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# **Tax Bulletin**

**SEPTEMBER 2024**



# Foreword



This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during August and September 2024.

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**Karachi**  
**September 19, 2024**

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# Executive Summary

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S.No.	Reference	Summary / Gist	Page No.
2.	<b>C.P. No.D-3757 of 2024 Sindh High Court</b>	<p><b>STAY AGAINST CHARGEABILITY OF SALES TAX ON SERVICES ON REIMBURSEABLE EXPENDITURE / COST INCURRED</b></p> <p>Petitioners challenged the enhancement of scope of 'economic activity' and 'value of taxable services' through the Sindh Finance Act, 2024 providing for charging sales tax on services on reimbursable expenditure / cost incurred on behalf of service recipient.</p> <p>Sindh High Court has passed ad-interim order to restrain SRB from taking coercive measures for recovery of sales tax.</p>	15
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2	<b>No.KPRA/ADMIN/MC /2024/618-22 dated September 4, 2024</b>	Allowing standard rate of sales tax at the rate of 15% instead of applicable reduced sales tax rate in case of certain taxpayers by name, effective from August 5, 2024. Consequently, input tax adjustment is also allowed to those taxpayers.	17
3	<b>No.KPRA/ADMIN/REG/2024/604 dated September 3, 2024</b>	Khyber Pakhtunkhwa Sales Tax Special Procedure (Tax on Specified Services) Regulations, 2024 have been enacted effective from September 03, 2024 which mandates collection agents (including SBP, scheduled banks or other entity authorized by SBP) to collect sales tax at applicable rates, from recipient of specified services based in Province of KPK, from gross amount of consideration remitted abroad. Such specified services broadly include services of Advertisement, Franchise, Digital or IT Services, Valuation services, VISA processing services and Online Market Place (OMP).	17

# Income Tax Ordinance, 2001

## A. Notifications:

### 1. S.R.O. 1377(I)/2024 dated September 6, 2024

Federal Board of Revenue (FBR) has made amendments in Rule 231C of the Income Tax Rules, 2002 (the Rules) i.e. Alternative Dispute Resolution (ADR) by substituting the sub-rules (1) to (15) with the changes proposed earlier through S.R.O. 1290(I)/2024 dated August 24, 2024. Previously, through Tax Laws (Amendment) Act, 2024 changes were introduced in Income Tax Ordinance, 2001 (the Ordinance) and ADR process was amended.

Through the amendment made, FBR has aligned the related rule with section 134A of the Ordinance. Following is the summary of the changes made vide SRO:

- Definition of State Owned Enterprise (SOE) is inserted in sub-rule (2) and FBR has made it mandatory for the SOEs to apply to the Board for appointment of a Committee, if aggrieved by a decision.
- Documents to be submitted along with the application to the Board are prescribed under sub-rule (5) that includes:
  - an initial proposition for resolution of the dispute;
  - an offer to make payment of tax; and
  - an undertaking that the applicant shall accept the decision of the Committee which shall be binding on him in all respects and that he shall on receipt of the decision immediately withdraw any and all pending litigation or cases of any kind in respect of the dispute mentioning details thereof.
- Composition of the panel notified by the Board is updated in the Rules and officer of Inland Revenue retired in BS-

21 and above are inserted as provided in the Ordinance.

- Time period to seek information and decide the dispute of 120 days from the constitution of the Committee has been updated to 45 days, extendable further by another 15 days for reasons to be recorded in writing.

### 2. S.R.O. 1321(I)/2024 dated August 28, 2024

This draft SRO proposed an amendment in the Second Schedule of the Income Tax Rules, 2002 and has introduced electronic return form for Tax Year 2024 and onwards for traders who were non-filers in Tax Year 2023.

### 3. S.R.O. 1320(I)/2024 dated August 28, 2024

The subject SRO grants exemption from withholding of tax under section 148 of the Ordinance on import of medicines for personal therapeutic use of immediate family members of the person on the issue of no objection certificate by the Ministry of National Health Services Regulations and Coordination, Government of Pakistan.

## B. Reported Decisions:

### 1. TAX ON DEEMED INCOME DECLARED ULTRA VIRES TO THE CONSTITUTION

(2024) 130 TAX 102

BALUCHISTAN HIGH COURT

**QUETTA CHAMBER OF COMMERCE & INDUSTRY AND ANOTHER VS FEDERATION OF PAKISTAN THROUGH SECRETARY REVENUE DIVISION AND ANOTHER**

**APPLICABLE SECTIONS: 7E AND 37 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE), CONSTITUTION OF PAKISTAN, 1973, ARTICLES 23 & 24 - ENTRY 47 OF THE FOURTH SCHEDULE (FEDERAL LEGISLATIVE LIST)- FINANCE ACT, 2022**



### **Brief Facts:**

Petitioner challenged the provision of section 7E of the Ordinance inserted through the Finance Act, 2022, on the basis that it is ultra vires the Constitution for being beyond the competence of the Federal Legislature, and for being discriminatory and confiscatory violating constitutional rights, hence liable to be struck down

### **Decision:**

Baluchistan High Court decided the matter as follows:

- All the powers to impose tax on immovable properties including the power to tax capital gain on immovable properties fall in the domain of the provinces and not of the Federation.
- That the impugned provision fails to pass the first two tests being out of the competence of the Federal Legislative List and a clear encroachment on the powers of Provinces as provided in the Constitution.
- Thus imposition of income tax by the Federation on immovable properties would mean double taxation of same assets both by the Provinces and by the Federation.
- For paying taxes on immovable properties where no income is earned / accrued the citizens will ultimately be forced to dispose of the immovable properties to pay said tax thereon. Hence section 7E being confiscatory in nature is clear violation of Articles 23 and 24 of the Constitution.
- In the absence of any economic transaction, taxing immovable properties in the hands of owner through legal fiction of deeming is thus irrational even in the light of the Apex Court decision in the case of Elahi Cotton Mills. For the reasons given above the instant petitions are allowed and the impugned provisions of Section 7E of the Ordinance are declared to be ultra vires the Constitution, hence it is struck down and is declared to be void ab initio.

## **2. SPECIAL LAW WOULD TAKE PRECEDENCE OVER THE GENERAL LAW**

**(2024) 130 TAX 79**

**SUPREME COURT OF PAKISTAN**

**COMMISSIONER INLAND REVENUE VS RIAZ BOTTLERS (PVT.) LTD. (NOW LOTTE AKHTAR BEVERAGES (PRIVATE) LIMITED)**

**APPLICABLE SECTIONS: SECTIONS 2 (C) AND 9 OF COMPANIES PROFITS (WORKERS PARTICIPATION) ACT, 1968 (WPPF), SECTION 25(C) OF THE INCOME TAX ORDINANCE, 1979 (REPEALED ORDINANCE)**

### **Brief Facts:**

Respondent was a private limited company, which derived its income from bottling carbonated soft drinks and non-carbonated drinks. Assessment for the assessment year 2001-2002 was completed under section 62 of the repealed Ordinance. This assessment was set aside by the ATIR, vide Order, dated December 1, 2007, on various issues for de novo consideration.

Subsequently department vide order dated June 28, 2008 reassessed the issue and made an addition on account of WPPF and interest thereon was added under section 25(c) of the repealed Ordinance.

Being aggrieved, the respondent filed appeal with CIRA, who confirmed the addition made under section 25(c) of the repealed Ordinance. Thereafter, ATIR vide its order deleted the addition with the observation that companies falling under section 2(c) of the WPPF were allowed to use such funds for their business operations and the income from such funds including capital gain was exempt from levy of tax, due to being granted through a special law.

Department filed Reference Application before the LHC which was dismissed vide judgment dated September 12, 2019.

Being aggrieved, the department filed petition in the Supreme Court.

### Arguments:

Department contended that High Court had misinterpreted the provisions of section 2(c) of the WPPF, by upholding the Order of the ATIR, wherein it was stated that the aforementioned Act is special law and therefore would prevail over section 25(c) of the repealed Ordinance. It was further contended that an amount not transferred to the WPPF of the government within 3 years attracts the provisions of section 25(c) of the repealed Ordinance and is liable to be added in the income of the taxpayer; and the High Court has in essence made provisions of section 25(c) redundant.

### Decision:

Supreme court held that:

- The word trade quite literally means buying and selling of goods and services. The department could not controvert that the transferred amount could not be termed as arising out of a trade / trading rather the same is a statutory liability. To elaborate, the transferred amount to the WPPF was granted an exemption because a statute, in the present case, WPPF, allowed for it. Hence, the amount in question was nothing but a statutory liability.

Moreover, this Court has opined in Gulistan Textile Mills Ltd that according to the principle of harmonious interpretation the special law would take precedence over the general law.

Even if for the sake of an argument, we were to give the Ordinance more weight over the special law, it would not help the department's case because the transferred amount to the WPPF was not a trading liability and thus did not attract the provisions of section 25(c) of the repealed Ordinance.

### **3. RATE OF TAXATION PROVIDED IN FIRST SCHEDULE FOR THE DIVIDEND INCOME HAS TO EXTEND TO INSURANCE BUSINESSES AS WELL WITHOUT ANY DISTINCTION.**

**130 TAX 113**

## LAHORE HIGH COURT

### **COMMISSIONER INLAND REVENUE VS SECURITY GENERAL INSURANCE COMPANY LIMITED APPLICABLE SECTION: Section 99 read with Rule 5 of the Fourth Schedule of the Income Tax Ordinance, 2001 (the Ordinance).**

### Brief Facts:

In the instant case, Security General Insurance Company Limited and others filed appeals to the Appellate Tribunal Inland Revenue concerning various tax years, raising identical legal questions. Due to differing opinions among Tribunal members, the matter was referred to a Full Bench of the Appellate Tribunal, which subsequently issued the contested judgment.

The Full Bench considered the judgment rendered by the Supreme Court of Pakistan and conclusively determined the legal question by adhering to the apex court's precedent, ruling in favor of the respondents.

The counsel for the taxpayers argued that while the Fourth Schedule provides the computation of profits and gains under Rule 5, it does not pertain to the determination or computation of tax liability, which is a distinct concept.

Conversely, the counsel for the Department contended that the Supreme Court's judgment in EFU General Insurance is distinguishable, as it is based on the provisions of the Ordinance, 1979, specifically Section 26(a). The Department's counsel argued that the principles established in EFU General Insurance would not apply under the provisions of the Ordinance, 2001.

### Decision:

The Lahore High Court (LHC) ruled in favor of the Petitioner on the following grounds:

- The rate of taxation must extend to insurance businesses without any distinction or discrimination.

- The First Schedule specifies a different tax rate for dividend income. If the First Schedule is applicable, the Department cannot argue that insurance businesses are ineligible for the tax rate benefits provided therein, while other similarly situated companies and taxpayers receive such benefits.
- There is no basis for the Department's argument to prevail. The benefits concerning the rate of taxation must extend to insurance businesses equally and without discrimination.
- The Court clarified that while Rule 5 of the Fourth Schedule pertains to the computation of profits and gains, it does not address the determination or computation of tax liability, which is a separate issue. Thus, the rate of taxation specified in the First Schedule for dividend income must also apply to insurance businesses without distinction.

**4. MERE FILLING OF RETURNS WITHOUT BRINGING ON RECORD ANY PROOF OF PAYMENTS OF THE AMOUNT DUE BY THE RECEIPT IS NOT SUFFICIENT TO ESTABLISH THAT TAX DUE WAS ACTUALLY PAID.**

**130 TAX 124**

**LAHORE HIGH COURT**

**COMMISSIONER INLAND REVENUE  
Vs  
PUNJAB MEDICAL STORE**

**APPLICABLE SECTIONS: Sections 153 and 161 of the Ordinance, 2001; Rule 44 of the Income Tax Rules, 2002.**

**Brief Facts:**

In this case, the respondent-taxpayer, an Association of Persons engaged in the sale of medicines and pharmaceutical products, was required to deduct tax as a withholding agent under Section 153(1)(a) of the Ordinance. During the tax year 2020, it was observed that the taxpayer made payments to various individuals without providing proof of tax deductions as mandated by the Ordinance. Consequently, the Department issued a

notice under Rule 44(4) of the Income Tax Rules, 2002, due to the failure to comply with withholding tax provisions.

Despite multiple opportunities for the taxpayer to respond and a show-cause notice being issued, the taxpayer did not provide the required documentation. As a result, the Assessing Officer passed an order, creating a tax demand of Rs. 4,518,845, including a default surcharge. The taxpayer's appeal to the Commissioner Inland Revenue (Appeals) was dismissed; however, the Appellate Tribunal subsequently allowed the taxpayer's appeal. The Tribunal commented that the taxpayer was a prescribed person required to deduct tax on payments made for purchases under Section 153(1)(a) and the default in tax deduction for the concerned tax year was established. However, since the recipients of the payments had filed their tax returns, the Assessing Officer's creation of the tax demand was unjustified.

Being aggrieved from the above decision, the department filed reference application under Section 133 of the Ordinance, in the LHC and raised following question of law

" That whether the impugned order of the learned ATIR is legally sustainable and justified interpretation and application of sections 161(1), 161(1B) and 161(2) read with sections 136 and 205 of the Ordinance, in the present case whereas default in deduction of tax has been clearly established, no proof of payment of tax has been provided and mere filing of the tax returns by the recipient of the payments has been considered sufficient to establish that the tax that was to be deducted from the payment made to a person or collected from a person has meanwhile been paid by that person there by absolving the withholding agent of its statutory liability?"

**Decision:**

The reference application under Section 133 of the Ordinance, was allowed, and the question of law was decided in favor of the applicant department, establishing that the taxpayer could not be absolved of its statutory obligation to collect and deposit the tax as a withholding agent, when it failed to provide evidence of tax payment by the recipient.

# Sales Tax Act, 1990

## A. Circular:

### 1. Sales Tax Circular No. 04 of 2024 / IR-Operations dated September 5, 2024

As per proviso to sub-rule (a) of rule 5 of the Sales Tax Rules, 2006, every individual, any member of an AOP, and a director of a company with only one shareholder or member (as the case may be) are required to visit an e-Sahulat Centre of NADRA during the month of July every year for biometric re-verification.

The deadline of July 31, 2024 for current year was previously extended till August 31, 2024 through circular no. 2 of 2024/IR-Operations dated July 30, 2024. Now, through circular no. 04/2024/IR-Operations dated September 05, 2024, FBR has further extend the time line for biometric re-verification till September 30, 2024.

## B. Reported Decisions:

### 1. IMPOSING DEFAULT SURCHARGE ON NON-CHARGING OF SALES TAX ON ADVANCES AND DEMANDING 10% OF OUTPUT TAX UNDER SECTION 8B(1) ARE NOT SUSTAINABLE IN CASE WHERE UNADJUSTED INPUT TAX CREDIT IS AVAILABLE

**130 TAX 43  
APPELLATE TRIBUNAL INLAND  
REVENUE**

**M/S. XPLOR ENTERPRISES (PVT) LTD  
VS  
THE COMMISSIONER INLAND  
REVENUE**

**APPLICABLE PROVISIONS: Section 2(16), 2(44), 3, 6, 7, 8B(1), 22, 23, 25, 26, 33(1) and 88(1) of Sales Tax Act, 1990 (ST Act)**

#### Brief facts:

During audit conducted under section 25 of the ST Act, it was observed by the officer that the taxpayer failed to pay sales tax and further tax on payment received in advance. Further, the officer contended that the taxpayer being importer-cum-manufacturer was required to pay 10% of

the output tax in terms of section 8B (1) of the ST Act.

Accordingly, show cause notice was issued and the assessing officer charged default surcharge and penalty for short payment of sales tax and further tax on advances and for recovery of 10% of output sales tax in terms of section 8B(1) of the ST Act.

Being aggrieved, the appellant filed appeal before the Commissioner (Appeals) which was dismissed. Subsequently, the appellant filed second appeal before the Appellate Tribunal Inland Revenue.

#### Decision:

The appellate Tribunal allowed the appeal in favor of the appellant and annulled both orders of the lower authorities on the following grounds:

- The appellant had a huge carried forward unadjusted input tax, consequently sales tax was not required to be paid. Section 34 required imposition of default surcharge where payment of sales tax is involved. Said section does not cater the situation where the output tax (tax on supplies) is allowed to be adjusted against the tax credit available with the monthly return, Therefore, no default surcharge can be charged in a case where no payment is to be made with the sales tax return.
- The appellant was engaged in business of commercial imports and not in the business of manufacturing. Therefore, as per serial No. 7 of the Table to SRO 647(I)/2007 dated June 27, 2007, the appellant being a commercial importer is excluded from the purview of subsection (1) of section 8B of the ST Act and was not required to pay 10% of the output tax.
- The Appellate Tribunal further held that non-payment of 10% of the output tax is a procedural lapse on the part of registered person which does not cause any revenue loss to the government exchequer because the excess

unadjusted input tax, as per sub section (2) of section 8B, will either be adjusted or refunded after one year time. Therefore, order for recovery of unpaid 10% of output tax under section 8B is not legally sustainable.

## **2. THE ENHANCEMENT OF THE RATE OF SALES TAX WITH RETROSPECTIVE EFFECT IS EXPROPRIATORY AND CONFISCATORY IN NATURE**

### **130 TAX 53 APPELLATE TRIBUNAL INLAND REVENUE**

#### **THE COMMISSIONER INLAND REVENUE VS M/S AR FOODS (PVT) LTD**

**APPLICABLE PROVISIONS: Sections 3, 5, 33 and 34 of the Sales Tax Act, 1990 (ST Act)**

#### **Brief facts:**

In the instant case, the registered person was confronted vide a show cause notice regarding short charging and payment of sales tax during the tax period of June 2013 (from June 13, 2013 to June 30, 2013). It was contended that the registered person was liable to pay sales tax at the rate of 17% for the aforesaid tax period however, the registered person charged sales tax at the rate of 16%.

The registered person charged and collected sales tax at the rate of 16% till June 30, 2013. Subsequently through Finance Act, 2013, the rate of sales tax was increased from 16% to 17% retrospectively with effect from June 13, 2013. In the absence of a response by the registered person and by virtue of this retrospective amendment in section 3(1) of the ST Act, the assessing officer passed the order against the appellant and adjudged the sales tax liability at the rate

of 17% in respect of the aforesaid tax period. The assessing officer also imposed default surcharge under section 34 and penalty under section 33(5) of the ST Act.

The registered person filed appeal before the Commissioner (Appeals) where Commissioner (Appeals) remanded back the case to the assessing officer.

Being aggrieved, the department filed appeal before the Appellate Tribunal.

#### **Decision:**

The Appellate Tribunal decided the matter in favour of the registered person and annulled the orders of lower authorities.

The Tribunal held that a registered person shall be charged to tax at such rate as is in force at the time of supply. Therefore, the enhancement of the rate of tax from 16% to 17% through the Finance Act, 2013 with retrospective effect in respect of tax period June 2013 (from June 13, 2013 to June 30, 2013) is inconsistent with section 5(a) of the ST Act.

It is a golden rule of interpretation of statute that an enactment is to be construed as a whole and different provisions thereof should be interpreted harmoniously and in consonance with each other, in such a way that every part becomes effective and surplusage is to be avoided.

The Tribunal further held that the enhancement of the rate of sales tax with retrospective effect is expropriatory and confiscatory in nature and opposed to the fundamental rights guaranteed under the Constitution. The Tribunal further observed that although on one hand the enhancement of the rate of sales tax is introduced with the retrospective effect but on the other hand it is not allowed to pass on the burden, which is nothing but an exercise against the fundamental rights, being also unreasonable in nature.

# Federal Excise Act, 2005

## A. Notification:

### 1. S.R.O. No. 1376(1/2024 dated September 5, 2024

Through Finance Act, 2024, Federal Excise Duty (FED) is levied ranging from 3% to 7% on allotment or transfer of commercial property and first allotment or first transfer of open plots or residential property by any developer or builder in such mode and manner and subject to such conditions and restrictions as may be prescribed by the Board. The applicable rates provided under serial no. 1 Table-III of First Schedule to the FE Act are as under:

Serial No.	Description	Rate of duty
(a)	where the buyer is appearing on Active Taxpayer List (ATL) under section 181A of the Income Tax Ordinance, 2001 on the date of acquisition of the property	3% of gross amount of consideration involved
(b)	where the buyer has not filed the income tax return by due date as specified in proviso to rule IA of Tenth Schedule to the Ordinance	5% of gross amount of consideration involved
(c)	where the buyer is not appearing on ATL on the date of acquisition of the property	7% of gross amount of consideration involved

Through aforesaid notification, FBR has prescribed rules for collection and payment of FED on property. These rules require developer or builder (at the time of allotment or transfer of commercial property and first allotment or first transfer of open plots or residential property) to collect duty at aforesaid rates. The duty so collected shall be credited to the Federal Government on the same day through a computerized payment receipt (CPR) or SWAPS payment receipt (SPR). Further, a monthly statement is also required to be filed by the developer or builder with the Commissioner in prescribed form

In case duty is not paid or short paid, the Officer Inland Revenue having jurisdiction over the developer or builder will take action to collect the outstanding duty amount under Section 14 of the Act along with default surcharge under Section 8 of the Act to be calculated from due date till the date of payment.

Where the person from whom duty to be collected has paid the duty thereon, the principle amount of duty will not be recovered from the developer or builder in default. However, the developer or builder shall be liable to pay default surcharge at the rate of 12% or Kibor+3% whichever is higher as provided under Section 8 of the FE Act to be calculated from the time they failed to collect the duty until the duty was paid.



# Sindh Sales Tax on Services Act, 2011

## A. Reported Decisions:

### 1. AMOUNT OF SALES TAX NOT WITHHELD PRIOR TO INSERTION OF SECTION 13(3) OF THE SINDH SALES TAX ON SERVICES ACT, 2011 THROUGH SINDH FINANCE ACT, 2019 IS NOT RECOVERABLE FROM WITHHOLDING AGENTS

S.T.R.A. No. 1133 / 2015  
SINDH HIGH COURT

M/S. NATIONAL TRANSMISSION & DESPATCH COMPANY LIMITED  
VS  
THE COMMISSIONER (APPEALS),  
SINDH REVENUE BOARD, KARACHI

**APPLICABLE PROVISIONS: Section 17, 23 and 47 of the Sindh Sales Tax on Services Act, 2011.**

#### Brief facts:

In the instant case, main issue involved is that whether the applicant was a person liable to pay sales tax on services involved which was not withheld as a withholding agent in respect of period prior to insertion of section 13(3) of the Sindh Sales Tax on Services Act, 2011 (SST Act) through the Sindh Finance Act, 2019.

#### Decision:

The Hon'ble Court relying upon another judgment of the Sindh High Court reported as 2021 PTD 484 held that person receiving service was not liable to pay tax as withholding agent prior to the year 2019. Therefore, principal amount of Sindh Sales Tax on Services not withheld by a person as a withholding agent prior to insertion of sub-section (3) of section 13 of the SST Act through Sindh Finance Act, 2019 cannot be recovered from such person.

### 2. STAY AGAINST CHARGEABILITY OF SALES TAX ON SERVICES ON REIMBURSEABLE EXPENDITURE / COST INCURRED

C.P. No. D-3757 of 2024  
SINDH HIGH COURT

VARIOUS PETITIONERS  
VS  
SINDH REVENUE BOARD (SRB)

**APPLICABLE PROVISIONS: Section 5 of the Sindh Sales Tax on Services Act, 2011 (SSTS Act).**

#### Brief facts:

Petitioners have challenged the vires of proviso added to section 5 of the Sindh Sales Tax on Services Act, 2011 through the Sindh Finance Act, 2024 for charging sales tax on reimbursable expenditure or cost incurred by service provider and charged in the course of provision of services. Further, scope of 'economic activity' is also enhanced through Sindh Finance Act, 2024 for charging sales tax on services to include the activities of employees which are not rendered directly for an employer but to any other person in the course of, or furtherance to, an economic activity of the employer.

#### Background of the issue:

Chargeability of sales tax on reimbursable expenditure / cost had been a contentious issue in the past. In the year 2017 petitions were filed before the Sindh High Court (SHC) against chargeability of Sindh Sales Tax on Services on reimbursable expenditure mainly on account of salaries & wages in disposal of which the Hon'ble SHC through judgment reported as 2021 PTD 731 decided the issue in favor of the petitioners holding that the Province can only levy taxes on services pursuant to Entry 49 of the Fourth Schedule to the Constitution of Pakistan, 1973, as such any such tax on the reimbursement amount of salaries, wages, etc. is beyond the mandate of Province.

Sindh Revenue Board (SRB) challenged the aforesaid judgement before the Hon'ble

Supreme Court of Pakistan (SCP). However, SCP through its judgment reported as 2023 SCMR 1778 maintained the judgment of SHC.

Later on, through aforesaid amendments in scope of economic activity and value of taxable service, SRB has attempted to circumvent the effect of judgments of Superior Courts.

Being aggrieved from the aforesaid amendments, a Constitutional Petition (CP) was filed before the SHC by various service providers requesting for an ad-interim order, citing a similar situation in an earlier case where such an order was granted.

### **Decision:**

As the vires of law has been challenged, the Court has issued stay order restraining SRB from any coercive measures for the recovery, which may become due pursuant to the impugned amendment.

However, the Court instructed the petitioners to continue making sales tax payment on services as per provisions of law existed prior to the impugned amendment.



# Khyber Pakhtunkhwa Sales Tax on Services Act, 2022

## A. Notifications:

### 1. Public Notice Dated August 22, 2024

Through aforesaid notification, Infrastructure Development Cess (IDC) is levied at the rate of 2% of value of all export consignments leaving for abroad from the Province of Khyber Pakhtunkhwa through air, road or rail effective from August 28, 2024 in terms of section 3 of Khyber Pakhtunkhwa Infrastructure Development Cess Act, 2022 as substituted vide the Khyber Pakhtunkhwa Finance Act, 2024. Collection of IDC on exports commence at Air Freight Unit, Bacha Khan International Airport, Peshawar and subsequently extends to other exporting stations of the Province.

### 2. No. KPRA/ADMIN/MC/2024/618-22 dated September 4, 2024

Through the aforesaid notification, KPRA has allowed following registered taxpayers to charge standard sales tax rate of 15% effective from August 05, 2024 instead of applicable reduced rate on services being rendered by them. Consequently, input tax adjustment is also allowed against services chargeable at standard rate.

Name	KNTN	Region
M/s Alamgir Construction Company	K3152821-0	Central Region
M/s Sharif Khan & Co.	K4549772-7	Central Region

Name	KNTN	Region
M/s Farooq Khattak and Son	K2734335-9	M&M Region
M/s Sufyan Traders	B305138-2	Central Region
M/s AU Solution	K4583229-2	Central Region

### 3. No. KPRA/ADMIN/REG/2024/604 dated September 3, 2024

Through aforesaid notification, new regulations have been introduced as the Khyber Pakhtunkhwa Sales Tax Special Procedure (Tax on Specified Services) Regulations, 2024 effective from date of notification i.e. September 03, 2024.

These regulations shall apply in relation to collection and payment of sales tax on the specified services for which recipient of the service based in the Province of KPK, makes payment in relation to any such specified services to service provider not resident in Pakistan and such payment is made through a 'collection agent' by using any means for transfer of amount for consideration to the service provider.

The collection agent is defined under clause (m-i) of section 2 of the KPK Sales Tax on Services Act, 2022 which includes State Bank of Pakistan (SBP), any scheduled bank, or any other entity licensed by SBP to transfer money abroad for specified services.

The specified services and applicable rate for collection of tax is mentioned as under:

<b>S.No</b>	<b>Entry No. of Second Schedule</b>	<b>Description of taxable service</b>	<b>Rate of tax</b>
1.	6	Advertisement services for which payment is made through a collection agent by using any means for transfer of payments to any service provider not resident in Pakistan	10%
2.	10	Franchise services either on giving or on receiving ends including royalties or similar financial benefits arising out of intellectual property rights or other factors of business good will, market standing, popularity, image or reputation etc.	15%
3.	15	Digital or IT based services in whatever form or manner or under whatever arrangement	2%
4.	19(g)	Software or IT based system development or management or similar such other fields.	5% or 15% as the case may be
5.	31	Visa processing or visa acquisition services including advisory or consultancy services for foreign education or migration provided by persons in their private business or professional capacity.	15%
6.	32	Valuation or visa acquisition services including competency and eligibility testing services and services involving written test or without interviews for job or work recruitment or selection for any other purposes like British Council, ACCA, Cambridge University, University of London, and other charging amounts for exams and other fee including the fee on TOEFL and ILETS, ICAP, FRCS, FRSM, FRCPS and ICAEW etc.	5%
7.	42	Online Market Place (OMP) including online platform or portal services by whatever name called (other than ride-hailing or ride-hail services)	2%

#### **Mode and manner of collection, reporting and deposit of sales tax:**

The collecting agent shall charge and collect the sales tax, from recipient of aforesaid specified services based in the Province of KPK, at applicable rate on the gross value of specified services being remitted abroad. The tax so collected shall be reported by collection agent in its Annexure C of its sales tax return for respective tax period. Such tax collected shall be deposited by 15<sup>th</sup> of the month following the month in which consideration was remitted. Further, no input tax shall be adjustable against said tax collected and payable by collection agent.

#### **Registration of collection agent:**

The collection agent, if not already registered under section 29 of the Act, shall obtain registration under the Act.

#### **Application of other provisions:**

All the provisions of the Act, rules, regulations including these regulations and notifications made thereunder shall apply *mutatis mutandis* in relation to payment of tax, short payment of tax, assessment of tax, recovery of tax, e-filing of returns, maintenance of records, imposition of penalty and default surcharge.

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## About Yousuf Adil

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