PROVINCIAL BUDGET(S) 2017-2018

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WITH COMPLIMENTS

To our Clients and Associates

We are pleased to summarize the important changes proposed in Finance Bill (s) 2017, presented in the provincial assemblies of Punjab, KPK and Sindh.

Under the Constitution, taxing rights on rendering of services, disposal and use of immovable properties and agricultural income tax inter alia are with the provinces. All changes proposed through the Provincial Bills are effective July 1, 2017 subject to approval by the provincial assemblies.

Major receipts of the provinces are from sales tax on rendering of services. Stamp duties, registration fees, motor vehicle tax, property tax and agricultural income tax also inter alia fall within the ambit of provincial fiscal legislation.

The proposals in the Provincial Bills are to be approved by the respective assemblies and should not generally be acted upon without obtaining appropriate advice.

The memorandum can also be accessed on our website www.rafqat.com

If you require any information or have queries with regard to the proposed amendments in the Finance Bill (s), please feel free to contact us.

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EXECUTIVE SUMMARY

Sales tax on services is taxed, wherever applicable, by the respective provinces and the sale of goods is taxed by the Federal Government. Principally, a value added tax system is in place in Pakistan therefore, sales tax on goods and services either at Federal or Provincial levels is admissible as input tax subject to certain conditions whilst discharging the respective output tax liability, unless specifically made inadmissible.

Since 2011, 2012, 2013 and 2015 Provincial Governments of Sindh, Punjab, Khyber Pakhtunkhwa and Balochistan respectively have started collecting sales tax on services. Tax on services in Islamabad Capital Territory (ICT) being collected by Federal Govt.

Following collection targets for provincial sales tax has been set by the provinces for fiscal year 2016-17;

		2015-16	***2015-16*** *Revised*	***2016-17***
			[Rupees in Billion]	
1.	*Khyber-Pakhtunkhawa*	*10.00*	*10.00*	*13.653*
2.	*Sindh*	*78.00*	*78.00*	*100.00*
3.	*Punjab*	*85.00*	*84.25*	*127.00*

Federal Government has retained federal sales tax at 17 percent on goods, and 16 per cent has on services in ICT. Punjab has retained the rate of 16 per cent. However, in Khyber Pakhtunkhwa general rate of sales tax on services, except few services is 15 per cent and Sindh has, across the board, except few services, reduced the standard rate to 13 per cent.

A comparison of provincial sales tax laws of Sindh, Punjab and KPK revealed that a disparity in sales tax rates on services has been witnessed. The matter of disparity in rates is to be considered on national level.

Over the years, more and more service sectors are being brought within the ambit of tax.

PUNJAB FINANCE BILL-2016

S.No	Proposal	Relevant Section/ Clause/ Schedule

PUNJAB SALES TAX ON SERVICES ACT, 2012

1.	Due date	2(17)
2.	Place of business	2(30)
3.	Liability of a registered person	11A
4.	Special procedure for collection of tax, etc.	14A
5.	Deduction and adjustment of tax on inputs to the business	16(2),16(4)(b) & 16(5)
6.	Adjustment of input tax paid on certain goods and services	16C
7.	Assessment of tax	24
8.	Appointment of authorities	39
9.	Offences and Penalties	48
10.	Recovery of arrears of tax	70
11.	Power to restrain certain authorities	76A
12.	Service of orders and decisions	78
13.	Condonation of time limit	84
14.	Amendment in Second Schedule	

THE STAMP ACT, 1899

2 and Schedule-1

PUNJAB SALES TAX ON SERVICES ACT, 2012

DUE DATE -Section 2(17)

The Federal Sales Tax Law provides separate dates for filing of different annexures of the sales tax return. The registered persons are required to declare their supplies till 10th of the following month in the return. This enables them to electronically select the purchases in their sales tax returns, thereby preventing them from claiming the input tax manually. The system is called Sales Tax Real time Invoice Verification (STRIV).

The Bill seeks to amend the definition of the due date of filing of return to propose provision of different dates for furnishing different parts of the annexures of the Punjab sales tax return to harmonize it with the Federal Sales Tax Act, 1990.

PLACE OF BUSINESS -Section 2(30)

The Bill seeks to extend the definition of place of business by amending sub-clause (b) of sub-section (30) of section 2 of the Punjab Sales Tax on Services Act, 2012 (PSTSA'2012). Through the proposed amendment, the activities performed through ecommerce or virtual presence including web portals shall now be treated as place of business for levy of the Punjab sales tax on the activities carried out through e-commerce, web-portals, etc.

In the current age, significant economic activities are performed virtually in the form of IT applications etc. It seems that such activities shall now be subject to the Punjab sales tax in the hands of the owner of the application or persons having a virtual presence in the Punjab and shall also be liable to get registration with the Authority.

LIABILITY OF A REGISTERED PERSON- Section 11A

The Bill seeks to insert new section 11A whereby, in case the recipient of taxable service being withholding agent fails to make the payment of tax to the service provider within one hundred and eighty days and the service provider has also not made payment of tax within the due date, the recipient and the provider of services shall jointly and severally be liable for payment of tax.

Currently, the service providers do not bother to take the responsibility of making payment of the sales tax where their services are subject to withholding of tax by the recipient of their services, especially in the case of advertisement services. The proposed amendment is expected to curb this practice.

SPECIAL PROCEDURE FOR COLLECTION OF TAX, ETC. -Section 14A

The Bill seeks to insert a new section 14A which empowers the Authority to issue a notification to declare any person as tax collecting agent.

The said person shall be liable to pay the tax so collected to the Government as per procedures to be prescribed by the Authority, including related to registration, record keeping, invoicing, returns and other related matters.

DEDUCTION AND ADJUSTMENT OF TAX ON INPUTS TO THE BUSINESS -Section 16(2), 16(4)(b) & 16(5)

The Bill seeks to substitute sub-section (2) of section 16 to allow the registered person to claim adjustment, deduction or refund of the tax paid or payable under any other law with the condition to furnish tax invoice or Goods Declaration (GD), bearing the name of claimant and its National Tax Number, in case of domestic purchases or imports respectively.

The proposed requirement of furnishing documents or evidences to justify the legality of the input tax adjustment/ deduction or refund by the registered person gives an impression that the proposed STRIV system will only cater to the sales tax invoices issued under the PSTSA’2012. In that case, manual furnishing of tax invoices of goods and services or GDs for imported goods would be an additional burden.

The Bill also seeks to substitute sub-section (4) of section 16, empowering the Authority to put restrictions on claim/ adjustment of input tax by issuing notification with the approval of the Government.

The Bill further proposed to re-number sub-section (4) as (5) and also add the restriction on adjustment of further tax and extra tax.

The adjustment of further tax and extra tax charged under the Federal Sales Tax Act, 1990 has already been restricted in terms of clause (r) of sub-section (1) of section 16B of the PSTSA’2012.

ADJUSTMENT OF INPUT TAX PAID ON CERTAIN GOODS AND SERVICES -Section 16C

The Bill seeks to insert new section 16C which provides that the adjustment of input tax paid on the acquisition of capital goods, machinery and fixed assets classified under Section XVI, Chapter 84 and 85 of the First Schedule to the Customs Act, 1969 shall be adjustable against output tax in twelve equal monthly installments. The proposed section is though silent, but the term “services” used in the caption could trigger controversy as it could be viewed as intended to defer the input tax paid on services related thereto, such as customs clearance services, installation of capital goods, machinery and fixed assets.

The proposed amendment aims to harmonize the inflow of taxes to the Government, but to allow claim of input tax in 12 months, suitable amendment will also be required in the law, which currently allows a period of four months from the date of invoice for claiming input tax.
The proposed amendment replicates the unpopular amendment introduced by the Finance Act, 2007 in the Federal Sales Tax Act, 1990, which was ultimately withdrawn in 2011.

ASSESSMENT OF TAX -Section 24

The Bill seeks to extend the period of issuance of show cause notice for amendment of assessment from five years to eight years.

Similar amendment was also made in the Federal Excise Act, 2005 through the Finance Act, 2011 whereby the period of issuance of show cause notice was extended from three years to five years and the department of Inland Revenue had taken a view that the amendment has a retrospective effect. This controversy may also arise as a result of the proposed change in the PSTSA'2012.

APPOINTMENT OF AUTHORITIES -Sections 39

The Bill intends to introduce two new officer cadre in hierarchy of sales tax persons, namely Risk Compliance Officer and Enforcement Officer. However, it remains to be seen what powers and responsibilities will be assigned to these officers.

OFFENCES AND PENALTIES -Section 48

The Table under Section 48 of the PSTSA'2012 provides general and specific penalties under the specified circumstances.

The Bill seeks to amend Entry No. 10 of the Table to enhance the penalty imposed on any person who obstructs any officer to perform his official duties from Rs. 25,000 to Rs. 100,000. It is also proposed to insert reference of section 70 (recovery of arrears of tax) in the Entry to impose penalty on violation of said section.

RECOVERY OF ARREARS OF TAX -Section 70

The Bill seeks to insert clause (bb) to the sub-section (1) of Section 70 of the PSTSA'2012 whereby the Authority upon issuance of notice in writing would be authorized to recover the amount of tax payable by a taxpayer from any other person who owe any amount to the taxpayer under legally enforceable relation including purchase contracts, contracts with credit or financial institutions or banking companies, lease contracts, loan agreements, building loan contracts, life insurance contracts, employment or work contracts etc.

It was repeatedly urged by the taxpayers that in deference to the principle of natural justice and equity, it would be reasonable that pending disposal of the appeal by the Appellate Authorities, the disputed tax demand and penalty should remain stayed. However, the Bill seeks to provide automatic stay against recovery of the disputed tax demand on payment of at least 25% of such demand during pendency of the appeal before the Commissioner (Appeals) by inserting a proviso after clause (f) to the sub-section (1) of Section 70 of the PSTSA'2012.

The amendment will not infringe the right of the Commissioner (Appeals) to grant stay without payment of disputed tax.

POWER TO RESTRAIN CERTAIN AUTHORITIES- Section 76A

The Bill seeks to insert new section 76A which authorizes the Authority to issue a notification with the approval of the Government in the Official Gazette requiring any authority competent to issue or renew a license or permission to any person to engage in an economic activity which is taxable under the PSTSA'2012 to hold the issue or renewal of such license or permission to such person unless the licensee or grantee furnishes the evidence that he is a duly registered person under section 25, 26 or 27 of the PSTSA'2012.

The proposed amendment may create dispute in the cases where the competent authority does not fall within the jurisdiction of Punjab.

SERVICE OF ORDERS AND DECISIONS -Section 78

Under sub-section (7) of Section 78 of the PSTSA'2012, the Authority, while issuing notification, may communicate electronically in respect of all communications including notifications, order, assessment or requisition from officers. The Bill seeks to extend this facility for the service of notices and show cause notices as well.

CONDONATION OF TIME LIMIT -Section 84

The Bill seeks to add an explanation in section 84 of the PSTSA'2012 which deals with the condonation of time limit. The explanation provides that the expression "act or things to be done" includes an act or thing to be done by a registered person or an authority specified in section 39 of the PSTSA'2012.

AMENDMENT IN SECOND SCHEDULE
-Section 3 read with Second Schedule of the PSTSA'2012

The Bill proposes to make the following changes in the Second Schedule

Telecommunication Services- Serial No. 6

The existing exemption to "internet services whether dialup or broadband including e mail services, data communication network services (DCNS) and value added data services" is proposed to be restricted to value of services up to Rs.1,500 per month per student if used by the students.

From the language of the charging section of the PSTSA'2012, a view could be taken that the Punjab sales tax would apply only to the services listed in the Second Schedule to the PSTSA'2012. Based on this understanding, if a review of the services listed in the Second Schedule is carried out, there is no service category specifically listed which declares the services of (a) internet whether dial up or broadband, including e mail services [tariff heading 9812.6000]; (b) Data communication network services (DCNS) [tariff heading 9812.6200]; and(c) Value added data services [tariff heading 9812.6300], taxable.

The format of the Second Schedule is designed to provide complete listing of each service category which are taxable under PSTSA'2012 and the reference of the classification is provided only for guidance purposes. This argument takes strength from the insertion of expression"if applicable" in column 3 of the Second Schedule by the Punjab Finance Act, 2015 which supports the understanding that the primary column for determination of taxability of any service is column "2" which provides the description of the services.

For the sake of argument, if it is assumed that the taxation of the services is governed by the classification codes, in that case, the purpose or objective of providing extensive details in column 2 of the Second Schedule, which is updated by the Authority on an yearly basis, shall be defeated.

In this situation, a view could be taken that the services classifiable under tariff heading 9812.6000, 9812.6200 and 9812.6300 were never taxable and insertion or deletion of such headings in the exclusion would not have any impact. The services which are not taxable could not be declared exempt. This may lead to controversy if it is not addressed by the Authority.

Construction Services - Serial No. 14

The Government of Punjab on the recommendations of the Authority had issued a notification No. SO(TAX)5-24/2016 dated 05 October 2016 effective from 01 July 2016 whereby a reduced rate scheme was announced for construction services. The aforesaid notification is valid up to 30 June 2017.

The Bill seeks to introduce a similar scheme by inserting explanation in the taxable service category under Sr. No. 14 of the Second Schedule to the PSTSA'2012. A summary of the proposed amendment is given below

Type of construction service	Rate of Punjab sales tax
All services specified at S.No.14 without input tax credit or adjustment to the extent of Government civil works including those of cantonment boards involved in the ongoing development schemes and projects launched during Financial Year 2016-17 and funded under the Annual Development Plan of the Punjab Government or funded through foreign loans where the negotiations were finalized after 1st of July 2016 or funded under Public Sector Development Program of the Federal Government or funded by the Cantonment Boards.	One percent
All services specified at S.No.14 without input tax credit/adjustment to the extent of Government civil works including those of cantonment boards involved in	Zero percent

the ongoing development schemes and projects launched prior to Financial Year 2016-17 and funded under the Annual Development Plan of the Punjab Government or funded through foreign loans where the negotiations were finalized as on 1st of July 2016 or funded under Public Sector Development Program of the Federal Government or funded by Cantonment Boards.	
All other construction services are proposed to be taxable.	Reduced rate of 5% without input tax credit / adjustment.

Persons engaged in the contractual execution of work or furnishing supplies - Serial No. 16

The Bill proposes to withdraw the exemption provided to the scenario where the annual turnover of the contractual works or supplies does not exceed Rs.50 million.

Under the proposed amendment the services of the persons engaged in the contractual execution of work or furnishing supplies shall be taxable irrespective of the value of the work, except for the contracts involving printing or supplies of books which will remain exempt irrespective of the value of contracts.

STAMP DUTY

MERGING OF CVT AND REGISTRATION FEE WITH STAMP DUTY

As per the statement of reasons and objects to the Bill, the Board of Revenue, Punjab recently has introduced e- Stamping project for facilitation of public and to eliminate the usage of counterfeit stamp papers. Owing to great success, it has been proposed to merge all the Taxes /Duties/Fees in one head of account of Stamp Duty which would be issued through estamping system. The merger of all taxes would ease the procedure of deposits and helpful in reconciliation process as well.

Therefore, it is proposed that the other taxes and fee i.e. Capital Value Tax and Registration Fee which is being charged at the rate of 2% of the value of the urban property and Rs.500 in case of value up to Rs.500,000 and Rs.1,000 exceeding Rs.500,000 respectively may be merged into the head of account of Stamp Duty.

The new rate of Stamp Duty would be 5% of the consideration and the component of Registration Fee has been proposed to be added in the Stamp Duty. However, the exemptions already envisaged in section 6 of Finance Act, 2010 (as amended) from the payment of CVT would remain intact.

Considering the merger of CVT into Stamp Duty, the definition of urban area is proposed to be included in Stamp Act, 1899 to mean an area which is:

(a) a rating area under the Punjab Urban Immovable Property Tax Act, 1958 (V of 1958);

(b) the area already declared as an urban area under the Punjab Finance Act, 2010 (VI of 2010); and

(c) any other area which the Board of Revenue may, by notification, declare as an urban area; and

(d) an area developed by a development authority, housing authority, statutory body, cooperative housing society or a real estate company or developer.".

REGISTRATION FEE TO BE RECOVERED AS ADDITIONAL STAMP DUTY

Considering the drive to merge CVT and registration fee into Stamp Duty, additional Stamp Duty in case of registration of the instrument, is introduced.

INCREASE IN STAMP DUTY

Considering the merging of CVT with Stamp Duty and introduction of definition of urban area in Stamp Act, Stamp Duty for immoveable property is proposed to be bifurcated into ‘urban area property’ and other property. For Other property, the existing rates of Duty are maintained (except for additional duty for registration fee), whereas Stamp Duty rate for an instrument of immoveable property situated in an urban area are proposed to be enhanced.

SINDH FINANCE BILL-2017

S.No	Proposal	Relevant Section/ Clause/ Schedule

SINDH SALES TAX ON SERVICES ACT, 2011

1	Revision in Sindh Sales Tax Rates	3
2	Definition of franchise	2(46)
3	Definition of place of business	2(64)
4	Definition of programme	2(67B)
5	Person liable to pay tax	9(1)
6	Input tax credit not allowed	15A(1)
7	Input tax adjustment on certain goods and services	15B
8	Assessment of tax; and recovery of tax not levied or short levied	23(3)& 47(3)
9	Short paid amounts recoverable without notice	47A
10	Obligation to produce documents and provide information	52(4)
11	Monitoring or tracking by electronic or other means	54A
12	Offences and penalties	43(7B)
13	Appeals	57
14	Recovery of arrears of tax	66
15	Power to require licenses or permission	72A
16	Condonation of time limit	81

SINDH SALES TAX ON SERVICES ACT, 2011

PROPOSALS MENTIONED IN BUDGET SPEECH BUT NOT COVERED UNDER FINANCE BILL

During the budget speech it has been announced that the general rate of sales tax of 13% on taxable services would remain unchanged. However, the rate of sales tax on certain services is proposed to be reduced.

These propositions have not been catered in the Bill and, we understand, this will come into effect through notifications issued by the Board.

Increase in tax rate for telecommunication services

The only rate of sales tax which is increased is in respect of telecommunication services, which is proposed to be taxable at the rate of 19.5% instead of the current rate of 19%.

Reduced rate of tax on service

Following are the proposed amended rates of Sindh sales tax on services.

Description of services	Existing Rate	Proposed Rate
Travel agent 9805.50	10%	8%
Tour operators 9805.51	10%	8%
Specific indenters 9819.12	13%	3%
Specific call center 9835.00	13%	3%
Renting of immovable property 9806.30	8%	3%

DEFINITION OF FRANCHISE -Section 2(46)

The definition of the term franchise covers situations where certain rights to do business have been granted by a franchiser against a consideration or fee. Such consideration or fee will be treated as value of services for the levy of Sindh sales tax under the SSTS Act.

The Bill now seeks to extend the definition of franchise to cover the situations where such rights will be granted without any consideration or fee.

In accordance with these proposed amendments, it is important to highlight that a proviso to Rule 36(2) of the Sindh Sales Tax Rules, 2011 [the Rules] already provides that in cases of franchise where there is no formal agreement or the agreement between the franchiser and franchisee does not specify the amount of consideration (i.e. franchise fee or royalty), the value of services shall be an amount equal to 10% of the turnover of the franchisee during the relevant tax period or year.

However, there has always been a question mark on whether the provisions of the Rules are corresponding with the definition of franchise under the SSTS Act, which only covers grants of right against consideration or fee. Thus, by way of the proposed amendment, the legislation intends to synchronize the definition of the term 'franchise' with the deeming provisions under the Rule 36.

DEFINITION OF PLACE OF BUSINESS -Section 2(64)

The Bill seeks to extend the definition of place of business by amending sub-clause (b) of sub-section (64) of Section 2 of the SSTS Act. Through the proposed amendment, a person carrying on economic activity through virtual presence or a website or a web-portal or through any other form of e-commerce etc. shall now be treated as having a place of business in Sindh under the SSTS Act.

It seems that through the proposed amendment persons providing taxable services in Sindh through websites, applications or other forms of virtual ecommerce, without having any physical presence in Sindh, will now be treated as a person;

> *Having place of business in Sindh resident of Sindh liable to register under the SSTS Act, and; liable to discharge its Sindh sales tax liability in respect of such virtual economic activities.*

It would be noted that similar amendments have been proposed under the Punjab Sales Tax on Services Act, 2012 [PSTS Act], through the Punjab Finance Bill 2017.

It is important to note that generally such virtual ecommerce platforms, websites, applications are owned and run by persons who are located outside the territorial jurisdiction of Sindh or Pakistan and having no physical presence in either Sindh or Pakistan. In such situation it remains to be seen as to how SRB will legally bound such persons located outside the territorial jurisdiction of Sindh to get registered with SRB.

DEFINITION OF PROGRAMME -Section 2(67B)

Presently the definition of programme as provided under Section 2(67B) of the SSTS Act covers only audio or visual matter; live or recorded.

Now the Bill seeks to extend the scope of definition of the term programme to include any audio or visual matter; re-recorded or subjected to any postproduction processes like dubbing, colouring, subtitling or captioning.

Accordingly productions houses and programme producers involved in the above extended activities will also be required to charge Sindh sales tax at the applicable rate.

PERSON LIABLE TO PAY TAX -Section 9(1)

The Bill seeks to insert a new proviso along with two explanations in sub- section (1) of Section 9 of the SSTS Act which places the liability to pay Sindh sales tax on the registered person providing the services from his place of business in Sindh.
The proposed amendment now makes liable both the services provider and recipient of services jointly and severally for the amount of tax in the situation where –

> *A registered person receiving the taxable services fails to make payment of the amount of tax to a service provider within 180 days from the date of the tax invoice; and*
>
> *The service provider has also not made the payment thereof within the prescribed due date.*

It is explained that, for the purpose of the proposed proviso, the "amount of tax" shall include the total amount of tax and also the amount of tax as was liable to be withheld or deducted by service recipient in terms of the Withholding Rules prescribed under section 13(2) of the SSTS Act.

The Bill further explains that for the purpose of proposed proviso, the "registered person" shall include a person covered by the terminology "withholding agent" in terms of the Withholding Rules prescribed under Section 13(2) of the SSTS Act.
Under the present provisions of Section 9(1), the registered service provider is liable to pay tax on taxable services rendered and SRB is empowered to recover any unpaid amount of sales tax only from the service provider.

By virtue of the proposed amendments, SRB is now empowered to recover the unpaid amount of tax jointly, and severally, from the service provider or the recipient. We trust that the new powers would not be exploited by recovering the same amount of tax from both the service provider and the recipient.

INPUT TAX CREDIT NOT ALLOWED -Section 15A(1)

The Bill seeks to insert a new sub- clause (jj) in subsection 1 of Section 15A which provides that a registered person shall not be entitled to claim, reclaim, adjust, deduct input tax in relation to specified goods or services.

Through the proposed clause (jj) the registered person are barred from claim or adjustment of input tax paid (either federal or provincial) on acquiring of goods or services which are liable to sales tax at specific rate or at fixed rate or at such other rates not based on value or at a rate lesser than thirteen percent ad valorem.

It would be noted that the sub- clause (jj), proposed to be inserted, is already available under the Rules 2011 being sub- rule (ii) of Rule 22A. Now this subRule is being made part of the main legislation to provide legal cover to the existing rules.

The Bill further seeks that a telecommunication service provider paying Sindh sales tax at 19.5% ad valorem can claim amount of sales tax paid on good or services at ad valorem rates not exceeding 17%. Conversely, all other service providers will continue to have the restriction on claim of input tax at ad valorem rates not exceeding 13%.

INPUT TAX ADJUSTMENT ON CERTAIN GOODS AND SERVICES -Section 15B

The Bill seeks to insert new Section 15B which provides that the adjustment of input tax paid on the acquisition of capital goods, machinery and fixed assets classified under Chapter 84 and 85 of the First Schedule to the Customs Act, 1969 shall be adjustable against output tax in twelve equal monthly instalments.

Whilst, the proposed amendment aims to harmonize the inflow of taxes to the Government, it would directly impact the cash flow of the taxpayer by allowing the claim of input tax in 12 months. It is anticipated that, if legislated, due amendments would be made in the format of sales tax return to capture the amendment.

It would be recalled that similar provisions were available under the Federal Sales Tax Act, 1990, which were later on withdrawn in 2011 there by resulting in the adjustment of input tax in the same period.

ASSESSMENT OF TAX; AND RECOVERY OF TAX NOT LEVIED OR SHORT LEVIED -Section 23(3) and Section 47(3)

The Bill seeks to increase time period available to an officer of SRB for passing an assessment order under Section 23(1), 23 (1A) and 47(2) of the SSTS Act from 120 days to 180 days from the date of issuance of show cause notice.

This extra time is in addition to the power of the officer of SRB to extend such period by a further period of 60 days. Thus, the existing period of 6 months for passing an order, as available to the officer of SRB, is now proposed to be extended to 8 months.

SHORT PAID AMOUNTS RECOVERABLE WITHOUT NOTICE -Section 47A

The Bill seeks to insert a new section which provides that a short paid amount of tax as indicated from the sales tax return of a registered person can be recovered alongwith amount of default surcharge without giving a show cause notice. Such short paid amount of tax can be recovered by attaching the bank accounts of the registered person or by any action prescribed under Section 66 of the SSTS Act.

However, no penalty under Section 43 of the SSTS Act shall be imposed without issuing a show cause notice to such person.

It is pertinent to note that similar provisions are already available under Section 11A of the Federal Sales Tax Act, 1990. These provisions were however challenged before the Courts, and, by virtue of judgements, the application of the same was restricted to the extent of undisputed liability declared in the return.

It is essential to highlight that under the current Sindh online filing system, sales tax return can be filed even under the circumstances where the unpaid amount of tax is appearing as payable in the sales tax return. By virtue of the proposed amendment, it is advised that the taxpayers remain cautious in filing their online sales tax return to avoid any adverse inferences at a later stage.

OBLIGATION TO PRODUCE DOCUMENTS AND PROVIDE INFORMATION -Section 52(4)

The Bill seeks to extend the requirement of furnishing the "information" in time by adding words "data and documents" as required by the Board or an officer of the SRB under sub-section (4) of Section 52.

MONITORING OR TRACKING BY ELECTRONIC OR OTHER MEANS -Section 54A

The Bill proposes to insert new section whereby Board is authorized to issue notification in the Official Gazette to notify any registered person or class of registered persons or any of the other services or class of services subject to certain conditions to impose the provision of monitoring and tracking of transactions or the invoices issued by the registered person through electronic or other means.

The proposed new Section is aimed to broaden the tax base by allowing the Board to track the transactions carried out by the registered persons or any of the other class of registered persons.

These measures are adopted from the identical provision already available under the Federal Sales Tax Law and Punjab Sales Tax Act.

OFFENCES AND PENALTIES -Section 43(7B)

The Bill has proposed to insert a new Clause (7B) under Section 43 for imposing penalty on person who refuses or denies or obstructs the compliance of newly introduced Section 54A.

The person in violation of Section 54A will now be liable to penalty of Rs.100,000 or an amount equal to the amount of tax involved, whichever is higher.

APPEALS -Section 57

Section 57 describes the assessment orders passed under various provisions of the SSTS Act, where the aggrieved person can file an appeal before the Commissioner (Appeals) SRB.

Now the Bill seeks to bring Section 25A within the parameters of Section 57. Thus, in situations where a taxpayer is deregistered or its application for deregistration is rejected, the same can now be appealed before the Commissioner (Appeals) SRB.

RECOVERY OF ARREARS OF TAX -Section 66

The Bill seeks to insert a proviso in clause (f) in subsection (1) of Section 66 of the SSTS Act whereby the officer of SRB is authorized to recover the amount of tax payable by a taxpayer through various recovery measures.

The Bill now seeks to provide automatic stay against recovery of the disputed tax demand on payment of at least 25% of such demand during pendency of the appeal before the Commissioner (Appeals) by inserting a proviso after clause (f) to sub-section (1) of Section 66 of the SSTS Act.

This amendment will not infringe the right of the Commissioner (Appeals) to grant stay without payment of disputed tax under Section 57 of the SSTS Act.
It would be noted that similar amendments have been proposed under the Sales Tax Act, 1990, and the PSTS Act, through the respective Finance Bills 2017.

POWER TO REQUIRE LICENSES OR PERMISSION -Section 72A

The Bill proposes to insert a new Section 72A whereby the Board is empowered, with the approval of Government of Sindh, to require any authority, including regulatory authority, competent to issue or renew licenses or permissions for engaging into an economic activity, which is a taxable service, to refrain from issuance or renewal of such license or permission unless the licensee or permission holder submits evidence that he is duly registered under the SSTS Act.

It is pertinent to note that such restrictions on regulatory authorities are against the arrangements of powers under the Constitution of Pakistan and therefore, may result in unnecessary conflict between the SSTS Act and the respective regulatory laws.

Further, these provisions also appear to be in conflict with the existing provisions of the SSTS Act which requires registration under the SSTS Act only at the time of rendering of taxable services in the province of Sindh, and does not apply at the time of bidding for a license or permission from any authority in Pakistan.

CONDONATION OF TIME LIMIT -Section 81

The Board is empowered to condone the time limit under any provisions of the SSTS Act. This facility was understood to be available to a registered person. It is now proposed to insert an explanation under this section whereby apart from a registered person, the facility of condonation of time limit is also proposed to be available to the SRB authorities.

This would mean that the SRB authorities can seek condonation of time limit prescribed under the SSTS Act for issuing show cause notices, conducting audits, filing appeals, etc. which may perhaps open the Pandora’s box.

THE STAMP ACT AND OTHER LAWS

During the budget speech it has been announced that certain amendments in the Stamp Act and other revenue laws have also been introduced but these are not part of the Bill

KHYBER PAKHTUNKHWA FINANCE BILL-2017

THE KHYBER PAKHTUNKHWA FINANCE ACT, 2013 -SALES TAX ON SERVICES

Scope of services related to facilities for travel has been proposed to be enhanced to include "Ride hailing services" in the list of services. It is expected that corresponding amendment to levy sales tax would be notified by the provincial government. Apart from the above, it is reported that amendment is proposed to exempt various services including money transfer, construction of bridges, gas supply and sanitation services. We understand that separate notification in this regard will be issued by KPKRA to give effect to this announcement.

URBAN IMMOVABLE PROPERTY TAX

Substantial increase in rates of property tax for residential properties is proposed. However, for commercial properties increase in tax is proposed only for properties used for CNG stations and services stations for vehicles.

PROFESSIONAL TAX

Professional tax rates have been proposed to be adjusted for certain companies. Professional tax rates are enhanced for certain other trades and callings including non-specialists doctors, Hakeems, homeopaths, diagnostic and therapeutic centers, departmental stores, cable operators, whole sale dealers, chemists / druggist / medical stores etc.