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Budget Brief 2016

Sindh Finance Bill 2016

This Budget Brief 2016 contains amendments of Sindh Finance Bill 2016 as it relates to Sindh Sales Tax on Services Act, 2011; Stamp Act 1899; Sindh Urban Immovable Property Tax Act, 1958; and Sindh Development and Maintenance of Infrastructure Cess.

The provisions of the Sindh Finance Bill 2016 are generally applicable from 01 July 2016, unless otherwise specified.

This also contains summary of already enacted Sindh Companies Profits (Workers' Participation) Act, 2015.

This Memorandum contains the comments, which represent our interpretation of the legislation, and we recommend that while considering their application to any particular case, reference be made to the specific wordings of the relevant statutes.

12 June 2016

Contents

Sindh Sales Tax on Services

Revision in Sindh Sales Tax Rates

Second Schedule

The standard rate of Sindh Sales Tax [SST] is proposed to be reduced from 14% to 13% under Second Schedule to Sindh Sales Tax on Services Act, 2011 [Sindh Act].

It is indicated in salient features issued by SRB that reduced rate of 6% will be enhanced to 8% on following services, as applicable under Notification SRB-3-4/8/2013, dated 01 July 2013 (the amendment notification yet to be issued):

- Renting of immovable property services
- Legal practitioners and consultants
- Accountants and auditors
- Tax consultants
- Construction services
- Program producers and production houses
- Corporate law consultants
- Persons engaged in inter-city transportation or carriage of goods by road or through pipeline or conduit
- Ready mix concrete services

Further, an increase in SST rate by 1% is proposed for telecommunication services, which will be taxable at 19% w.e.f. 01 July 2016.

Negative list of services

First & Second Schedules

In Budget Speech, necessary legislation for introduction of the *negative list* system of sales tax on services is proposed to be initiated soon after the budget, with a view to making this system effective and enforceable with effect from 01 December 2016.

Introduction of negative list will eliminate list of taxable services and list of non-taxable services (negative list) will be introduced.

This may significantly enhance the scope of taxable services. Before implementation thereof, it is suggested that coordinated approach be adopted between Federal and other Provincial sales tax authorities to avoid disputes.

Services brought under tax net

Second Schedule

Following services are proposed to be included under Second Schedule to Sindh Act, subject to levy of SST at 13% or reduced SST rate (as if notified):

- Chartered flights within Sindh or originating from any airfield in Sindh
- Cosmetics and plastic surgery and transplantations (except those required in specified diseases as per Budget speech)
- Other consultants including tax consultants, human resource and personnel development consultants
- Public relation services
- Visa processing services, including advisory or consultancy services for migration or visa application filing services
- Supply chain management or distribution (including delivery) services
- Debt collection services and other debt recovery services provided or rendered by debt collection agencies or recovery agencies or other persons.

The services of chartered flights are already subject to levy of Federal excise duty at 16%.

Per Entry 53 of Fourth Schedule to the Constitution, power to legislate in respect of terminal taxes on goods or passengers carried by air, including taxes on fares and freight lies with the Federal Government. In a recent judgment, the Honorable Sindh High Court held that shipping agents and related services are domain of the Federal Government.

The proposed inclusion of services of air travel by chartered flights under First and Second Schedules of Sindh Act, may likely to open the doors of litigation.

New definitions introduced

Section 2

Following new definitions, owing to broadening of tax ambit under Second Schedule, are proposed to be inserted to clarify the scope of such services:

(29A) Cosmetic and plastic surgery

(31A) Debt collection and other debt recovery services

(69A) Public relation services

Besides above, the definition of term 'notification in the official Gazette' is also proposed to be inserted under Section 2(60A) of Sindh Act. This definition will have retrospective effect from 01 July 2011. The very purpose of this definition, with retrospective effect, appears to lay to rest the disputes with regard to effective date of such Gazette. Now, such Gazette will become effective from such date as specified, irrespective of date of Gazette itself.

Time limit prescribed for filing of refund

Section 15

Presently, there is no specific provision in the Sindh Act dealing with timeline for claim of refund, however, Rule 23B provides a bar that a refund filed after lapse of one year shall not be admissible.

A proviso to Section 15 is now proposed to be inserted, which prescribes the time of filing of refund arising as a result of any claim of adjustments or deductions, which shall be filed on yearly basis in the month following the end of a financial year.

Input tax credit not allowed

Section 15A

The Bill proposes to enact a new Section to prescribe the comprehensive list of inadmissible input tax, as already provided under the provisions of Rule 22A of Sindh Sales Tax on Services Rules, 2011. This strengthens the legal position that anything, which is related with determination of sales tax liability, should principally be governed through the provisions of main statute.

Section 15A will have an overriding effect to all other provisions of Sindh Act. Besides incorporating entries as per Rule 22A, the proposed enactment entails that input tax shall not inter alia be claimed or adjusted in relation to:

- Goods or services procured or received by a registered person during a period exceeding 6 months prior to the commencement of the provisions of taxable services.
- Goods and services used or consumed in a service liable to sales tax at ad valorem rate lesser than 13% or at specific rate at fixed rate or at such other rates not based on value.
- Sales tax paid on telecommunication services in excess of 19% ad valorem and the amount of sales tax paid on other taxable goods or services in excess of 13% ad valorem.

The above proposed amendments, as also clarified in salient features suggest that the input tax credit / adjustment against the output SST of other services (paying SST at 13%) will be restricted to the extent of

13% with a view to safeguarding the net amount of SST payable. This will be a distortion to VAT principles, which would certainly lead to increase in cost of doing business.

Joint and several liability of persons where tax unpaid

Section 18

The provisions of Section 18 describes the joint and several liability of the registered service provider and registered service recipient in the event of any non-payment of tax. The word 'registered' is proposed to be omitted from Section 18 to widen the scope of the provision. This implies that recovery of unpaid SST can be made from any unregistered service provider or unregistered service recipient, having knowledge or suspicion of tax evasion.

Sales of taxable activity or transfer of ownership

Section 19

Section 19 applies when any business is transferred or in cases of mergers & acquisitions. The Bill seeks to remove the anomaly that seller of business may not be absolved from recovery of unpaid amount of sales tax. The proposed amendment encompasses that:

- In addition to tax chargeable, any tax assessed or determined will also be required to be accounted for and paid by the person whom sale of business / ownership of assets is being transferred.
- In the event of non-payment of tax by the transferee of business, as prescribed, the amount of tax shall be the first charge on the assets of business and both persons involving in sale/purchase of business shall be jointly and severally liable for payment of tax.

Time limit to issue show-cause notice and record-keeping enhanced

Sections 23, 27, & 47

The Bill proposes to enhance the period of limitation for assessment and recovery of SST from 5 years to 8 years under the provisions of Sections 23 and 47 of Sindh Act. This will help the revenue to keep the cases of the fiscal year 2011-12 alive for adjudication for another 3 years. Thus, SRB officer will be empowered to issue show cause notice and adjudicate any demand of SST within 8 years, instead of existing time limit of 5 years.

Accordingly, the time limit to retain or maintain the statutory records under Section 27(1) is also proposed to be enhanced from 5 years to 10 years.

It is noted that the suggested enhancement of timeline is not in corroboration to other taxing statutes like the Income Tax Ordinance, 2001, the Sales Tax Act, 1990, Federal Excise Act, 2005, etc. This would not only give unbridled powers to the Provincial authorities at one hand, but also result in causing hardships to the taxpayers. Also, such enhancement may be considered as lack of capacity on the part of Provincial authorities.

Separate return when rate of tax changes

Section 30(5)

The Bill proposes to omit sub-section (5), which requires to file two separate returns for each portion of tax period, showing the application of different rates of tax. Since e-filing of returns caters adequately the rate change issue, as such the provision may not have any utility, as such it is now to be withdrawn.

Recovery of tax not levied or short-levied

Section 47(1B) & Section 47(6)

The Bill proposes, apart from change in limitation period, to insert a new sub-section (1B) to empower the tax officer to adjudicate and recover the withholding sales tax, which is not withheld or deposited. This will provide legal backing to the proceedings undertaken or to be undertaken against the withholding agents, who are required to withhold and pay sales tax in the capacity of service recipients in view of the provisions of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014.

Sub-section (6) is also proposed to be inserted which empowers SRB to regulate the system of determination of liability including the powers for transfer of cases and extension of time limit in exceptional circumstances. This implies that the proposed time limit of 8 years can further be enhanced in exceptional circumstances, as may be determined by SRB.

Appointment of Member – SRB Tribunal

Section 60

The Bill seeks to enhance the tenure of the Member of SRB Tribunal from 5 years to 10 years from date of his / her appointment by the Government.

Removal of difficulties

Section 74

The Government is empowered under Section 74 to remove difficulties of the taxpayers by means of special orders or modifications to the provisions of the Sindh Act. Powers under this Section can however be exercised within 5 years of the commencement of Sindh Act. Owing to completion of 5 years upto 30 June 2016, this time limit is being enhanced from 5 years to 8 years.

Other changes as per budget speech

- Exemption threshold of annual turnover of Rs.3.6 million, wherever applicable upto 30 June 2016 is proposed to be increased to Rs.4 million per annum to encourage the SME sector.
- Exemption threshold for internet and broadband users is proposed to be increased from 2mbps speed and Rs. 1500 per user per month to 4mbps speed and Rs. 2,500 per user per month, respectively.
- The existing threshold, conditions and limitations for exemption on the following services are proposed to be rationalized and simplified to reduce the classification disputes:
  - Contractual execution of work (9809.0000)
  - Contractor of building (9814.2000)
  - Construction services (9824.0000)

Notification to above effect will be issued, to be applicable w.e.f. 01 July 2016. However, the existing exemptions under Notification SRB-3-4/7/2013, dated 18 June 2013 shall continue to apply.

Stamp Duty

The Sindh Finance Bill 2016 proposes to amend Stamp Act 1899 as under:

- Fee for the opinion of Collector on the amount of duty chargeable on an instrument is proposed to be increased to amount not exceeding Rs. 200 as against existing range of prescribed amounts between Rs. 0.50 to Rs. 5.
- Currently, the penalty for obstruction is Rs. 20,000 and for concealment of information at the higher of Rs. 20,000 or 15% of the amount involved. It is now proposed to enhance the amount of Rs. 20,000 to Rs. 30,000.
- It is proposed to increase existing duty on various instruments as under:
    - Article 7 - Bill of entry from Rs. 500 to Rs. 1,000;
    - Article 8 - Bill of Exchange from Rs. 1.5 to Rs. 3;
    - Article 19 - Financing documents:
        - Clause (i) from 0.2% to 0.3% Advalorem;
        - Clause (i-a) from Rs. 1,000 to Rs. 1,500;
        - Clause (ii) from Rs. 2,500 to Rs. 3,800;
        - Clause (iii) from Rs. 10,000 to Rs. 15,000;
        - Clause (iv) from Rs. 25,000 to Rs. 38,000;
        - Clause (v) from Rs. 35,000 to Rs. 53,000
        - Clause (vi) from Rs. 50,000 to Rs. 75,000; and
        - Clause (vii) from Rs. 100,000 to Rs. 150,000.
    - Article 27 - Power of attorney:
        - Clause (a) from Rs. 25 to Rs. 100;
        - Clause (b) from Rs. 100 to Rs. 200;
        - Clause (c) from Rs. 200 to Rs. 500;
        - Clause (d) from Rs. 500 to Rs. 1,000;
        - Clause (ee) from Rs. 3,000 to Rs. 5,000; and
        - Clause (f) from Rs. 10 to Rs. 100 for each person authorized.

Sindh Urban Immovable Property Tax Act, 1958

The Sindh Finance Bill 2016 proposes to amend provisions of Sindh Urban Immovable Property Tax Act 1958 which imposes tax on the immovable properties in urban areas.

It is proposed that a rebate equal to five percent of the amount of annual tax for a financial year will be allowed on annual rental value of immovable property if the amount of annual tax is paid in lump sum by 30 September of respective financial year.

Surcharge is currently imposed to any amount not exceeding ten percent which is now proposed to straight 10%.

Sindh Development and Maintenance of Infrastructure Cess

The Cess is levied for the facilitation and maintenance of infrastructure in Sindh province. It is charged as a percentage of the value of goods assessed by the Customs authorities plus amount per kilometer. The Bill now proposes to replace existing schedule with the following:

Schedule (See Section 9)	
Net weight of goods	**Rate of Cess along with distance**
Upto 1250 kilograms	1.10% of total value of goods as assessed by the Customs Authorities plus one paisa per kilometer
Exceeding 1250 kilograms but not exceeding 2030 kilograms	1.11% of total value of goods as assessed by the Customs Authorities plus one paisa per kilometer
Exceeding 2030 kilograms but not exceeding 4060 kilograms	1.12% of total value of goods as assessed by the Customs Authorities plus one paisa per kilometer
Exceeding 4060 kilograms but not exceeding 8120 kilograms	1.13% of total value of goods as assessed by the Customs Authorities plus one paisa per kilometer
Exceeding 8120 kilograms but not exceeding 16000 kilograms	1.14% of total value of goods as assessed by the Customs Authorities plus one paisa per kilometer
Exceeding 16000 kilograms	1.15% of total value of goods as assessed by the Customs Authorities plus one paisa per kilometer
Explanation: For the purpose of the Schedule, the “value” means the total value of goods as assessed by the Customs Authorities upon entering in and using the infrastructure of the Province and “distance” means the distance covered within the Province.”.	

Sindh Companies Profits (Workers' Participation) Act, 2015

After introduction of Eighteen Amendment to the Constitution of Pakistan 1973, like Sindh Workers Welfare Fund Act 2014, the Government of Sindh has now enacted Sindh Companies Profits (Workers' Participation) Act, 2015 [Sindh WPPF Act] which is made effective from 01 July 2011.

General scheme of Sindh WPPF Act is as under:

Applicability

Scheme applies to all companies which are engaged in Industrial undertakings as defined in the Schedule to the Sindh WPPF Act which is generally in line with that of Companies Profit (Workers' Participation) Act, 1968 [Federal WPPF Act].

Companies employing 50 persons or more were required to establish a Workers Participation in Profit Fund under the Federal WPPF Act, however, Sindh WPPF Act prescribes this limit to 100 persons.

Sindh WPPF Act provides option to companies which operate more than one industrial undertaking to approach the Government to seek permission of splitting up the Fund among various undertakings.

Contribution

Contribution under Sindh WPPF Act is also in line with Federal WPPF Act i.e. @ 5% of profit.

Workers

The definition of "Worker" has been extended to include workers employed by the contractor. "Worker" in relation to a company is defined to mean an employee of the company, including employed by or through the contractor, who falls within the definition of the worker as defined in the Industrial Relations Ordinance, 2002, and has been working for or in the company for a period of not less than six months.

Disbursement of benefits

The wage categories for the disbursement of benefit to the workers are as under:

a) Workers drawing average minimum monthly wages as fixed by the Government from time to time;

b) Workers drawing average minimum monthly wages as fixed by the Government from time to time but not exceeding Rs. 20,000;

c) Workers drawing average minimum monthly wages exceeding Rs. 20,000.

Maximum share

The maximum share a worker can receive is four times of the minimum wages for unskilled worker as given in the Schedule of Minimum Wages for Unskilled Workers Ordinance, 1969.

Areas need to be looked into

Retrospective application of Sindh WPPF Act will give rise to difficulty for the companies who have already discharged their obligation under Federal WPPF Act for the period from 01 July 2011 to the enactment of this Sindh WPPF Act.

The provisions of Income Tax Ordinance 2001 are need to be synchronized to allow deductible allowance under section 60B for the amount paid in accordance with the provisions of Sindh WPPF Act. It is pertinent to note that similar provisions with respect to Sindh WWF Act have not yet been made in the Income Tax Ordinance 2001 to all deductible allowance under section 60A.

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