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# A brief of Khyber Pakhtunkhwa Finance bill, 2021

**June 2021**

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# Preamble

The Khyber Pakhtunkhwa Finance Bill 2021 was presented in the Khyber Pakhtunkhwa Provincial Assembly on 18 June 2021. We are pleased to summarize our comments containing our interpretation of the proposed legislations in this brief.

We recommend that while considering their application to any particular case, reference be made to the specific wordings of the relevant statutes.

The amendments shall take effect from first day of July 2021 subject to approval by the Khyber Pakhtunkhwa Finance Assembly.

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# A brief of Khyber Pakhtunkhwa Finance bill, 2021

## Khyber Pakhtunkhwa Finance Act, 2013

### Option for standard rate taxation

Section 26A of the KP Finance Act [the Act] allows an option to the registered persons providing taxable services, chargeable at reduced rate of sales tax, to opt for payment of sales tax at standard rate or general rate with input tax adjustment. Exercise of the option is subject to permission by KPK Revenue Authority [the Authority] to this effect. Every such permission is effective from the date mentioned therein and subject to such conditions, restrictions and limitations as may be specified by the Authority in this behalf. Reverting to reduced tax regime is also subject to approval of the Authority, which may conduct or cause to conduct such enquiry or audit as it may deem necessary to ascertain the genuineness of the request.

The Bill seeks to authorize Companies to exercise the option for payment of sales at standard rate system merely by intimating the Authority at least one month in advance. Reverting to the reduced tax regime is made subject to approval of the Authority, as aforesaid.

### Withholding agent defined and made personally liable for compliance

The Authority has the power to propose a special procedure for payment of tax, registration, book-keeping, invoicing or billing requirements, returns and other related matters in respect of any service or class of services. Further, the Act requires any person or class of persons whether registered or otherwise, to withhold full or part of tax charged on provision of taxable services, and to deposit the tax so withheld with the Government within such time and manner as specified in the official gazette.

The Bill seeks to provide that where a person has been or is required to act as withholding agent, he shall be personally liable to withhold and deposit the due tax. In case of failure on his part to do so, it shall be his personal liability to pay such due amount of tax along with default surcharge and

penalty under the Act. Any such amount of tax, including default surcharge and penalty, if not paid, may be recovered from such person under section 87 of the Act.

This proposal seeks to bring withholding agents at par with those entrusted with the withholding tax liability in other laws, like income tax.

### Adjustment of tax paid with other authorities

Section 32 authorizes the Authority to allow the registered persons to claim adjustments or deductions, including refunds in respect of the tax paid under any other law i.e., input tax paid to the Federal Board of Revenue or any provincial tax, on any account in respect of any taxable service or goods or class of taxable services or goods provided by them.

The Authority may adopt the principles or concepts laid down in such other law in respect of adjustments, deductions or refunds including zero-rating principle. No adjustment or deduction of any tax payable under any other law is claimable by any person except in the manner and to the extent specified in the notification issued by the Authority.

The Bill seeks to stipulate that input tax adjustment or refund shall be allowed to the extent and from the date mentioned in the notification issued by the Authority and if no such date has been specified, the date of coming into effect of such notification shall be deemed to be the specified date for this purpose.

### Joint and several liability in case of tax unpaid

Section 35 prescribes joint and several liability of the person receiving and the person providing taxable service for payment of the amount of tax involved in a transaction.

The Bill seeks to define a 'withholding agent', in terms of section 2(57) of the Act, to mean any person who, as a recipient of taxable service or otherwise, withholds or deducts and pays or

deposits tax directly to the Government in the manner as may be prescribed.

Additionally, the Bill seeks to add the term 'a person' to include a withholding agent also to be liable for any amount of tax unpaid. An explanation is also proposed to be inserted to make a registered person or a person to take all possible measures to ensure that the person from whom taxable services are received, deposits the due tax in relation to a transaction, in the manner as provided under the Act.

### Assessment of tax

Section 40 prescribes the way assessment proceedings can be conducted against a taxpayer. Where on the basis of any information acquired during an audit, inquiry, inspection or otherwise, an officer of the Authority is of the opinion that a registered person has not paid the tax due on taxable services provided by him or has made short payment for any reason including inadmissible adjustment of input tax, an officer of the Authority shall make an assessment, or further amendment to the assessment, of the tax actually payable by that person and shall impose a penalty and charge default surcharge in accordance with sections 64 and 65 after affording proper opportunity of being heard through a show-cause notice. Such a notice could be issued within five (05) years from the end of the tax period to which it relates. The time limitation for passing the assessment order is prescribed at one hundred and twenty (120) days from the date of issue of the notice. In computing the period of 120 days, any period during which the proceedings are adjourned on account of a stay order or proceedings with the Alternative Dispute Resolution Committee, or the time taken through adjournments by the person shall be excluded.

The Bill seeks to also exclude 'adjournments otherwise ordered by the officer for any bona fide or genuine reasons or factors beyond normal control of the person, on the date fixed for hearing' while computing the period of 120 days.

No time limit was provided in the law for passing an order against a withholding tax agent who

defaulted in making compliance with the withholding tax provisions, which resulted in hardships to the taxpayers. The Bill seeks to apply the same time limits to these proceedings as applicable to the assessments.

The Bill seeks to further explain the instances to which provisions of section 40 apply through following proposed 'Explanations' to include:

— **Explanation- I:** In case, if a registered person receives or collects sales tax from recipient of taxable services but the collected amount has not been paid, or has been short paid due to short receipt, collection or due to inadmissible adjustment of input tax.

Where non-payment or short payment of tax is attributable to intention, collusion, abetment, deliberate attempt, misstatement, fraud, forgery, false or fake documents, the Bill proposes to apply the provisions of section 68(2) of the Act.

— **Explanation- II:** The term 'audit' based on which assessment can be conducted by the Authority includes departmental audit, external audit, special audit or any other scrutiny of records, facts and tax affairs in any manner, style or mode, resembling audit or appearing like audit.

— **Explanation- III:** 'Non-paid' or 'short-paid' amount of sales tax includes non-deposit or short-deposit of non-withheld tax or withheld tax to the Government by the person receiving services as a withholding agent.

### Offences and penalties

Like all other taxation laws, the act provides for imposing penalty for contravention of its provisions in section 64.

The Bill seeks to penalize person or class of persons whether registered or not, and requires withholding full or part of tax charged, for non-observance of the following requirements:

To make an application for registration.

To furnish a return within the due date.

To deposit the amount of the tax due or any part thereof in time and manner laid down under the Act or the rules.

To maintain records required under this Act or the rules.

To produce any record that is required to be maintained under this Act or the rules made thereunder, or furnish any information required to be furnished under this Act or the rules made thereunder. When a notice in the respect is received from the Authority or any officer of the Authority with direction to produce such records or furnish such information.

— To allow access to an authorized officer to business premises, registered office or to any other place where records are kept, or otherwise refuses access to accounts or records.

The Bill also seeks to impose a penalty equal to twenty-five thousand rupees or more to the above person who commits, causes to commit or attempts to commit tax fraud, or abets or convinces in commission of tax fraud.

### Computation of rate of default surcharge

Section 65 prescribes levy of default surcharge for non-payment or part payment of tax due within the stipulated time in the manner specified under the Act.

Clause (a) to sub section 1 provides that the rate of default surcharge for a person liable to pay amount of tax or charge shall be the inter-bank rate plus three percent per annum of the amount of tax due.

Clause (b) to sub section 1 provides the rate of default surcharge for a person committing tax fraud shall be at the rate of two percent per month of the amount of evaded tax.

The Bill seeks to propose methodology in case of applicability of clause (a) for computation of

monthly rate of default surcharge by using quarterly average of inter-bank rate as announced, certified by or obtained from State Bank of Pakistan. It also seeks to clarify that the rate of default surcharge shall not be compounded for any of the cases mentioned above and that default surcharge is to be prorated over the number of days in the relevant month in which payment is made by the defaulting person.

### Enhancement of time period for issuance of show cause notice

Section 68 provides for recovery of tax not levied or short levied due to inadvertence, error, misconstruction or any other reason within a period of three years.

The Bill seeks to enhance the period for issuance of show cause notice in the event of short levy or non-levy of sales tax from 'three' years to 'five' years. It further proposes to remove capping of thirty days' adjournments requested during the proceedings by the taxpayer.

### Decision in appeal

Section 81 provides the manner in which the appeal filed with the Collector (Appeals) could be decided through an order. It further provides that in deciding an appeal, the Commissioner (Appeals) may make further inquiry and shall in no case remand any matter for *denovo* consideration.

The Bill seeks to authorize the Collector (Appeals) to remand a case for *denovo* consideration in special circumstances for which reasons and purposes are to be recorded by him in writing.

### Recovery of arrears of tax

Section 87 provides for recovery of tax due from any person through various mechanisms by an officer of the Authority not below the rank of Assistant Collector.

The Bill seeks to provide powers to the officer of the Authority to recover amount of tax due directly from the person who is holding or is otherwise in

custody of any money, whether owned by or payable to the defaulter. These powers are *peripheria* to the provisions of the Income Tax Ordinance, 2001.

### Amendments in Second Schedule

#### Reduction in tax rate

The Bill proposes a reduction in tax rate for the following services without input tax adjustment:

| Sr. No. | Description   | Existing rate                   | Proposed rate  |
|---------|---|---------------------------------|--|
| 1.      | Services provided or rendered by clubs and local non-corporate stand-alone hotels.  | 15% with input tax adjustment   | 8% without input tax adjustment  |
| 1.      | Non-corporate sector hospitality businesses, including hotels, guest houses, rest houses, lodges, restaurants and similar other accommodations and food serving businesses, located in the tourist spots of Galiyat and Kaghan Valleys. | 15% with input tax adjustment   | 5% without input tax adjustment, subject to the compliance to all such conditions and procedures, as may be prescribed by the Authority, in this behalf. |
| 6.      | Advertisements on or through print media of all types and forms.  | 5% without input tax adjustment | 1% without input tax adjustment  |
| 9.      | Stand-alone car wash services   | 2% without input tax adjustment | 1% without input tax adjustment  |
| 16.     | Leases (including re-leasing by the lessees) and licenses (including sub-contracting or   | 15% with input tax adjustment   | 2% without input tax adjustment  |

| Sr. No. | Description   | Existing rate                    | Proposed rate                   |
|---------|---|----------------------------------|---------------------------------|
|         | license usage permissions by license holder) granted or fees and royalties, received by Government Departments, or as the case may be, by the lessees or licensees. |                                  |                                 |
| 20.     | Cinematographic production, photographic services, recording services and telecasting or broadcasting services  | 2% without input tax adjustment  | 1% without input tax adjustment |
| 27.     | Cold storage services (including other forms of warehousing of agriculture produce) regardless of their   | 10% without input tax adjustment | 1% without input tax adjustment |

| Sr. No. | Description   | Existing rate                   | Proposed rate                   |
|---------|---|---------------------------------|---------------------------------|
|         | corporate or non-corporate status.  |                                 |                                 |
| 34.     | Services provided or rendered by underwriters including sponsorship services.   | 2% without input tax adjustment | 1% without input tax adjustment |
| 36.     | Services provided or rendered by auctioneers.   | 2% without input tax adjustment | 1% without input tax adjustment |
| 39.     | Services provided or rendered in respect of quality assurance, quality control, quality inspection (including pre-inspection), quality verification or certification including verification or certification of quality or standards under ISO regime.      | 2% without input tax adjustment | 1% without input tax adjustment |
| 44.     | Services relating to or in respect of the installation, erection, commissioning or other permanent structure-affixed/ linked/ tied placement (whether full or in part) of any industrial, mechanical or electrical plant, machinery or equipment (excluding | 2% without input tax adjustment | 1% without input tax adjustment |

| Sr. No. | Description   | Existing rate | Proposed rate |
|---------|---|---------------|---------------|
|         | installation of domestic equipment etc. for residential use). |               |               |

### Tax exemptions

The Bill seeks to exempt the below mentioned services from levy of sales tax:

Under serial No. 10, full exemption is granted to health-related franchise services;

Under serial No. 14, the following construction services are proposed for tax exemption:

- a. Such portion or portions of the construction work of the projects of Public Sector Development Programme (PSDP), as were undertaken and completed before 30<sup>th</sup> June 2021, regardless of the dates of their approval or initiation; and
- b. Construction services, including allied works, provided or rendered in respect of low-cost housing projects and schemes of the Provincial Housing Authority of Khyber Pakhtunkhwa. This exemption will be granted under the condition that this exemption shall not be construed or interpreted in any manner to claim or take any refund, waiver, dispensation or relief of tax already deposited, paid or recovered (including already withheld or deducted but not deposited or paid) on or before 30<sup>th</sup> June, 2021 on any ground whatsoever.
- c. The Bill also intends to clarify that following services also fall under construction services:
  - i. construction works of power (including hydropower) generation projects;
  - ii. Where fixed rates of rupee one hundred per square yard, or as the case may be, rupees fifty per square foot are applicable in case of

land development and commercial construction as per description specified above, tax shall not be charged in respect of the areas allocated, fixed or used exclusively for schools, medical dispensaries, mosques, graveyards, parks, public toilets, corridors (inside passages of buildings) and stairs provided that these facilities are meant for common use of the public at large without the involvement of any commercial aspect including intention or purpose for sale, leasing or renting.

### Enhancement of sales tax rate

The Bill proposes to enhance the sales tax rate on below mentioned services:

| Sr. No. | Description   | Existing rate                   | Proposed rate                   |
|---------|---|---------------------------------|---------------------------------|
| 5.      | Labor and Manpower Services rendered by:  |                                 |                                 |
|         | Corporate entities  | 5% without input tax adjustment | 15% with input tax adjustment   |
|         | Non-Corporate entities  | 5% without input tax adjustment | 8% without input tax adjustment |
| 5.      | Business support services provided by corporate entities.                             | 5% without input tax adjustment | 15% with input tax adjustment   |
| 8.      | Property dealers, dealers of electrical or electronic equipment appliances, plant and | 2% without input tax adjustment | 15% with input tax adjustment   |

| Sr. No. | Description  | Existing rate                    | Proposed rate   |
|---------|--|----------------------------------|---|
|         | machinery and other second-hand goods rendered or provided by corporate sector dealers.  |                                  |   |
| 10.     | Franchise services   | 10% without input tax adjustment | 15% with input tax adjustment   |
| 14.     | Services provided by construction contractors, architects, civil engineers. Land or property surveyors, construction consultants, designing and supervision consultants. Town or real estate or property promoters. Developers or planners including interior decorators or allied or ancillary professions. | 2% without input tax adjustment  | 5% except Government funded construction projects including ADP/PSDP-funded projects and construction of hydropower projects on which the rate of tax shall be 2% |
| 19.     | Corporate entities and to such other entities as are operating in collaboration or as subsidiary or branch of foreign service  | 5% without input tax adjustment  | 15% with admissible input tax adjustment  |

| Sr. No. | Description  | Existing rate | Proposed rate                   |
|---------|--|---------------|---------------------------------|
|         | providing entities and all such entities providing services as practitioners, professionals, consultants and advisers. |               |                                 |
| 26.     | Health insurance services and services in respect of Government sponsored Sehat Card plus program                      | Exempt        | 1% without input tax adjustment |
| 26      | Life insurance   | Exempt        | 15% with input tax adjustment   |

### Principals of application and interpretation

The Bill proposes to clarify that when a registered service provider opts for payment of tax on standard rates for the services rendered to corporate buyers, the service provider is entitled to claim input tax proportionally and exclusively confined to the value of such services.

Corporate sector entities providing services referred to in Serial No. 9, 10, 11, 13, 17, 18, 21, 22, 27, 28 (excluding public sector entities), 39 and 44 of the Second Schedule shall mandatorily pay sales tax at standard rate of 15%. They shall be entitled to input tax adjustment.

Further, the Bill seeks to propose that services provided by or relating to dealers of agriculture machinery and equipment, commission agents of agriculture produce, agriculture specific market research, human resource development or management in agricultural fields, and exhibitions of agricultural products or products usable

exclusively in agriculture sector shall be charged to tax at 2% without any input tax adjustment.

### Stamp Act, 1899

Section 27A provides that where any instrument chargeable with *ad valorem* duty under Articles 23, 27-A, 31, 33, 48(b), 48(bb), 63 or 63-A of Schedule I to Stamp Act 1899, relates to an immovable property, the value of the immovable property shall be calculated according to the valuation table notified by the District Collector in respect of immovable property situated in the locality.

The Bill proposes to set a floor for valuation of the immovable property at ninety percent of the value determined by the Federal Board of Revenue.

The Bill further seeks certain amendments in Schedule 1 that prescribe stamp duty on Instruments, as under:

Stamp duty of Rs.300 per marla and Rs.600 per marla against Article 6A in relation to residential open plots and commercial open plot is proposed to be increased to Rs.600 per marla and Rs.1,200 per marla respectively.

Stamp duty of Rs.200, Rs.300 and Rs.700 against Article No. 53 is proposed to be substituted by Rs.500, Rs.600 and Rs.1,200 respectively.

The Bill seeks to substitute Article 22A relating to instruments of 'Contract' in the nature of memorandum of agreement entered into by a contractor with Government, a corporation, a local body, a local authority, an agency or an organization set up or controlled by Federal or Provincial Government by introducing new slabs for the quantum of work and the related stamp duties.

### Registration Act, 1908

#### Online repository and electronic verification

The Bill proposes to empower the Government to make provision for establishment of online repository of registered instruments and electronic

verification of registered property in the prescribed manner.

#### **Digitized version of documents**

With a vision of digitizing the record, the Bill seeks to introduce the processing of documents, books, instruments, decrees, deeds, assignments, endorsements, debentures, orders, certificates, counterpart of lease and signatures mentioned in the Act through digitized means of registration.

#### **West Pakistan Urban Immovable Property Tax Act, 1958**

##### **Charge of tax on petrol pumps and CNG stations**

The Bill seeks to charge property tax at flat rate of Rs. 45,000 per annum on petrol pumps and CNG stations with effect from 01 July 2020.

#### **Khyber Pakhtunkhwa Land Tax and Agriculture Income Tax Ordinance, 2000**

The Bill proposes not to charge land tax for the Financial Year 2021-22.

The Bill further proposes to provide relief to the taxpayers by making the following amendments in Second Schedule regarding agricultural income tax;

| Proposed Rates  |  |
|---|--|
| Where the taxable limit does not exceed Rs.600,000                          | No tax   |
| Where the taxable limit exceeds Rs.600,000/- but does not exceed Rs.850,000 | 5% of amount exceeding Rs. 600,000                       |
| Where the taxable limit exceeds Rs.850,000 but does not exceed Rs.1000,000  | Rs.12,500/- plus 7.5% of the amount exceeding Rs.850,000 |
| Where the taxable limit exceeds Rs.1000,000 but does not exceed Rs.1250,000 | Rs.23,750 plus 10% of the amount exceeding Rs.1000,000   |

| Proposed Rates   |   |
|--|---|
| Where the taxable limit exceeds Rs.1250,000 but does not exceed Rs.1500,000; and | Rs.48,750 plus 15% of the amount exceeding Rs.1250,000      |
| Where the taxable limit exceeds Rs.1500,000.                                     | Rs.92,500/- plus 17.5% of the amount exceeding Rs.1,500,000 |

#### **Khyber Pakhtunkhwa Finance Ordinance, 2002**

Tax on hotels is levied every year at the rate of 5% of the room rent per lodging unit per day, on the basis of 50% of the total number of lodging units available in the hotel under section 4 of the Ordinance.

The Bill seeks to omit the use of 50% of the total number of lodging units for the purpose of computation of tax, meaning thereby that the tax shall be payable on the basis of actual use of the lodging units.

#### **Khyber Pakhtunkhwa Local Government Act, 2013**

The Bill proposes to substitute the development grant for local government from 30% of the total development budget of the province to 20% of the provincial share of Annual Development Program.

It is also proposed that 20% development grant shall be admissible only when the elected local governments are in place.

Considering the health-related issues and delivery of services, the Bill proposes to authorize Secondary or Primary Health Facilities to retain ninety percent of the revenue generated by them. The retention amount is subject to the approval of the Health Department of the Government and shall be utilized through Hospital Management Committee or Primary Care Management towards the improvement of service delivery.



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