

**COMMENTS ON AMENDMENTS PROPOSED VIDE  
FINANCE BILL 2011 IN SALES TAX ACT, 1990**

**Our comments on the proposed amendments in the Sales Tax Act, 1990 through Finance Bill 2011 are explained as under:**

**1. Scope of tax**

**Section 3**

The Bill seeks to propose a general reduction in sales tax rate by 1%. Accordingly existing sales tax rate of 17% is replaced by 16% wherever appearing in this section.

The new rate will be effective from 1<sup>st</sup> July, 2011.

However special sales tax rates specified through SROs 644(I)/2007 dated June 27, 2007, SRO 313(I)/2006 dated March 31, 2006, SRO 669(I)/2006 dated January 28, 2006 and sales tax rate prescribed in Rule 20 of the Special Procedure Rules 2007, i.e. at the rate of 22% & 19.5%, 7%, 15%, and 26% respectively will remain the same.

**2. Adjustable input tax**

**Section 8B(1)**

The Bill seeks to substitute the first proviso to sub-section 1 to allow immediate adjustment of sales tax paid on fixed assets or capital goods acquired by a taxpayer.

Presently the first proviso to sub-section 1 of section 8B prescribes that the tax charged on acquisition of fixed asset shall be adjustable against the output tax in twelve equal monthly instalments. Now after the proposed amendment a registered person has become entitled for the adjustment of the entire amount of input tax in its monthly return in the tax period in which the taxpayer acquires any fixed asset or capital goods.

It appears that the proposed change has been made to give relief to the industrial sector, which is presently facing cash flow problem as the exemption /zero rating of sales tax on import/local purchase of plant and machinery has been withdrawn and the industrial sector was obliged to pay sales tax on acquisition of fixed assets/capital goods and was compelled to make adjustment of tax paid on fixed assets/capital goods in twelve equal instalments. So now there is some relief to this sector.

### 3. De-registration, blacklisting and suspension of registration

#### Section 21(3)

The bill seeks to insert a new sub-section 3 which inter-alia prescribes that during the period of suspension of registration, the invoices issued by such person shall not be entertained for the purposes of sales tax refund or input tax credit, and once such person is blacklisted, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such blacklisting, shall be rejected through a self-speaking appealable order and after affording an opportunity of being heard to such person.

Previously same provisions were available in sub rule (5) of rule 12 but these provisions contained in the rules were, since, inconsistent with the provisions of section 21 of the Act, therefore, legal objection could have been raised before a competent court of law, therefore, these provisions have now been made a part of the statute, to provide for specific and express legal provisions to effectively enforce the blacklisting regime.

### 4. Return

#### Section 26(3)

The bill seeks to amend sub-section 3 by inserting the words “or ~~filed~~ under clause (a) or (b) of section 27” so as to allow the revision of special return, to be filed under section 27.

Sub section (3) thereof inter alia prescribes that a registered person may, subject to approval of the Commissioner Inland Revenue having jurisdiction, file a revised return within 120 days of the filing of return under sub section (1) or as the case may be, sub section (2), to correct any omission or wrong declaration made therein.

Section 27 of the Act prescribes that in addition to the returns specified in section 26 i.e. monthly or quarterly return, a registered person shall furnish special return within such date and in such form indicating information such as quantity manufactured or produced, purchases made, goods supplied or payment of arrears made, for such period as the Board may specify through a notification. It further prescribes that the Commissioner may require any person whether registered or not, to furnish a return in prescribed format and such person shall furnish the return.



After the proposed amendment the taxpayer can also file a revised returns prescribed in section 27 subject to the approval of the Commissioner Inland Revenue.

**5. Appointment of authorities** **Section 30(1)(3)(4)**

The bill seeks to insert a new clause (ia) in sub-section 1 to empower the Board to appoint any person to be an Inspector of Inland Revenue in additions to the authorities listed in sub-section 1 from (a) to (i).

The bill further seeks corresponding amendments in sub-section 3 and prescribes that an Inspector of Inland Revenue shall be subordinate to the Commissioner IR and shall perform his functions in respect of such persons or classes of persons or such areas as the Commissioner, to whom he is subordinate, may direct.

The bill further seeks corresponding amendments in sub section 4 and prescribes that Inspector Inland Revenue shall also be subordinate to Additional Commissioner Inland Revenue.

**6. Director General, (intelligence and Investigation)** **Section 30A**

The bill seeks to amend section 30A to provide for the nomenclature of Directorate General of Intelligence and Investigation, CBR to Directorate General of Intelligence and Investigation, Inland Revenue.

Since three local taxes including sales tax, federal excise duty and income tax have been given under the administrative control of Inland Revenue department since 28.10.2009, therefore, a corrective amendment in marginal note as well as in section 30A, words “CBR” have been substituted with words “Inland Revenue”.

**7. Obligation to produce documents and provide information** **Section 38B(1)**

The bill seeks to amend sub-section 1 to insert the words “an Assistant” in place of words “ a Deputy” to empower an Assistant Commissioner Inland Revenue to initiate investigative audit.



Presently Deputy Commissioner Inland Revenue is empowered to issue notice in writing to any person required to maintain the record under the Act, as and when specified. Now after the proposed amendment the Assistant Commissioner Inland Revenue will exercise powers of section 38B.

**8. Alternative dispute resolution** **Section 47A(4A)**

The bill seeks to amend by substituting existing sub-section 4A to include the words “FBR, and a member nominated by him” to bring this section in conformity with section 38 of the Federal Excise Act, 2005.

Sub-section (4A) was inserted in section 47A through Finance Act, 2008 which prescribes that the Chairman may on the application of an aggrieved person, for reasons to be recorded in writing, and on being satisfied that there is an error in order or decision of FBR made in pursuance of the recommendations of ADRC, may pass such order as may be deemed just and equitable.

After the proposed amendments in sub-section 4A the Chairman FBR and a Member nominated by him may, on the application of an aggrieved person, for reasons to be recorded in writing, and on being satisfied that there is an error in order or decision, pass such order as may be deemed just and equitable.

**9. Refund to be claimed within one year** **Section 66**

Section 66 prescribes that no refund of tax claimed to have been paid or overpaid through inadvertence, error or misconception or refund on account of input adjustment not claimed within the relevant tax period, shall be allowed unless the claim is made within one year of the date of payment.

The bill seeks to insert a new proviso in addition to the existing provisos, which prescribes that no refund shall be admissible under section 66 if incidence of tax has already been passed on directly or indirectly to consumers.

**10. Condonation of time limit** **Section 74**

The bill seeks to add explanation to section 74 to empower the FBR, either by itself or through Commissioner Inland Revenue, to also grant condonation of time limit in cases where the delay is on part of the Tax Authority.



There existed a difference of opinion between the departmental authorities and the legal fraternities that whether or not under the provisions of section 74, the Board can grant condonation of time limit for an act to be done by the departmental officer. After insertion of the explanation in section 74, the stance of legal fraternities seems to have been accepted as these provisions have prospective effect and only after 01.07.2011, the Board is empowered to grant condonation of time limit prescribed for any act or thing to be done by the departmental officers under various provisions of the Act.

**Amendments in Sixth Schedule to withdrawal of exemptions from the charge of sales tax w.e.f 4-06-2011**

Section 13 overrides the provisions of section 3 of the Act and provides that the goods specified in the Sixth Schedule shall, subject to such conditions as may be specified by the Federal Government, be exempt from sales tax.

Sixth Schedule has been divided into two Tables i.e. Table-1 and Table-2. Table-1 covers goods on which exemption is available on “import and local supply” whereas table-2 covers goods on which exemption is available only on local supply.

Following are the entries which the bill seeks to omit, meaning thereby that sales tax will now be charged at standard rate of 16% w.e.f 4-06-2011:

**Entries in Table-1 from Sixth Schedule:--**

1. Sr. No. 29A- Surgical tapes classified under HS 30.05.
2. Sr. No. 29B-Ultrasound gel classified under HS 3006.7000.
3. Sr. No. 30-Diapers for adults (Patients) classified under HS 4818.4010.
4. Sr. No. 34-Bricks classified under HS 6901.0000.
5. Sr. No. 35-Building blocks of cement including ready mix concrete blocks classified under HS 6810.1100.
6. Sr. No. 41-Computer software classified under HS 8523.2990, 8523.4010, 8523.4090, 8523.5990 and 8523.8090.
7. Sr. No. 42-Ambulances, firefighting vehicles, waste disposal trucks, brake down



- lorries, special purposes vehicles for maintenance of street lights and overhead cables classified under HS 87.02, 87.03, 8704.2200, 8704.2300, 8705.3000 and 8705.9000.
8. Sr. No. 43-Aircrafts classified under HS 8802.2000, 8802.3000 and 8802.4000.
  9. Sr. No. 44-Ships of gross tonnage exceeding 15 LDTs, excluding those for recreation or pleasure purpose classified under HS [8901.2000,8901.3000 and 8901.9000] 30.
  10. Serial No. 62-Import and supply of “Defence stores, whether manufactured locally or imported by the Federal Government against foreign exchange allocation for defence, including trucks, trailers and vehicles falling under PCT heading 87.04 of the first schedule to the Customs Act, 1969 (IV of 1969), specially modified for mounting defence equipments, their parts and accessories for supply to Armed Forces classified under respective heading.
  11. Sr. No. 64-Spare parts and equipment for aircraft and ships covered by serial number 43 and 44 above classified under respective headings.
  12. Sr. No. 65-Equipment and machinery for pilotage salvage or towage for use in ports or airports classified under respective headings.
  13. Sr. No. 66-Equipment and machinery for air navigation classified under respective headings.
  14. Sr. No. 67-Equipment and machinery used for services provided for handling of ships or aircrafts in a customs-port or customs-airport classified under respective headings.
  15. Sr. No. 68-Such plants and machinery as is notified by the Federal Government in official gazette but if imported, these shall be entitled to exemption from sales tax on importation if these are not manufactured in Pakistan classified under respective headings.
  16. Sr. No. 69-Bulldozers and combined harvesters; and components (which include, sub-components, components, sub-assemblies and assemblies but exclude consumables) imported in any kit form and direct materials, assembly or manufacture thereof, subject to the same conditions as are envisaged for the purpose of exemption under the Customs Act, 1969 (IV of 1969) classified

under respective headings.

17. Sr. No. 70-Import and supply of fully dedicated CNG Euro-2 buses whether in CBU or CKD condition classified under HS 8702.9010 and 8702.9090.

**Entry No. 5 from Table-2 of Sixth Schedule:--**

In terms of entry at Sr. No. 5 of Table-2, exemption of sales tax has been granted to “supply of agricultural implements as are specified in a notification issued by the Federal Government in the official gazette.

**Summary of significant notifications issued simultaneously with the Finance Bill, 2011-12 with their effective dates, alongwith our brief comments is tabulated below:**

<u>Sr.No.</u>	<u>SRO No.</u>	<u>Dated</u>	<u>Subject matter</u>	<u>Effective from</u>
1	480(I)/2011	3-06-2011	<p>Federal Government has rescinded its following notifications whereby exemption of sales tax was granted subject to certain conditions namely:</p> <p><b>SRO 1240(I)/2005 dated December 16, 2005:</b></p> <p>Exemption of whole of sales tax on dump trucks for off-highway use, on-highway dump trucks of 320 HP and above classified under HS 8704.2290 and 8704.2390 and transit concrete mixer.</p> <p><b>SRO 542(I)/2006 dated June 5, 2006:</b></p> <p>Exemption from whole of sales tax on supply of locally manufactured agricultural machinery, equipment and implements as specified in the Table</p>	4-06-2011



given below the said notification including “Tillage and seed bed preparation equipment”, “Seeding or planting equipment”, “Irrigation drainage and agro chemical application equipment”, “Harvesting, threshing and storage equipment” and “Post-harvest handling and processing and miscellaneous machinery”.

Exemption of sales tax had also been granted under the said notification on import of agricultural machinery, equipment and implements as specified under the respective customs concessionary notifications subject to same conditions as are prescribed for the purpose of applying zero rating of customs duty.

**SRO 275(I)/2008 dated March 12, 2008:**

Exemption of whole of sales tax on import and supply of CKD kits of single cylinder agriculture diesel engines of 3 to 36 HP. SRO 275(I)/2008

**SRO 1(3)STM/2004(Pt-II) dated August 23, 2009:**

Sales tax on local supplies of sugar shall be charged to tax at the rate of 8%.

*SRO 1(3)STM/2009 Pt-II dated 23.08.2009 has been rescinded through SRO 480(I)/2011 dated 03.06.2011 which is effective from*



			<i>04.06.2011 however through SRO 481(I)/2011 dated 03.06.2011, a new serial number 27 has been added in SRO 551(I)/2008 dated 11.06.2008 through which exemption of whole of sales tax has been granted on supply/import of sugar.</i>	
2	481(I)/2011	3-06-2011	<p>Through SRO 551(I)/2008 dated 11.06.2008, the Federal Government has granted exemption of sales tax on a number of items specified in the Table given below the said notification. Now through SRO 481(I)/2011 Federal Government omitted serial numbers 2, 12,15,17, and 18 relating to the exemption from sales tax on various other items including sugar, CNG kits, cylinders, commercial catalogues, rock phosphate, phosphoric acid and mineral oil.</p> <p>Now onward all the above items will be charged at a standard rate of sales tax.</p>	4-06-2011
3.	482(I)/2011	3-06-2011	Through SRO (I) 2011 Rule 58B of Sales Tax Special Procedures Rules 2007 has been amended whereby rate of sales tax on account of minimum value addition for a commercial importer increased from 2% to 3%.	04-06-2011
4	483(I)/2011	3-06-2011	Through SRO 880(I)/2007 dated 01.09.2007; the Federal Government has granted exemption of whole of sales tax on 63 types of diagnostic kits or equipment as had been specified in the Table given below said notification.	4-06-2011



			<p>Now through SRO 483(I)/2011 , the Federal Government has amended the entries at Sr. Nos. 50 &amp; 59 of the Table of aforesaid notification.</p> <p>In terms of Sr. No. 50 of the Table exemption of sales tax is now available to “standard or calibrated” classified under HS 3822.0000 whereas in terms of section 59 thereof, exemption of sales tax is now available to “Elisa or Ecila kit” classified under HS 3822.0000.</p>	
5.	485(I)/2011	3-06-2011	<p>The Federal Government rescinded its notification no. SRO 116(I)/2007 dated November 30, 2007 whereby exemption from sales tax was granted on the import of raw materials use for the manufacture of diapers of HS 5601.1040 is now withdrawn.</p> <p>Now sales tax will be charged at the standard rate on the import of raw material required by a manufacture of diapers of HS 5601.1040.</p>	4-06-2011
6.	486(I)/2011	3-06-2011	<p>Through SRO 549(I)/2008 dated 11.06.2008; the Federal Government has directed that sales tax at the rate of 0% shall be charged on goods specified at Sr. Nos. 1 to 9 of the Table given below the said notification.</p> <p>Now through SRO 486(I)/2011 the Federal Government has amended SRO 549(I)/2008 to omit the following clauses in column 1 against serial number 4, in column 2 to withdraw zero rating of sales tax on items</p>	4-06-2011



			<p>specified against these entries:</p> <p><b>Clause (xxv)</b></p> <p>Dedicated CNG buses and all other buses meant for transportation of forty or more passengers whether in CBU or CKD condition classified under HS 87.02.</p> <p><b>Clause (xxvi)</b></p> <p>Truck and dumpers with g.v.w. exceeding 5 tonnes classified under HS 87.04.</p> <p><b>Clause (xxviii)</b></p> <p>Trailers and semi trailers” for transport of goods having specifications duly approved by EDB classified under HS 87.16.</p> <p><b>Clause (xxix)</b></p> <p>Road tractors for semi trailers, prime movers and road tractors for trailers whether in CBU condition or in kit form” classified under HS 8701.2010, 8701.2020, 8701.2030, 8701.2090, 8701.9030, 8701.9040, 8701.9050 and 8701.9060.</p>	
7.	487(I)/2011	3-6-2011	<p>Sales Tax Rules, 2006 amended as follows:</p> <ul style="list-style-type: none"> <li>• Rule 14A- Omitted:</li> </ul> <p>This rule was prescribed that where any registered person wishes to revise his return resulting in the payment of tax over the tax already paid on the</p>	



			<p>original return and prior approval of such revision is required under section 26(3) of the Act, regardless whether or not such person has already file to the Commissioner any application for approval of such revision, may file his revised return and pay the differential amount of tax alongwith default surcharge, if any, without such approval from the Commissioner and without any penalty whether adjudged or not. It was further prescribes that the time limitation of 120 days prescribed in sub section (3) of section 26 shall not apply to revision the return made by a registered person.</p> <ul style="list-style-type: none"><li>• Appointment of Alternative Dispute Resolution Committee ---- Amendment in rule 65:</li></ul> <p>Presently the Board shall require ADRC to submit its report within 60 days of its appointment. Now the period of 60 days has been enhanced to 90 days</p>	
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