

**COMMENTS ON AMENDMENTS PROPOSED
VIDE FINANCE BILL 2010 IN THE SALES TAX ACT, 1990**

1. Scope of tax**Section 3**

The Bill seeks to propose a general increase in sales tax rate by 1% to shift the burden of additional tax across the board. Accordingly existing sales tax rate of 16% is replaced by 17% wherever appearing in this section.

Further sales tax rates specified through SROs 644(I)/2007 date June 27, 2007, 313(I)/2006 dated March 31, 2006, 69(I)/2006 dated January 28, 2006 and sales tax rate prescribed in rule 20 of the Special Procedure Rules 2007 to be charged by transmission and distribution companies to CNG station have also been increased by 1% through SROs 395 to 398(I)/2010 date June 05, 2010.

These new rates will be effective from 1st July, 2010.

We feel that such increase bound to cause inflation to certain extent, having severed impact on the lower income group of people.

2. Access to record, documents, etc.**Section 25(2)&(3)**

The Bill seeks to provide power to the officer of Inland Revenue, duly authorised by the Commissioner, to conduct audit of the taxpayer's record once in a year provided that in case Commissioner has information or sufficient evidence showing that Registered Person (RP) is involved in tax fraud or evasion of tax, he may authorize officer not below the rank of Assistant Commissioner to conduct audit. This audit can be carried out even if the same RP was earlier audited by the office of the Auditor General of Pakistan.

The Officer of Inland Revenue after completion the audit shall pass an order u/s 11 or 36 as the case may be.

3. Selection for audit by the Board**Section 72B**

The Bill seeks to propose a new section which will enable the Board to select persons or classes of persons for audit of tax affairs through computer ballot which may be random or parametric as the Board may deemed fit.

The insertion of this provision will avoid the unnecessary litigation on the selection procedure through random balloting, as seen in the past.



4. Amendment already enacted and made through Finance (Amendment) Ordinance, 2009 w.e.f February 06, 2010.

Following are the major amendments which had already been made in the Sales Tax Act, 1990 through Finance (Amendment) Ordinance 2009 on February 06, 2010 but since the date of this ordinance has not been extended by President of Pakistan on June 05, 2010 therefore these amendments have lapsed. Accordingly the Bill seeks to insert these amendments to give them legal cover to remain effective on or after June 5, 2010:

4.1 Re-designation of administrative and adjudicating authorities

Re-designation of administrative and adjudicating authorities of sales tax to amass and harmonize the authorities of three domestic taxes i.e. income tax, sales tax and central excise duty:

Reference given in Sections	Before amendment sales tax Authority	After amendment sales tax Authority
2(1)	Sales Tax Appellate Tribunal	Appellate Tribunal Inland Revenue, established under Section 130 of the Income Tax Ordinance, 2001
2(2), 11(1),11(2), 11(3),11(5), 25A,37(3), 38(2)&(4), 40(1),40B,46 48,52,55 and 69	Officer of Sales Tax	Officer Inland Revenue
3(f)(iv), 2(5),2(46), 10(3),11(4), 11(5),21(2), 23(3),26(3), 27(b),32A(2) 36,38A,38B, 40B,45A,47 49A,58A, 58B and 66	Collector of Sales Tax	Commissioner Inland Revenue
2(4)	Not defined	Chief Commissioner Inland Revenue
30,45B and 46	Collector (Appeals)	Commissioner Inland Revenue (Appeals)
30 and 47A	Additional Collector Sales Tax	Additional Commissioner Inland Revenue
30	Deputy Collector Sales Tax	Deputy Commissioner Inland Revenue
30	Assistant Collector Sales Tax	Assistant Commissioner Inland Revenue
30	Superintendent Sales Tax	Superintendent Inland Revenue
30	Senior audit Sales Tax	Senior auditor Inland Revenue

4.2 Definition of Chief Commissioner Section 2(4A)

The definition of Chief Commissioner Inland Revenue proposed to be inserted to harmonize the higher administrative authority for the three domestic taxes i.e. income tax, sales tax and federal excise duty.

4.3 Definition of Commissioner Section 2(5)

The definition of Commissioner Inland Revenue is proposed to be inserted to harmonize the administrative authority for the three domestic taxes i.e. income tax, sales tax and federal excise duty.

4.4 Definition of Local Inland Revenue Office Section 2(15)

Means office of the Superintendent of Inland Revenue and such other office as the Board may by notification in official gazette.

4.5 Definition of Inland Revenue Officer Section 2(18)

The term Inland Revenue Officer is proposed to be inserted to harmonize the administrative authority for the three domestic taxes i.e. income tax, sales tax and federal excise duty.

4.6 Retention of record and documents Section 24

Before the amendments made through Finance (Amendments) Ordinance, 2010 a taxpayer was required to maintained and keep sales tax record for a period of 5 years. The Bill seeks to increase record retention period for 6 years or till such period the final decision of any proceeding including proceeding for assessment, appeal, revision, reference, petition and any proceedings before an Alternate Dispute Resolution Committee (ADRC) is finalized.

4.7 Transactions between associates Section 25AA

To make the sales tax law in line with income tax a concept of arm's length transactions between associate has been introduced.

4.8 Appointment of authorities Section 30

The Bills seeks to authorize the Board for the appointment of the following authorities:

- (a) Chief Commissioner Inland Revenue;
- (b) Commissioner Inland Revenue;
- (c) Commissioner Inland Revenue (Appeals); 14
- (d) Additional Commissioner Inland Revenue;
- (e) Deputy Commissioner Inland Revenue;
- (f) Assistant Commissioner Inland Revenue;

- (g) Inland Revenue Officer;
- (h) Superintendent Inland Revenue;
- (i) Inland Revenue Audit Officer; and
- (j) officer of Inland Revenue with any other designation.

4.9 Delegation of power**Section 32**

The Bill seeks to empower the Board or the Chief Commissioner, with the approval of the Board, to delegate its power to the following officers of Inland Revenue subject to certain conditions and limitations:

- (a) Additional Commissioner Inland Revenue or Deputy Commissioner Inland Revenue to exercise any of the powers of a Commissioner Inland Revenue under this Act;
- (b) Deputy Commissioner Inland Revenue or Assistant Commissioner Inland Revenue to exercise any of the powers of an Additional Commissioner Inland Revenue under this Act;
- (c) Assistant Commissioner Inland Revenue to exercise any of the powers of Deputy Commissioner Inland Revenue under this Act;
- (d) any other officer of Inland Revenue to exercise any of the powers of an Assistant Commissioner Inland Revenue under this Act.

This amendment seeks to empower commissioner besides the Board.

4.10 Power of Adjudication**Section 45**

After introducing the amendments in section 25, the same become superfluous hence Bill seeks to omit this section.

4.11 Appeals**Section 45B(1)**

The Bill seeks to substitute subsection 1 of section 45B to read as follows:

- (1) Any person, other than the Sales Tax Department, aggrieved by any decision or order passed under sections 10, 11, 25, 36, or 66, by an officer of Inland Revenue may, within thirty days of the 19 date of receipt of such decision or order, prefer appeal to the Commissioner Inland Revenue (Appeals) :

Provided that an appeal preferred after the expiry of thirty days may be admitted by the Commissioner Inland Revenue (Appeals) if he is satisfied that the appellant has sufficient cause for not preferring the appeal within the specified period:

Provided further that the appeal shall be accompanied by a fee of one thousand rupees to be paid in such manner as the Board may prescribe

4.12 Appeals to Appellate Tribunal**Section 46(2A)**

This sub-section proposed to insert to shift appellate jurisdiction of Sales Tax cases from Customs Tribunal to Appellate Tribunal constituted u/s 130 of the Income Tax Ordinance, 2001 w.e.f. 28th day of October 2009.

4.13 Service of order, decisions, etc.**Section 56**

To harmonize service of order and decisions of three domestic taxes and to be in line with Income Tax Laws, the Bill seeks to substitute this section as follows:

- (1) Subject to this Act, any notice, order or requisition required to be served on a resident individual, other than in a representative capacity, for the purposes of this Act shall be treated as properly served on the individual if:
 - (a) personally served on the individual or, in the case of an individual under a legal disability or a non-resident individual, the representative of the individual;
 - (b) sent by registered post or courier service to the place specified in clause (b) of sub-section (2) or to the individual's usual or last known address in Pakistan; or
 - (c) served on the individual in the manner prescribed for service of a summons under the Code of Civil Procedure, 1908 (V of 1908).
- (2) Subject to this Act, any notice, order or requisition required to be served on any person, other than a resident individual to whom sub-section (1) applies, for the purposes of this Act, shall be treated as properly served on the person if:
 - (a) personally served on the representative of the person;
 - (b) sent by registered post or courier service to the person's registered office or address for service of notices under this Act, in Pakistan, or where the person does not have such office or address, the notice is sent by registered post to any office or place of business of the person in Pakistan; or
 - (c) served on the person in the manner prescribed for service of a summons under the Code of Civil Procedure, 1908 (V of 1908).
- (3) Where an association of persons is dissolved, any notice, order or requisition required to be served under this Act, on the association may be served on any person who was the principal officer or a member of the association immediately before such dissolution.
- (4) Where, business stands discontinued, any notice, order or requisition required to be served under this Act, on the person discontinuing the business may be served on the person personally or on any individual who was the person's representative at the time of discontinuance.



- (5) The validity of any notice issued under this Act, or the validity of any service of a notice under this Act, shall not be called into question after the notice has been complied with in any manner.

4.14 Reference to authorities

Section 72A

The Bill seeks to insert this section to give general protection to change mode in respect of nomenclature of authorities given in Sales Tax Act, Rules, Circular and Notification, etc.

Summary of significant notifications issued simultaneously with the Finance Bill, 2010-11 with their effective dates, alongwith our brief comments is tabulated below:

	<u>SRO No.</u>	<u>Dated</u>	<u>Subject matter</u>	<u>Effective from</u>
1	395(I)/2010	5-06-2010	SRO 644(I)/2007 dated June 27, 2007 specify certain goods on which sales tax shall be charged at the rate of 21% and 18.5%. Now through this SRO these rates have been increased to 22% and 19.5% respectively.	1-07-2010
2	396(I)/2010	5-06-2010	SRO 313(I)/2006 dated March 31, 2006 deals with import of soyabean seed by solvent extraction industries which are subject to sales tax of 6%. Now through this SRO rate of sales tax has been increased to 7%.	1-07-2010
3	397(I)/2010	5-06-2010	SRO 669(I)/2006 dated January 28, 2006 deals with import of rapeseed, sunflower seed and canola seed by solvent extraction industries which is subject sales tax 14%. Now through this SRO rate of sales tax has been increased to 15%.	1-07-2010
4	398(I)/2010	13-06-2009	Sub-rule 2 (c) of rule 20 of the Sales Tax Special Procedure Rules 2007 prescribes that transmission and distribution companies shall charge 25% sales tax to CNG stations. Now through this SRO this rate of sales tax has been increased to 26%.	1-07-2010