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Subject:- **SALES TAX ACT, 1990 – PROPOSED AMENDMENTS.**

Respected Sir:

Aslam-o-Alekum!

As you know, a pre-budget Seminar was conducted by the Lahore Tax Bar Association on 21-04-2012 at the Auditorium of Tax House, Nabha Road, Lahore. On this occasion, I was honoured to place certain proposals with reference to the Sales Tax Act, 1990, before the House. Your goodself required me to send you the said proposals, in writing. The same are accordingly summarized as under:-

SECTION -3 SCOPE OF TAX

It is proposed that standard rate of sales tax may please be reduced from 16% to 15%.

You may appreciate that while introducing draft for Reformed GST and VAT, 15% uniform rate was proposed. Further more,

tax rate is not directly proportional to **TAX - GDP** ratio; as is apparent from the following list of various countries of the World.

SR. NO.	**COUNTRY NAME**	**VAT RATE**	**TAX-GDP RATIO**
1	CANADA	7%	(33.4)
2	AUSTRALIA	10%	(30.5)
3	SWITZERLAND	6.5%	(30.1)
4	SOUTH AFRICA	14%	(26.9)
5	INDIA	12.5%	(17.7)
6	MALAYSIA	5%	(15.5)
7	**PAKISTAN**	**16%**	**(9)**

The reduction in sales tax rate shall be a positive change to reduce burden on the end-consumer and to reduce inflation in the society. However, to bridge the deficit, undue exemptions, concessions, Zero ratings can be abolished. You can adopt various other measures to

generate more revenue like effective control on fictitious units, flying invoices and bogus refunds. It is further proposed that deficiencies of infrastructure of the Department should be immediately removed. The stakeholders have already placed various proposals in this regard.

Another important measure is to broaden the tax base. The remedial provisions like Sections 36 and 11 etc. should be re-drafted to cater for any possible situation to retrieve the loss of revenue and the case law, so far developed in this regard, can be consulted for better drafting.

Proper taxation of Services in other three Provinces, like Sindh, is also very essential, as per 18th Amendment made in the Constitution of Pakistan. Likewise, Ordinance relating to sales tax on Services for Islamabad Capital Territory also needs the attention of the Federal Government to incorporate more Services in the 'Schedule' to broaden the tax base. To promote better results, you can take on board technical experts, chartered accountants and legal experts to help the Department in audit procedures, assessments, recovery drive and to face complex court proceedings.

SECTION 11A – SHORT PAID AMOUNTS RECOVERABLE WITHOUT NOTICE.

This Section was inserted by Finance Act, 2006. It provides where a taxpayer makes short payment of tax, recovery shall be made from him without issuing any notice by stopping removal of any goods from his business premises and through attachment of his business bank accounts. Further more, no notice will be issued to impose and collect the default surcharge.

It may please be noted that the entire recovery procedure is laid down in Section 48 as well as in the related Sales Tax Rules, 2006. The measures of recovery, as intended in Section 11A, can be taken in the light of Section 48 and there was hardly a need to mention these measures in Section 11A. More over, a notice must be issued to the registered person for imposing/charging default surcharge, as an ex-parte action would be contrary to the principles of natural justice. You may further appreciate that as per Chapter - II of the Sales Tax Rules, 2006, every registered person is required to file his return electronically. So, the liability is generated through automated system of FBR. Unless that

amount is paid in treasury, the return cannot be submitted through FBR e-Portal. Thus, there is hardly a possibility to file any return without payment of admitted tax liability. Prima facie, there is no justification to keep this provision in tact in the present form. It is, therefore, proposed that it may please suitably be amended.

REGISTRATION - SECTION 14 AND CHAPTER 1 OF THE SALES TAX RULES, 2006.

The present procedure of registration is very troublesome, lengthy and time-consuming. It needs to be simplified and decentralized. A time limit of 15 days is given for rejection of application but there is no time frame for acceptance of the application for registration. It is, therefore, proposed that besides simplifying the process of registration, the applicant should be allotted a provisional number or permission be granted to him to use NTN as his provisional STRN till the date of his registration. However, the incumbent can be required to furnish necessary security/guarantee; if so, required.

Likewise, the procedure regarding change in particulars of registration also needs to be decentralized and simplified. Further more,

it is not very clear from the related provisions of law that from which date sales tax is liable to be paid i.e. from the date of application or date of registration. In case, the sales tax is liable to be paid from the date of application for registration, then, what should be the fate of the input tax involved in connection with the invoices received by the applicant prior to the date of application as well as subsequent to the filing of the application till the date of registration?

As per Section 23(1)(b), the invoice shall contain the sales tax registration Number of the buyer. Likewise, Section 7(2)(i) says 'a registered person shall not be allowed to deduct input tax unless he holds a valid invoice in his name bearing his registration number etc.' Section 8(3) says: 'No person other than a registered person shall be allowed to claim any deduction on account of input tax against taxable supplies.' Similarly, there is another provision i.e. clause (37) of Section 2, which says that making a taxable supply without getting registration amounts to tax fraud. So, in the given circumstances, a clarification may please be issued that from which date the tax is to be paid by the applicant and in

case the tax is to be paid from the date of application, then, the said provisions must be relaxed relating to the period starting from date of application.

Further more, as per Section 59, tax Paid on goods Purchased by a Person, who is subsequently registered, shall be treated as Input Tax, Provided that such goods were Purchased from a registered Person, who issued invoices u/s 23 during a period of 30 days before making an application for registration.

Here the Question arises, invoices so issued shall not contain STRN of the Buyer, then in the presence of Sections 23(i)(b), 7 (2)(1) & 8(3), whether Input Tax shall be allowed or not?

Proviso to Section 59 Provides that where a Person imports goods, the tax paid by him during a Period of 90 days before making an application for registration shall be treated as input tax.

If we look at Section – 14 & Rule – (4) of Chapter-1 of the Sales Tax Rules, 2006 'zero is the threshold for an Importer for registration, so every importer is liable to be registered. Hence, there is no scope to make any imports without Sales Tax registration. Thus, the said Proviso has become infructuous and redundant.

SECTION 21 – DE-REGISTRATION, BLACKLISTING AND SUSPENSION OF REGISTRATION

As per sub-section (2) of Section 21, if a registered person has committed tax fraud, the Commissioner may blacklist such person or suspend his registration in accordance with the procedure laid down by FBR. Prima facie, this provision has not been properly drafted; as an option is available to the Commissioner to either suspend, or blacklist the concerned taxpayer. Principally, as a first step, the registration is required to be suspended, followed by an inquiry and if tax fraud is established in inquiry, then, only the registered person should be blacklisted through an order, in writing.

More over, sub-section (3) of Section 21 also needs amendment. This provision was inserted in the Statute Book through Finance Act, 2011. It, inter-alia, provides that:-

(i) during the period of suspension of registration, the invoices issued by such person shall not be entertained;

(ii) when such person is blacklisted, the invoices shall not be entertained issued by such person whether prior or after such blacklisting unless the registered person has fulfilled his responsibilities under Section 73.

Now, there are a few queries about this particular Provision:-

(i) When the taxpayer has made the payments through banking instruments, as provided in Section 73, on account of the transactions exceeding Rs. 50,000/- each, to the supplier (Registered Person) who was subsequently blacklisted; whether the invoices issued by him before the date of suspension/blacklisting will

be allowed for adjustment of the input tax without any hesitation?

(ii) Whether, where genuine transactions were made involving payments, less than Rs. 50,000/-, which were not routed through proper banking channels as those were not required by Section 73, input tax shall straight away be rejected?

(iii) Where legitimate invoices issued by the said person before the date of his suspension/blacklisting will straightaway be disallowed or be allowed or disallowed after causing necessary verification?

As per practice prevailing in the Inland Revenue Department, once a person is blacklisted, all invoices issued by him are rejected without due application of mind. In the opinion of the department, the blacklisting of any registered person is sufficient evidence to reject all the invoices issued by him without considering that his earlier invoices issued to various suppliers were valid, genuine

and legitimate. Moreover, the order of blacklisting is an executive order. The Supreme Court of Pakistan in a judgment reported as 2005 SCMR 492 has held that:

> ***"It is well settled principle of Law that the executive order or notification, which confer rights and are beneficial, would be given retrospective effect and those which adversely affect or invade upon vested right cannot be applied with retrospective effect."***

So, in this view of the matter, there is an urgent need to suitably amend the above Provision and to clarify the intent of the legislature to save the taxpayers from undue hardships.

SECTION 26(3) REVISED RETURN

As per sub-Section (3) of Section 26, a return can be revised with the approval of the Commissioner within 120 days only. If we look at Section 114(6) of the Income Tax Ordinance, 2001, it provides that if any person discovers any omission or wrong statement in the original term, he can file a revised return subject to the condition that it is accompanied by revised accounts or revised audited accounts, whichever applicable. Moreover, reasons for revision of return, in writing, duly signed by the taxpayer, should also be filed with the

Return. This provision may also be amended in the same spirit as the taxpayers are facing undue hardships due to this provision of Law. Moreover, this provision has unduly burdened the Commissioners with extra load without any reason or justification. More over, the limit of 120 days should also be waived of and this provision should be redrafted in accordance with the provisions like Sections 24, 36 and 11 whereby the revenue is entitled to retrieve the loss of revenue by taking remedial actions within a period of five years. Moreover, period for retention of record and documents has been fixed 'six years' (in the light of Section 24). It is also to be pointed out here that STR 11 (Challan) can be generated without approval of the Commissioner, so, if tax can be paid without approval of the Commissioner, then, why revised return cannot be filed without obtaining approval of the Commissioner.

It is also relevant to add that the revised return would not curtail any of the powers of the Department to initiate any legal action whatsoever including invoking of any of the relevant provisions for

retrieving the loss of Revenue. Thus, there is hardly a reason to impose the above embargo.

SECTION 40B – POSTING OF INLAND REVENUE OFFICER

As per proviso to Section 40B, if the Commissioner, on the basis of material evidence, has reason to believe that a registered person is involved in evasion of tax or tax fraud; he may, by recording the reasons in writing, post an officer of Inland Revenue to the Premises of such Registered Persons to monitor Production or Sale of taxable goods and the stocks position. This provision is being recklessly used by the Commissioners without any check, whatsoever. No rules have been framed in this regard by FBR. This Provision does not provide any time frame, to check how long the Sales Tax Officers can stay at the business premises of the registered person. Likewise, timings have also not been mentioned any where. Moreover, it is not clear:

1. Whether any documents can be obtained by the officers, so deputed, from the registered person; like invoices, cash memos etc?
2. Whether the officers so deputed can note gas and electricity consumption etc.?
3. Whether the officers, so deputed, can directly interact with the customers/clients/visitors?
4. Whether they can force the taxpayers to sign the information, so recorded by them?
5. Whether the provisions of Section 40B can be invoked in case of unregistered persons also?
6. What would be the use of the information, so collected?
7. How the assessment will be made and for which period?
8. Whether remedial provisions can be invoked in this situation or not?

It is, therefore, suggested to frame necessary rules in this regard, so that, these provisions should not be misused by the Department.

SECTION 57 – CORRECTION OF CLERICAL ERRORS ETC.

This Section provides that clerical or arithmetical errors in any assessment, adjudication order or decision, may, at any time, be corrected by the officer of Inland Revenue, who made the Assessment, adjudication or passed such order or decision or by his successor, in office. This provision is incomplete and sketchy.

If we look at Section 221 of the Income Tax Ordinance, 2001, it provides that mistakes apparent from the record can be corrected. However, no order shall be rectified after five years. This provision i.e. Section 57 also needs to be re-drafted so that besides arithmetical errors, other mistakes could also be rectified within a given span of time.

CONSOLIDATION AND CODIFICATION OF EXEMPTIONS

As per sub-Section (2) of Section 50, all rules made under sub-Section (1) of Section 50 or any other provision of the Sales Tax Act, 1990, shall be collected, arranged and published along with general

orders and departmental instructions and rulings, if any, at appropriate intervals and sold to the public at reasonable price.

So, the consolidation and codification of exemptions, zero ratings, SROs Rulings, general orders, circulars, clarifications, is very much essential. It is very difficult for the stakeholders to consult all the related provisions of such a rapidly growing Law. It is accordingly proposed that all the constituents of subordinate legislation should be compiled and published by FBR at appropriate intervals and offered for sale to the general public at a reasonable price.

SRO 191(1)/2012 DATED 23RD FEBRUARY, 2012

Earlier, SRO No. 821(1)/2011 dated 6th September, 2011, required that all registered manufacturers, importers and exporters making taxable supplies to unregistered persons shall issue invoices containing CNIC numbers or NTNs of such unregistered Buyers.

Prima facie, the above SRO has silently over-ruled the SRO 821(1)/2011dated 23rd February, 2012. Through the current SRO, a new Chapter viz. XIV has been added in the Sales Tax Rules, 2006. This

SRO, inter-alia, provides that it is applicable to registered manufacturers, importers, exporters making taxable, dutiable and exempt supplies.

Rule 150B (1) provides that invoice shall be issued by the registered manufacturers, importers and exporters containing NTN or CNIC number of the un-registered Buyer. However, this scheme shall be followed in phased manner i.e. 60% sales shall be made to identifiable persons in March 2012, so, sales tax registration number or NTN or CNIC shall be provided in the monthly sales tax return. Likewise, this condition will be applicable to 70%, 80%, 90% and 100% sales relating to the periods April, May, June and July, 2012.

As per sub-Rule (3) of Rule 150B, if supplies to identifiable persons fall short of requisite percentages, input tax shall be disallowed proportionally. As per sub-Rule (4), if NTN or CNIC number is not verifiable from the FBR database or database of the National Registration Authority, a penalty of Rs. 5000/- or 3% of the tax involved, which ever is higher, shall be imposed.

As per sub-Rule (5), payments should be made by the buyers to the suppliers through banking instruments as provided in Section 73.

With reference to sub-Rule (3), which speaks about disallowance of input tax, it may be pointed out that it has been provided in the two judgments reported as 1999 SCMR 1442 and 2006-94-Tax-222 Karachi High Court that no subordinate legislation can expand or restrict the substantive provisions contained in the Act. Any attempt in this behalf shall be termed as conflicting to the substantive provisions and shall, to that extent, have to give way to the substantive provision contained in the Act. Prima facie, input tax is a vested right, which cannot be taken away through any piece of subordinate legislation by the FBR.

If we look at SRO 191 (I)/2012 dated 23rd February, 2012, it says that FBR has derived powers from Section 50, 8(2), 8B(2)(ii), 9, 10, 14, 21, 28, clause (c) of sub-Section (1) of Section 22, 1st Proviso to sub-Section (1) of Section 23, Section 26, sub-Section (6) of Section 47A, Sections 48, 50A, 52, 52A and 66 of the Sales Tax Act, 1999 to disallow

the input tax proportionally for the supplies made to un-identifiable persons.

I have minutely examined all these provisions of Law and found that no where, powers have been given to FBR to disallow the input tax in any case. Prima facie FBR has stretched its powers while issuing this notification. This is contrary to the said judgment of the Supreme Court of Pakistan as well as of Karachi High Court. Thus, in my view, it cannot sustain in the present form at least.

Moreover, while proposing to impose penalty, the Federal Board of Revenue has adopted the role of full-fledged legislature. A specific Section i.e. Section 33 is available in Law to provide various penalties in different situations; so an appropriate entry can be added in Section 33, but of course by legislature.

Without prejudice to the above, Entry No. 17 of Section 33 provides that any person who fails to follow any notification of FBR shall pay a penalty of Rs. 5000/- or 3% of the tax, whichever is higher. Thus in the presence of this entry, there was hardly a reason to provide any

other penalty by the FBR. Further more, penalty has been proposed to be levied on the supplier, if NTN/CNIC provided by the buyer is incorrect. Since, the supplier has no authority or direct access to the NADRA's database to verify the veracity of his buyer's CNICs, so, the seller cannot confirm the genuineness of CNICs furnished by his customers.

Although one indirect method is available to confirm the veracity of CNIC from NADRA's database i.e. by sending SMS at 7000, but it costs Rs. 12 per verification or so. This condition needs to be rationalized. Moreover, FBR's letter No. C.No.3 (36) STP/99 (PTL) dated 14th July, 2004 has already clarified that provisions of Section 73 would not be applicable in respect of unregistered persons. So, how they can be forced to make payments through banking channels in the light of Section 73 of the Sales Tax Act, 1990. This provision also needs fresh appraisal and necessary modification.

Yours truly,

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