

**The Sindh Sales  
Tax on Services  
(Amendment)  
Ordinance 2011**

**Tax Brief on Salient  
Amendments**

## OVERVIEW

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On 1<sup>st</sup> November 2011, the Governor of Sindh has promulgated the Sindh Sales Tax on Services (Amendment) Ordinance 2011 (hereinafter “the Ordinance”) whereby significant amendments have been made in Sindh Sales Tax on Services Act 2011 (hereinafter “the Act”).

The Ordinance has brought certain additional services under the ambit of Provincial Sales Tax. Besides, certain procedural and legal changes have also been made in the Act for the purpose of clarity and harmonization of the Act with that of Sales Tax Act 1990.

This commentary is focused on the important amendments in concise format and carries our interpretation and comments and therefore should not be presumed as a specific professional advice.

We, therefore, strongly recommend that the text of the Ordinance and the relevant laws and notifications, where applicable, be referred to in considering application of any provision. Besides, specific professional advice should be sought to avoid any potential confusion at later stage(s).

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# SALIENT AMENDMENTS

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## **Economic activity**

### *Section 4*

Previously, an activity of a person (other than an individual), which was essentially carried on as a private recreational pursuit or hobby of a member, owner, or associate of the person was outside the ambit of sales tax. Likewise, an activity carried on without a reasonable expectation of profit by an individual or an association of persons, all of the members of which are individuals was also not classified as an economic activity.

Both the above exclusions have been omitted from the definition of 'economic activity' meaning thereby that a person (not being an individual) engaged in any private hobby or any activity carried on non profitable basis, could be construed to be an economic activity and accordingly liable to sales tax.

## **Power to amend Schedules**

### *Section 11*

Subject to the approval of Sindh Assembly, the Sindh Revenue Board (hereinafter "the Board") is empowered to increase or decrease the rate of sales tax applicable to any taxable service.

We understand Section 8(2) also bestows Provincial Government with identical powers. Vide Notification No. SRB-3-4/2 /2011 dated 24 August 2011, the Provincial Government had already reduced sales tax rates of certain taxable services.

Therefore, with an apparent view to restrict such powers only with the Provincial

Government, the Board has now been debarred to revise tax rates either upward or downward.

## **Offences and Penalties**

### *Section 43*

Serial No. 6 of Section 43 has been amended whereby a penalty of Rs. 25,000 or 100% of the tax payable (whichever is higher) or conviction by a Special Judge to imprisonment for a term which may extend to five years may also be imposed upon the person who fails to pay, recover or deposit the actual amount of tax, or claims inadmissible tax credit or adjustment or deduction or refund.

## **Exemption from penalty and default surcharge**

### *Section 45*

The Board may, with the approval of the Government and by a notification in the official Gazette, exempt any registered person or class of registered persons from payment of the whole or any part of the penalty and default surcharge imposed under sections 43 and 44 of the Act subject to such conditions and limitations as may be specified in such notification or, as the case may be, special order.

Due to a typographical or drafting error, the reference of Sections 43 and 44 was incorrectly made as Section 34 and 35. By virtue to identical amendment in Section 45, such drafting error has been rectified.

### Recovery of tax not levied or short-levied Section 47

The provision of Section 47 is identical to Section 36 of Sales Tax Act 1990. The original text of Section 47 of the Act had empowered the SRB officer to recover tax not levied, short levied by the taxpayer due to tax officer's inadvertence, error or miscalculation. However, the said section was restricted towards recovery of revenue loss occurred due to any situation other than a deliberate act or collusion on the part of taxpayer.

Such lacuna has been catered in the Ordinance whereby a Sub Section (1A) has been inserted in Section 47. Sub Section 1A prescribes mechanism for recovery of tax within 5 years' time in cases of which was not paid, short paid, short assessed or short collected due to collusion, abetment, deliberate attempt, mis-statement, fraud, forgery, false or fake documents.

An interesting provision has also been added in Sub Section 1A(b) whereby identical recovery procedures may also be adopted in case where any undue refund was awarded to any taxpayer. It is pertinent to note that, on the contrary, no specific provision exists in the Act or the allied rules for refund of sales tax on services.

### Appeals Section 57

Any person, other than the Board or any of its officers, aggrieved by any decision or order passed by the adjudicating authority can prefer 1<sup>st</sup> appeal within 30 days of the date of receipt of such decision or order before the Commissioner (Appeals) SRB.

An amendment has been made in Section 57 whereby the list of appealable orders has been changed as follows:

Old	New
Section 13 - Special Procedure	Section 22 - Liability for payment of tax in the case of private companies or business enterprises
Section 18 - Joint and several liability of registered persons where tax unpaid	Section 23 - Assessment of Tax
Section 19 - Sales of taxable activity or transfer of ownership	Section 24B - Registration
Section 38 - Cognizance of offences by Special Judges	Section 43 - Offences and penalties
	Section 44 - Default Surcharge
	Section 47 - Recovery of tax not levied or short- levied
	Section 68 - Liability and obligations of agents
	Section 76 - Correction of clerical errors

**Services**  
*First Schedule*

The following significant amendments have also been made in the 1<sup>st</sup> Schedule to the Act:

Tariff Heading	Old Description	New Description	Comments
9813.3900	Services provided or rendered in respect of Musharika financing	Services provided or rendered in respect of modarba and musharika financing	The financial transaction of “modarba” is added to the list of services.
9813.4990		Other services not specified elsewhere - 16%	New Entry.  Other Services allied / ancillary to Safe Deposit Lockers and Safe Vaults have been added to the list of services.
9813.8100	Others	Others, including the services provided or rendered by non-banking finance companies, modaraba and musharika companies and other financial institutions	To harmonize 1 <sup>st</sup> & 2 <sup>nd</sup> Schedule, financial services already taxed in the Second Schedule are also added in the First Schedule.  Reclassification and expansion of tariff headings.
9819.9090	Others	Others, including the services provided by port operators, airport operators, airport ground service providers and terminal operators	Addition of new services.  Services provided by terminal operators except terminal fee charges are already taxable @ 16% under the Second Schedule (PCT 9824.0000).

**Taxable Services**  
*Second Schedule*

The following significant amendments have also been made in the 2<sup>nd</sup> Schedule to the Act. Consequently, sales tax has been imposed on such newly added services:

Tariff Heading	Old Description	New Description	Rate of Sales Tax	Comments
9813.3000		Services provided or rendered in respect of leasing	16%	New Entry.  To remove ambiguity and to explain heading 98.13, services provided in respect of leasing are reclassified into separate sub headings.
9813.3010		Financial Leasing	16%	- do -
9813.3020		Commodity or equipment leasing	16%	- do -
9813.3030		Hire purchase leasing	16%	- do -
9813.3900		Services provided or rendered in respect of modaraba and musharika financing	16%	New Entry. Reclassification of tariff headings.  Previously no sub heading was allocated for services provided or rendered in respect of modaraba and musharika financing.
9813.4990		Other services not specified elsewhere	16%	New Entry.  Other Services allied / ancillary to Safe Deposit Lockers and Safe Vaults have been added to the list of taxable services.

Tariff Heading	Old Description	New Description	Rate of Sales Tax	Comments
9813.8100	Others	Others, including the services provided or rendered by non-banking finance companies, modaraba and musharika companies and other financial institutions		<p>Reclassification and expansion of headings.</p> <p>The amendment could impose sales tax on service provided by NBFCs, modaraba and other financial institutions, as banker to an issue.</p>
9814.2000		Contractor of building (including water supply, gas supply and sanitary works), electrical and mechanical works (including air conditioning), multi-disciplinary works (including turn-key projects) and similar other works	16%	<p>New Entry.</p> <p>The scope of contractual work (Heading 9809.0000) has been expanded to certain other allied services.</p> <p>Such amendment could bring all civil and other projects ancillary to completion of project(s) into sales tax net.</p> <p>However, apparently a drafting error has been made whereby instead of services, the 'contractor of services' has been taxed in Heading 9814.2000.</p>
9814.3000		Property developers or promoters	16%	<p>New Entry.</p> <p>Services provided by property developers and promoters for development of land and construction of units are already taxed under Heading 9807.0000. Thus, it is not clear what other type of services are intended to be taxed under this Tariff Heading.</p>

Tariff Heading	Old Description	New Description	Rate of Sales Tax	Comments
9819.9090		Services provided or rendered by port operators, airport operators, airport ground service providers and terminal operators.	16%	New Entry.  Services provided by terminal operators except terminal fee charges are already taxable @ 16% under the Second Schedule (PCT 9824.0000).
9824.0000	Construction services	Construction services	16%	No Change has been brought.
		Management Services including fund and assets management services	16%	The services provided by AMCs are now taxable. Through this entry, an attempt has been made to remove the legal lacuna that existed in 1 <sup>st</sup> Schedule of Federal Excise Act 2005 regarding taxation of AMCs. Such matter later on went to Courts and is presently <i>sub judice</i> before the High Court.
		Airport services	16%	
		Tracking Services	16%	Vehicle tracking services are already sales taxable under Heading 9812.9490 @ 19.5%. It appears that all other types of tracking will now be taxable @ reduced rate of 16%.
		Security alarm services	16%	Burglar alarm services are already sales taxable under Heading 9812.9500 @ 19.5%. It appears that all other types of security alarm services will now be taxable @ reduced rate of 16%.



<b>Tariff Heading</b>	<b>Old Description</b>	<b>New Description</b>	<b>Rate of Sales Tax</b>	<b>Comments</b>
		Services provided by motels and guest houses	16%	New Entry. Services provided or rendered by hotels are already taxable under Heading 9801.1000. In order to bring all identical service providers at par with that of hotels, identical services rendered by motels and guests houses have also been brought under the tax net.