

BUDGET BRIEFING 2020

Comments on Finance Bill 2020—II

SALES TAX

1. Active taxpayer

Section 21 (a) & (d)

Section 21 of the ST Act specifies various scenarios such as issuance of fake invoices, committed tax fraud, claiming fraudulent input tax or refunds, etc. where the FBR or the Commissioner may blacklist such persons, suspend their registration or block the refunds / input tax adjustment of the person. Section 21(a) provides that the person who is blacklisted or whose registration is blocked in terms of section 21 of the ST Act shall not be covered under the definition of Active Taxpayer.

The Bill seeks to omit the term "blocked" from the definition of the term "Active Taxpayer" which appears to be a corrective amendment as Section 21 of the ST Act only refers to suspension of registration. However, it may also be inferred that even if the refunds or input tax adjustment of a registered person is blocked in view of Section 21 of the ST Act he may not be treated as a non-active taxpayer.

It may be noted that the Bill also seeks to amend section 165 of the Ordinance and proposes the filing of a quarterly statement instead of a bi-annual withholding statement. Consequently, Section 21(d) of the ST Act is also sought to be amended. The Bill now seeks to substitute the words "two consecutive monthly" with the term "quarterly". Accordingly, every registered person who fails to file quarterly withholding statement under Section 165 of the Ordinance, shall also be declared as non-active taxpayer.

2. Output tax

Section 220 (c)

Section 220 (c) of the ST Act provides the definition of the term "output tax" which means "sales tax charged under ST Act on supply of goods", "tax levied under the FE Act in sales tax mode" and "Provincial Sales Tax levied on services rendered". After the Eighteenth Amendment in the Constitution of Pakistan, 1973, the Provinces have enacted their respective Acts and are charging and collecting sales tax on the services rendered in their respective jurisdictions. However, the sales tax on services under ICT Ordinance is still administered and collected by the FBR. Hence the term "Provincial Sales Tax levied on services rendered" in the definition of the term "output tax" under the ST Act seems to be redundant.

The Bill seeks to streamline the situation and substitute clause (c) of sub-section (20) of section 2 of the ST Act and seeks to retain only "sales tax on the services rendered" provided" by the person under the ICT Ordinance, and accordingly has proposed this amendment.

3. Value of supply

Section 240(b) and (i)

Section 240(b) provides definition of value of supply for the Independent Power Producers which pay sales tax only on the amount received on account of energy price. The amount of received on account of capacity purchase price, energy purchase price premium, excess bonus, supplement charges, etc. is not included in the value of supply for the purpose of charging sales tax under the ST Act. The Bill now seeks to insert WAPDA whose value of supply shall also be considered as the amount received on account of energy price only, and exclusion provided for Independent Power Producers shall also be applicable on WAPDA.

The matter of application of sales tax on used vehicles was under consideration as most of the persons engaged in the supply of used vehicles were not offering sales tax on such supply. The Bill seeks to insert clause (i) in Section 46 of the ST Act, whereby registered persons who are engaged in purchasing vehicles from general public on which sales tax had already been paid at the time of import or manufacturing charge sales tax on the difference between sale and purchase price of the vehicle, if sold in the open market after making certain value addition.

4. Determination of tax liability

Section 7 (5)

The ST Act, subject to certain conditions and limitations, allows deduction of input tax paid or payable during a tax period for the purpose of taxable supplies. The Bill seeks to insert sub-section (5) in Section 7 of the ST Act whereby, the FBR through a notification in the official gazette may impose restrictions on the adjustment of input tax attributable to the wastage of material in respect of the goods or a class of goods.

5. Tax credit not allowed

Section 81 (m)

The Finance Act, 2019, has restricted claim of input tax proportionately on goods, if sales tax invoice issued to un-registered persons without mentioning their CNIC number or NTN. Under section 2(14) of the ST Act, the adjustment of input tax levied on services is admissible subject to certain conditions or limitations as specified in the ST Act, however, clause (m) of sub-section (1) of section 8 of the ST Act does not restrict the adjustment of input tax on services if the aforesaid conditions are not satisfied.

The restriction on claim of input tax is proposed to be extended to services if suppliers were made to un-registered persons and invoice were raised without mentioning NTN or CNIC.

6. Power of tax authorities to modify orders, etc.

Section 11C

The Bill seeks to insert a new section, Section 11C to the ST Act, whereby the Commissioner or the Officer Inland Revenue, notwithstanding whether any appeal is filed before the Supreme Court of Pakistan, or a reference is filed before any High Court, may follow the decision of the Appellate Tribunal or the High Court, decided on or after the first day of July, 1998, in case of any pending assessment or taxpayer, which applies the same question of law, until the decision of the High Court or the Appellate Tribunal is reversed or modified. The aforesaid section also provides that in case the decision of the High Court or the Appellate Tribunal is reversed or modified, the Commissioner or Officer Inland Revenue may, within a period of one year from the date of receipt of such decision, reverse the assessment or order in which the decision of the Appellate Tribunal or the High Court was followed, so that it conforms to the final decision.

The proposed section also states that the period of one year from the date of receipt of the Order of the High Court or the Supreme Court of Pakistan, shall be notwithstanding the expiry of period of limitation prescribed for making any assessment or order.

7. Tax invoice

Section 231 (b)

Clause (b) of sub-section (1) of Section 23 of the ST Act requires every registered person to provide name, registration number of the recipient and CNIC or NTN of the un-registered person, as the case may be, excluding supplies made by a retailer where the transaction value inclusive of sales tax amount does not exceed PKR 50,000, if sale is being made to an ordinary consumer. The Bill now seeks to provide that where a transaction value is less than PKR 100,000, a retailer is not required to mention CNIC or NTN of an unregistered person.

8. Access to record, documents, etc.

Section 25 (2A)

Section 25 of the ST Act provides procedure and powers of the Commissioner to conduct audit of the records of a registered person. To conform with the modern digital age, the Bills seeks to insert new sub-section (2A) in Section 25 of the ST Act, which empowers the Commissioner to conduct audit proceedings electronically through video links or any other facility as prescribed by the FBR.

9. Return

Section 26 (1)

Section 26 of the ST Act, provides that the registered person shall furnish not later than the due date a true and correct return in the prescribed form. The electronic Sales Tax Return form comprises of several Annexures which every registered person is required to submit. However, it has been observed that in various cases the return could be filed where complete information is not provided other than the information which impact the net liability or carry forward or refund of the return filer. Such information includes detail of exempt purchases and sales, etc.

To ensure provision of all the required information or details, the Bill seeks to insert a term "complete" in addition to "true and correct" in Section 26(1) of the ST Act.

10. Offences and penalties

Section 33, Serial 25 & 28

The serial number 25 of the table under Section 33 of the ST Act deals with the offence committed by a person who is required to integrate his business for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the FBR or its computerized system. The Bill now seeks to provide that even after imposition of penalty, if a person does not integrate his business with the FBR system within two months, the business premises shall be sealed until it integrates such business.

The Bill also seeks to add the following new entry at serial number 28 for imposing penalty for non-sharing of information.

Offences	Penalties	Section of the Act to which offence has reference
(1) Any person who is required to share information under section 56AB, fails to do so in the manner as required under the law	(2) Such person shall pay a penalty of twenty five thousand rupees for first default and fifty thousand rupees for each subsequent default	(3) 56AB

11. Authorized officers to have access to premises, stocks, accounts and records, Section 38(1)

The FBR has powers to authorize any of its officers or Commissioner or his agent to have free access to business or manufacturing premises, registered office or any other place where any stocks, business records or documents required under this Act are kept or maintained belonging to any registered person liable for registration or whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud committed by him or his agent or any other person.

The Bill seeks to widen the scope to include real-time access. The Bill further seeks to empower the FBR to make Rules relating to electronic real-time access for audit or a survey of persons liable to tax.

12. Appeals

Section 45B (1A)

The Bill proposes to insert new sub-section (1A) to Section 45B of the ST Act

EY Ford Rhodes

whereby procedure for filing of appeals before the Commissioner (Appeals) is prescribed. An appeal shall be:

- (a) be in the prescribed form;
- (b) be verified in the prescribed manner;
- (c) state precisely the grounds upon which the appeal is made;
- (d) be accompanied by the prescribed fee specified in sub-section (1B); and
- (e) be lodged with the Commissioner (Appeals) within the time set out in sub-section (1).

Aforesaid procedure has already been followed, being part of form of appeal provided in STR-23 of the Sales Tax Rules, 2006.

Moreover, second proviso to the Section 45B(1) provides appeal fee of PKR 1,000 for all class of taxpayers. Now, the Bill seeks to omit the above proviso and insert new sub-section (1B) which introduces different fee for corporate and non-corporate taxpayers as under:

Type of Appeal	Status of Taxpayer	Amount of Appeal Fee (PKR)
In case of appeals against assessment	Corporate taxpayer	5,000
	Other than corporate taxpayer	2,500
In case of other appeals	Corporate taxpayer	5,000
	Other than corporate taxpayer	1,000

The Bill also proposes to insert sub-section (5) which intends to harmonize the appeals procedure with the Ordinance whereby the Commissioner (Appeals) may not admit any documentary evidence which was not produced before the Officer Inland Revenue unless he is satisfied that the appellant was prevented by sufficient cause from producing such material.

13. Alternative dispute resolution

Section 47A

The provisions of this section were completely revamped through the Finance Act, 2018 as a result thereof, the forum of Alternative Dispute Resolution (ADR) was converted into another appellate forum whose findings were not challengeable. The reason being that the order passed by the FBR in ADR proceedings has been made final for both the taxpayers and the tax authorities rather than being an option for taxpayers to seek alternate remedy. In case, the recommendations made by the Committee formed for ADR purposes are not acceptable, the taxpayer was allowed to pursue the matter at other legal forums. The amendments made through the Finance Act, 2018 were generally criticized by businesses as well as professional forums and it was emphasized that the mechanism under ADR before such amendments should be restored.

In order to address the above concerns, the Bill proposes to make key amendments to the ADR mechanism. It is proposed that the taxpayer would no longer be required to withdraw his appeal pending before the appellate forum immediately after the constitution of the Committee. Instead, the taxpayer shall withdraw the appeal pending before the appellate forum only if he is satisfied with the decision of the Committee/ FBR. It is further proposed that the decision of the Committee/ FBR shall not be binding on the taxpayer but shall be binding on the Commissioner, provided that the order of withdrawal of appeal is communicated to the Commissioner within 60 days of the decision of the Committee/ FBR upon the taxpayer. The amendments so proposed are welcome amendments that various industries and professional bodies have been seeking for the past two years.

Currently, the Committee for ADR consists of an officer of Inland Revenue not below the rank of a Commissioner, a person nominated by the taxpayer from a panel notified by the FBR and a retired judge nominated through consensus by the other two members. Furthermore, the Committee decides the dispute by majority. The Bill now proposes that the Committee shall comprise of the Chief Commissioner having jurisdiction over the case and two persons from a panel notified by the FBR. Conversely, the Committee shall decide the dispute through consensus rather than majority.

The Bill also proposes that the Committee may, in case of hardship, stay the recovery of tax payable in respect of the dispute pending before it for a period not exceeding 120 days in aggregate or till the decision of the Committee or its dissolution, whichever is earlier.

Corresponding amendments in this regards should also be introduced in respective rules provided under the Sales Tax Rules.

14. Service of orders, decisions etc.

Section 51 (d) & (2)(d)

Section 51 of the ST Act deals with the service of notices and other documents. Sub-section (1)(d) and sub-section (2)(d) of Section 51 provides that any notice, order or requisition required to be served, shall be treated as properly served if sent electronically through email or to the e-folder maintained for the purpose of e-filing of Sales Tax-cum-Federal Excise returns, to limited companies, both public and private.

The Bills seeks to substitute the expression "limited companies, both public and private" with "registered persons". Conversely, electronically service of notices and other documents through email or to the e-folder maintained for the purpose of e-filing of Sales Tax-cum-Federal Excise returns, shall be treated as the prescribed mode of serving notices, orders or requisition to all registered persons irrespective of their legal status.

15. Real-time access to information and databases.

Section 56AB

For broadening of the tax base and effective monitoring of tax evasion, the Bill seeks to insert a new section dealing with the provision of real-time access of information and database of various organizations to the FBR. Such organizations and the related information is as follows:

Organization	Information
National Database and Registration Authority	"Details pertaining to National Identity Card, Pakistan Origin Card, Overseas Identity Card, Alien Registration Card, and other particulars contained in the Citizen Database"
Federal Investigation Agency persons and information pertaining to work	Details of international entry and exit of all permits, employment visas and immigration visas"
Bureau of Emigration and Overseas Employment	Detail of international entry and exit of all persons and information pertaining to work permits, employment visas and immigration visas"
"Islamabad Capital Territory, Provincial and local and development authorities	Record-of-rights including digitized edition of record-of-rights, periodic record, record of mutations and record of acquisition of rights"
Islamabad Capital Territory and Provincial	"Details regarding registration of vehicles, transfer of ownership and other documents and records"
Excise and Taxation Departments	"Particulars of a consumer, the units consumed and the amount of bill charged or paid, name" and CNIC of the owner and user in case where the connection is shared or used by a person other than the owner"
All electricity suppliers and gas transmission and distribution companies	"Any information and detail notified by the FBR"

The Bill further proposes that all electricity suppliers and gas transmission and distribution companies shall make arrangements by 01 January 2021 for allowing the consumers to update the ratio of sharing of a connection and the particulars of users. It is also proposed that the FBR shall make arrangements for laying the infrastructure for real-time access to information and databases described above and aligning it with its own database. The information and record received under this section shall be used only for tax purposes and kept confidential.

Keeping in view the fact that the establishment of such real-time infrastructure by the FBR, as well as the concerned organizations, may take significant time and may be subject to various constraints, the Bill also proposes that real-time access to information and database is made available, such information and data shall be provided periodically in any other form and manner as may be prescribed.

16. Certain transactions not admissible

Section 73 (4)

Sub-section (4) of Section 73 of the ST Act provides that a registered manufacturer or producer shall not be entitled to deduct input tax (credit adjustment or deduction of input tax) which is attributable to such taxable supplies exceeding in aggregate, PKR 100 million in a financial year or PKR 10 million in a tax period as are made to a certain person who is not a registered person under the ST Act with the certain exceptions. Restriction on input tax as attributable to the prescribed excess supplies to unregistered persons has now been sought to extend to every registered person. Previously, as discussed above, it was applicable only to registered manufacturers.

17. Fifth Schedule

Section 4

The Fifth Schedule of the ST Act deals with levy of zero rate of sales tax. Supplies of raw materials, plant and machinery to Gwadar Free Zone were zero rated, which were withdrawn through the Tax Laws (Second Amendment) Ordinance, 2019. The Bill now seeks to re-introduce the application of zero rate on the said supplies made by insertion of the following entries, effective from 01 June 2020.

S.No.	Description
13	Supplies of raw materials, components and goods for further manufacture of goods in the Gwadar Free Zone and export thereof, provided that in case of supply to tariff area of Pakistan shall be taxed at the value assessed on the Goods Declaration for import.
14	Supplies of locally manufactured plant and machinery of the following specifications to manufacturers in the Gwadar Free Zone, subject to the conditions, restrictions and procedure given below, namely:-
(i)	plant and machinery, operated by power of any description, as is used for the manufacture or production of goods by that manufacturer
(ii)	apparatus, appliances and equipment specifically meant or adapted for use in conjunction with the machinery specified in clause (i).
(iii)	mechanical and electrical control and transmission gear, meant or adapted for use in

- (a) conjunction with machinery specified in clause (i).
- (b) parts of machinery as specified in clauses (i), (ii) and (iii) and
- (c) identifiable for use in or with such machinery.
- (d) Conditions, restrictions and procedures:-
- (e) the supplier of the machinery is registered under the Act;
- (f) proper bill of export is filed showing registration number;
- (g) the purchaser of the machinery is an established manufacturer located in the Gwadar Free Zone and holds a certificate from the Gwadar Port Authority to that effect;
- (h) the purchaser submits an indemnity bond in proper form to the satisfaction of the concerned Commissioner Inland Revenue that the machinery shall, without prior permission from the said Commissioner, not be sold, transferred or otherwise moved out of the Gwadar
- (i) Free Zone before a period of five years from the date of entry into the Zone;
- (j) the machinery is brought to tariff area of Pakistan outside Gwadar Free Zone, sales tax shall be charged on the value assessed on the Goods Declaration for import; and
- (k) breach of any of the conditions specified herein shall attract legal action under the relevant provisions of the Act, besides recovery of the amount of sales tax along with default surcharge and penalties involved.

18. Sixth Schedule

Section 13

The Sixth Schedule deals with exemptions of goods from levy of sales tax.

Table 1 (on import and local supplies)

The Bill proposes to amend the following serial number

S.No.	Description (Existing)	Description (Proposed)
100A	Ship Bunkers Oil brought and sold to the ships calling or visiting Gwadar Port having Consignment Agreement with the Gwadar Port Authority	Ship Bunkers Oil brought and sold to the ships calling or visiting Gwadar Port by the addressed operating companies, having Consignment Agreement with the Gwadar Port Authority

The above proposed amendment in serial No. 100A apparently mentions only specific operating companies whereas earlier only concession agreements were referred to. The aforesaid declaration and certain amendments thereto are effective from 01 June 2020.

The Bill proposes to extend the exemption provided under serial No. 103 up to the year 2023 which deals with import and supply of ships and all floating crafts etc.

The Bill proposes to insert the following entries:

S.No.	Description	Tariff Heading
100D	Machinery, equipment, materials and goods imported either for exclusive use within the limits of Gwadar Free Zone, or for making exports therefrom, subject to the conditions that such machinery, equipment, materials and goods, are imported by investors of Gwadar Free Zone, and all the procedures, limitations and restrictions as are applicable on such goods under the Customs Act, 1969 (Act IV of 1969) and rules made thereunder shall, mutatis mutandis, apply provided that if any of such goods is taken out of the Zone for purpose other than the export, the tax on the same shall be paid by the importer.	Respective headings
	The above serial number is effective from 01 June 2020.	

S.No.	Description	Tariff Heading
154	Dietetic foods intended for consumption by children suffering from inherent metabolic disorder subject to the conditions that the importer shall acquire approval and quota from Ministry of National Health Services, Regulations and Coordination.	Respective headings

The Bill proposes to substitute the entry of Serial No. 15A as follows:

Existing	PCT Heading
Description Parts and Components for manufacturing LED lights and bulbs:- (i) Aluminum Housing/Shell for LED (LED Light Fixture) (ii) Metal Clad Printed Circuit Board (MCPCB) for LED (iii) Constant Current Power Supply for LED Lights and bulbs (1-300W) (iv) Lenses for LED lights and bulbs	9405.1090 8534.0000 8504.4090 9001.9000
Description Parts and Components for manufacturing LED lights:- (i) Housing/Shell, Shell cover and base cap for all kinds of LED lights and bulbs (ii) Bare and stuffed Metal Clad Printed Circuit Boards (MCPCB) for LED (iii) Constant Current Power Supply for LED Lights and bulbs (1-300W) (iv) Lenses for LED lights and bulbs	Proposed 9001.9000 PCT Heading 8534.0000 8504.4090 9001.9000

19. Eighth Schedule

Section 3(2)(aa)

The Eighth Schedule deals with goods subject to specific rates of sales tax. The Bill seeks to substitute the following entries in Table-1 of the Eighth Schedule to the ST Act.

Serial No. 56 - Potassium Chlorate

Presently, import and supply of potassium chlorate is subject to fixed amount of sales tax of PKR 70 per kilogram in addition to the standard rate of sales tax at 17%. The Bill proposes to enhance the fixed amount of sales tax from PKR 70 to 80 per kilogram.

Serial No. 66- Integrated Retail Outlets

Supplies made from retail outlets which are integrated with FBR's computerized system for real time reporting of sales were required to charge sales tax at the rate of 14%. The Bill now proposes to reduce the applicable rate to 12%.

The step is taken to encourage retail sector to facilitate documentation of economy by integrating themselves with FBR Point of Sales system.

20. Ninth Schedule

Section 3(B)

The Ninth Schedule deals with levy of sales tax on imports or supply of cellular mobile phones etc.

The Bill seeks to amend serial No. 2 (A) and (B) of the Table provided in the Ninth Schedule, which proposes to enhance sales tax of PKR 130 to PKR 200 on import or local supply of smart phones valuing upto USD 30.

Sales Tax on	Description/Specification of Goods (Existing)	Description/Specification of Goods (Proposed)	Import or Local Supply
	Cellular mobile phones or satellite phones to be charged on the basis of import value per set, or equivalent value in rupees in case of supply by the manufacturer, at the rate as indicated against each category:		
(A) Not exceeding USD 30 but not exceeding USD 100	(A) Not exceeding US\$ 30 (excluding smart phones)	(B) Exceeding US\$ 30 but not exceeding US\$ 100 (including smart phones valuing upto US\$ 30)	130 200

21. Eleventh Schedule

Section 3(7)

The Eleventh Schedule specifies the withholding agents and provides the rates of sales tax withholding.

Section 3(7) authorizes the Federal Government to notify a person as sales tax withholding agents along with the manner and conditions for withholding of sales tax. The procedure for deduction and deposit of sales withholding has been prescribed under Chapter XIV-D read with Rule 1502ZH to Rule 1502ZK of the Sales Tax Rules, 2006.

The Bill proposes to extend the scope of withholding on acquisition of services as well. The Bill substitutes the preamble of the Table for clarifying the specified rates provided under the Eleventh Schedule and the exclusions mentioned thereafter. The Bill also proposes a significant amendment under sales tax withholding regime by replacing the term "Registered persons" with the expression "Active Taxpayers" in the specified categories of suppliers in column (3) of the Table. The proposed amendments have been tabulated below:

S.No.	Withholding Agent	Existing Supplier Category	Proposed Supplier Category	Rate of Deduction
1	(a) Federal and provincial government departments, autonomous bodies, and public sector organizations	(i) Registered persons	(i) Active Taxpayers	1/10th of Sales Tax as shown on invoice
2	(a) Federal and provincial government departments, autonomous bodies, and public sector organizations	(ii) Persons registered as wholesaler, dealer or distributor	(ii) Active Taxpayers	1/10th of Sales Tax as shown on invoice
3	(a) Federal and provincial government departments, autonomous bodies, and public sector organizations	(iii) Unregistered persons	(iii) Persons other than Active Taxpayers	Whole of the tax involved or applicable to supplies on the basis of gross value of supplies
4	(a) Companies as defined in the Income Tax Ordinance, 2001 (XXIX of 2001)	(i) Unregistered persons	(i) Persons other than Active Taxpayers	Whole of sales tax applicable
5	(i) Registered persons as recipient of advertisement services	(i) Unregistered persons	(i) Persons other than Active Taxpayers	Whole of sales tax applicable
6	(i) Registered persons purchasing chain medicines	(i) Unregistered persons	(i) Persons other than Active Taxpayers	Whole of sales tax applicable

>>> Continued on Page 12