

# **BRIEF COMMENTS ON THE AMENDMENTS MADE IN THE KPK**

**Sales Tax on Services Act 2022**

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## **BRIEF COMMENTS ON THE AMENDMENTS MADE IN THE KHYBER PAKHTUNKWA SALES TAX ON SERVICES ACT, 2022**

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### **PROLOGUE:**

The Khyber Pakhtunkhwa Finance Bill, 2024 (“The Bill”) for the Fiscal Year 2024-2025 has been tabled before the Khyber Pakhtunkhwa Assembly (“KP Assembly”) on 27.05.2024. The Bill has proposed amendments to the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 (Khyber Pakhtunkhwa Act No. XIX of 2022) (“the Act”) amongst other laws.

The Preamble to the Bill provides that it shall come into force at once from the 1st July, 2024. Through this document, we have briefly analyzed the amendments made to the Act. It is pertinent to note that the Bill has been passed by the KP Assembly, and is currently awaiting assent / signature of the Governor of the Khyber Pakhtunkhwa.

### **DISCLAIMER:**

The interpretations of the amendments made in the Act vide the Bill are based on our understanding of tax law and past practices. These comments are provided for general use of public and should not be used for any specific transaction. We do not guarantee that these interpretations will be acceptable by the Government, revenue authorities, tax department and / or any court of law or Tribunal. These comments are prepared for general business understanding of masses. This document is not and shall not be construed to be a legal opinion, legal assistance, a legal advice, or a financial advice for, inter-alia, investing, managing taxes, incorporating any legal entities. Tola Associates does not assume, nor does it bear any responsibility, financial or otherwise, that can or may arise out of the use of this document by any individual or entity. Moreover, the Act covered in this document is subject to changes, hence, it is recommended that the reader must refer to the actual text of the law being referred to in this document, and the actual text of any supplementary legislation (including any rules, by-laws, regulations, cross-referenced Acts or Ordinances) thereto which may not have been mentioned in the document. Tola Associates also bears no responsibility to update this document for events and circumstances occurring on or after the date of this document.

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Warm Regards,

**Tola Associates**

**June 7, 2024**



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### **KEY HIGHLIGHTS:**

- A.** Attachment of bank accounts upon short-payment or un-paid tax without show cause notice. However, now prior approval of the Management Committee and Collector shall be needed. (Section 75 of the Act proposed to be amended by the Bill)
- B.** Reward to whistleblowers for reporting concealment or evasion of tax, tax fraud, corruption, or misconduct by officers or officials of the Authority. (A new Section 92A) proposed to be added vide the Bill)
- C.** Fixed rate of sales tax for Customs Agents at a fixed rate of Rs 3,000/- per goods declaration (Serial No. 05 of the Second Schedule of the Act proposed to be amended vide the Bill)
- D.** Practitioners, professionals, consultants, advisors of legal profession or field shall deposit a fixed sales tax of Rs 500/- at the time of filing of each case, appeal or petition. (Serial No. 19 of the Second Schedule of the Act proposed to be amended by the Bill)
- E.** Management services including fund and asset management services subject to sales tax on services at 15%. (Serial No. 46A of the Second Schedule of the Act proposed to be added vide the Bill).

### **1. DEFINITIONS:**

#### **a. Additional Collector (Section 2b-i)**

The Bill has proposed to define an Additional Collector as an Additional Collector appointed under section 43 of the Act.

#### **b. Collection Agent (Section 2(m))**

The Bill has proposed to insert the definition of a Collection Agent, whereby a Collection Agent would mean the State Bank of Pakistan (“SBP”) or any other scheduled bank or entity licensed or authorized by the SBP to transfer money abroad for the specified services.

#### **c. Inspector (Section 2(af-i))**

The Bill has proposed to insert the definition of the Inspector, who shall be an Inspector as per Section 43 of the Act.

#### **d. Regulations (Section 2au-i)**

The Bill proposed to insert / define the term “Regulations” as regulations made under the Act.



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### **e. Tax fraud (Section 2(aai))**

The Bill has proposed to include “failure to declare and pay tax chargeable” within the scope / definition of Tax Fraud, subject to certain conditions.

### **2. AMENDMENT IN PERSONS LIABLE TO PAY TAX (SECTION 10):**

The Bill proposed to amend subsection 2, whereby a resident or non-resident in the course of an economic activity would be liable to pay tax chargeable under the Act. Earlier, the section had been misapplied to the concept of separate legal persons. This was an anomaly in the law caused through a typographical error earlier.

### **3. INSERTION OF SPECIAL PROCEDURE FOR COLLECTION OF TAX THROUGH COLLECTION AGENT (SECTION 14A):**

The Policy has proposed to insert the procedure of collection of tax from Collection Agents whereby the Policy Board has been empowered to declare any other person or class of persons as collection agent, even if they are not a service provider or a service recipient in a particular transaction. Moreover, such persons would be required to collect full, or part of the tax charged from another person or class of and deposit it to the Government treasury within a stipulated time and such manner, as prescribed in the Notification by the Policy Board. The special procedure, so prescribed, may also provide for registration, bookkeeping, invoicing or billing requirements, returns and other related matters in respect of any service or class of services. Furthermore, the Bill also proposed that, if a tax collector fails to collect or deposit the tax, they'll be personally responsible for paying the tax to the Government.

### **4. AMENDMENT IN ADJUSTMENTS (SECTION 16(2))**

Earlier, the Management Committee could allow refunds, subject to conditions/restrictions, to registered persons to claim adjustments or refunds for tax paid on taxable services or goods used to provide taxable services. Through the Bill, it is proposed that the refunds could be adjusted subject to certain restrictions, limitations and fixation or re-fixation of the extent of input tax adjustment specified by the Management Committee, provided that the requirement that the adjustment or refund must be admissible under other applicable law is maintained. A non-obstante clause has also been added in this sub-section, giving it an overriding effect over the other provisions in the Act.

### **5. AMENDMENT TO INPUT TAX CREDIT NOT ALLOWED (SECTION 17)**

Among the list for which Input tax credit would not be allowed in subsection (k) of the same, the recipient of services subject to exemption or reduced rate of tax in the Second Schedule or through



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Notifications, were not allowed to adjust input tax paid on reduced rate against output tax payable on the service or services provided or rendered by him at immediate next stage of supply chain.

The Bill has proposed to amend this sub-section, whereby, goods or services which are liable to sales tax, at specific rate or at fixed rate or at such other rates, not based on value, or at a rate lesser than 15% for services or 18% for goods are used or consumed as inputs, the recipient shall not adjust the input tax paid on reduced rate of tax against output tax payable on the service or services provided or rendered by him at immediate next stage of supply chain.

### **6. ADDITION OF SECTIONS 17(O) AND (P):**

The Bill has proposed to disallow input tax credit on goods barred for input tax adjustments under the Sales Tax Act, 1990; and taxes levied and paid on services under the Islamabad Capital Territory (Tax on Services) Ordinance, 2001.

### **7. AMENDMENT IN ASSESSMENT OF TAX AND RECOVERY OF TAX NOT LEVIED OR SHORT-LEVIED (SECTION 27)**

The Bill has proposed to impose penalty or default surcharge as per section 53 and 54 of the Act, where a person failed to file a return or make payment of tax after the due date or failed to provide documents, explanations, documents or records as requested in notices/ audit proceedings/ monitoring or denied access of Officers on premises or for inspections.

### **8. AMENDMENT IN THE ASSESSMENT GIVING EFFECT TO AN ORDER (SECTION 28(2))**

A correction of reference has been proposed to be made through the Bill. Presently, the reference is made to Chapter-IX (offences/penalties) instead of Chapter-X (Appeals and other remedies).

### **9. AMENDMENT IN THE REGISTRATION AND APPLICATION FOR REGISTRATION (SECTION 29(4))**

Earlier the Policy Board, upon approval of the Government, was empowered to require any person or class of persons engaged in providing only exempt services to obtain registration and file the return. The Bill has now empowered the Management Committee to perform the same.

### **10. AMENDMENT IN THE OFFENCES AND PENALTIES (SECTION 53)**

The Bill has proposed to introduce the following:

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<b>Offences</b>	<b>Punishment or Penalty</b>
7A. Where a person fails to comply with the e-invoicing system or issues invoices outside the e-invoicing system or fails to upload on the Restaurants Invoice Management System (RIMS) or Invoice Management and Reporting System (IMRS) on real-time basis.	Higher of Rs 100,000/- or 5% of the tax involved for each instance of non-compliance.
Where a person fails to produce information/ records/documents on receipt of a notice issued by an officer of the Authority, not below the rank of the Assistant Collector	Rs 200,000/- for first Non-compliance. Rs 500,000/- for second Non-compliance; and Rs 1,000,000/- for third Non-compliance.

Furthermore, the Bill, proposed to substitute the entry in Serial No. 9, whereby it was earlier stated that a stipulated penalty would be imposed where a person violated any embargo placed on providing of service(s) in connection with tax recovery. The Bill, proposed to insert the following term in addition, “or violates the restrictions imposed vide sealing of business premises.”

### **11. ENHANCEMENT OF RATE OF DEFAULT SURCHARGE (SECTION 54)**

Earlier, a 12% per annum default surcharge was imposed on an amount of tax/ charge/ refund erroneously made. Through the Bill, it has now been proposed to be enhanced to 24%. Moreover, in case the default was due to tax fraud, the person committing such was subject to default surcharge of 24% per annum till the time the entire liability was settled. This has now proposed to be enhanced to 36% through the Bill.

### **12. AMENDMENT OFFICERS TO HAVE ACCESS TO PREMISES, STOCKS, ACCOUNTS AND RECORDS (SECTION 60)**

The Bill proposes to introduce prior approval of the Collector or Management Committee for any officer not below the rank of an Assistant Collector to have free access to the business premises, registered office or any other place where any stocks, business records or documents are kept or maintained.

### **13. REVISION (SECTION 65)**

The Bill proposes to introduce a second proviso for revision whereby, where the decision or order of an officer of the Authority is revised by the Collector, the revised order passed shall be communicated to the Management Committee by the Collector within 7 days of passing such orders.



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### **14. SHORT PAID AMOUNTS RECOVERABLE WITHOUT NOTICE (SECTION 75)**

Currently, Section 75 applies to recovery of short paid tax, i.e when the tax paid by the registered person is less than the tax as indicated in his return.

The Bill has proposed to substitute the aforesaid provision, whereby, if it is evident from the return submitted or through records and materials such as the Computer Systems, that tax has been unpaid or short paid, then such amount alongwith default surcharge may be recovered from the bank account of such person without giving a show cause notice. It has proposed to add a proviso, whereby, the attachment of bank accounts of the registered persons shall only be exercised upon prior approval of the Collector or Management Committee. The requirement of issuing a show-cause notice before issuing penalty under Section 53 has been maintained through the proposal.

### **15. INSERTION OF REWARD TO WHISTLEBLOWERS (SECTION 92A)**

The Bill has proposed to reward whistleblowers whereby, the Management Committee, with prior approval of the Finance Department, will reward whistleblowers for reporting concealment, evasion of tax, tax fraud, corruption, misconduct by officers/officials of the Authority. The Policy Board would prescribe the procedure of processing the reward and will specify the apportionment of reward. However, the reward shall be rejected if the information provided has no value, or the Management Committee already had the information, or the information was available in public records or where no collection of taxes is made from the information provided from which the Management Committee may pay the reward.

Moreover, the Bill also explains that a "whistleblower" is a person who reports fraudulent activities, including sales tax evasion, tax fraud, corruption, or misconduct by Authority officers or officials, to the competent authority, enabling detection or collection of taxes and action against offenders.

### **16. INSERTION OF SERVICES IN THE FIRST SCHEDULE OF THE ACT:**

The Bill has proposed to insert the following services:

- Education services including technical and vocational education services provided by the private sector;
  - Pre-primary, primary, lower/upper secondary, secondary, post-secondary non-tertiary, first stage tertiary, and second stage tertiary education services;
  - Other education and training services and educational support services;
- Management services including fund and asset management services.

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### 17. AMENDMENTS IN THE SECOND SCHEDULE OF THE ACT:

Description of Services	Rate of Tax	
	Earlier	Proposed
Services provided or rendered by hotels, motels, guest houses, resorts, accommodation and/or food service providing farm-houses, motorway or--highway-side accommodation and/or food provisioning/food servicing or food supply facilities, restaurants(including food service supply chains), ice cream parlors, marriage or wedding halls, marques, lawns, clubs and caterers, suppliers of prepared catables and drinkables, pandals and shamianas, clubs including such clubs as, though run on mutuality basis, are operated in commercial mode. manner or style, messes, hostels and similar entities, enterprises or undertakings including all such services, facilities, utilities, entertainments, comforts, enjoyments or amusements etc.. as are allied, auxiliary or ancillary there to. <i>(Changes made in red for Sr. No.1 of the Second Schedule)</i>	15%	13% with the facility of input tax adjustment as <b>allowed under this Act, rules and regulations.</b>
a. Services provided or rendered by local non-corporate stand-alone hotels or chains of such hotels (including guest houses, clubs and lodges etc.) and restaurants shall be charged to tax at the rate of <del>8%</del> 6% without input tax adjustment; provided that <del>where in any case of such restaurant,</del> the Restaurant Invoice Management System (RIMS) <del>shall be compulsorily be</del> is installed and working properly on regular basis <del>on all restaurants registered with the Authority the rate of tax shall be further reduced to 5% without any input adjustment:</del>	8% without input tax adjustment; and 5% where RIMS is installed and is working on a regular basis.	6% without input tax adjustment provided that RIMS is installed and is working on a regular basis.
b. Provided that incase of traditional type restaurants usually called as dhaba or conventional hut-type or similar other road/street side non-air-conditioned restaurants usually serving limited range of pre-cooked or pre-prepared food items with informal seating environment (located or operating	1%	2%



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anywhere in <del>the tariff areas of</del> the Province) the tax shall be charged and paid at the rate of <del>1%</del> 2%		
c. In case of traditional accommodation facilities like sarraye or inns or open air over night bed provisioning services generally located or available around or in the vicinity of railway stations, bus or wagon stands (stations), the rate of tax shall be <del>1%</del> 2% without any input tax adjustment if the charges for overnight stay do not exceed Rs 300 per bed.	1%	2%
d. In case of marriage or wedding halls including pandals and shamianas and similar other businesses including food services provided therein, the rate of tax shall be <del>8%</del> 11% without any input tax adjustment.	8%	11%
e. Addition: Fixed rate basis for the following wedding halls:  Category A- capacity of 500 or above in a posh area of a major city.  Category B- capacity of 300 or less than 500 in a municipality.  Category C- capacity of less than 300 in a suburb or roadside outside the main city.  The registered person may opt one of the tax regimes (either marriage hall ones or the category-wise one) before the 25.06.2024 for the existing registered persons. The Bill also proposes that persons registering in the future would exercise such option at the time of registration.	Not present.  Not Present.  Not Present.	Rs 25,000 per function.  Rs 15,000 per function.  Rs 10,000 per function.
Services provided by Health Care Centers etc. in private sector.	Not present.	5% (without input tax adjustment) of the charges (including fixed charges if any):

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		Provided further that the said charges exceeded Rs 10,000/- per day per bed/room.
The Bill has proposed to impose a fixed rate of tax on customs agent, in Serial No.5.	None.	Rs 3,000/- per goods declaration.
The applicable reduced rate of tax for Services of Advertisement on or through print media of all types and forms is proposed to be enhanced, under Serial No.6.	1%	2%
Services provided by persons engaged in contractual execution or performance of works (including but not limited to, repair, maintenance, and renovation, up-gradation, cleaning, fumigation and decontamination services or janitorial works) or furnishing supplies (excluding transactions involving contractual supply of goods only, without any component of service relating to such goods).	5% without any input tax adjustment.	15% without any input tax adjustment.
Under Serial No. 19, the Bill has proposed to introduce a Fixed Tax for practitioners, professionals, consultants or advisers of legal profession or field.  The Bill further proposes that proof of payment of such fixed sales tax shall be attached with the Power of Attorney.	Not present.	Rs 500 as fixed sales tax at the time of filing of each case, appeal or petition and proof attached with the Power of Attorney.
For Serial No.20, i.e Cinematographic production, photographic services, recording services and telecasting or broadcasting services including:  a) Film making or film production including drama production whether in serials or otherwise.  b) Tele casting or broad casting services (other than TV cable operators).  c) Videotape and recording services, sound recording services. TV/Radio production house services.	1% without any input tax adjustment.	2% without any input tax adjustment.

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<p>d) Photographic services (services of photography or photographers).</p> <p>c) Other similar, allied, ancillary or auxiliary services.</p> <p>Exemption: Full exemption on telecasting or broad casting services of and by government-owned TV or Radio stations or channels (this exemption shall not be construed to cover any other service or services including advertisements taxable under this Schedule).</p>		
<p>For Serial No. 21, i.e. Event management services whether covering all or any of the processes like planning, budgeting, scheduling, site selection, acquiring necessary permits, coordinating transportation and parking, arranging for speakers or entertainers, arranging decor, event security, catering, picturing, video filming, musical enjoyment so or any other allied or connected task.</p>	<p>8% without any input tax adjustment.</p>	<p>10% without any input tax adjustment.</p>
<p>For Serial No.22, i.e. Exhibition, convention or carnival services and allied services including renting of purpose-specific property or space for such events.</p>	<p>8% without any input tax adjustment.</p>	<p>5% without any input tax adjustment.</p>
<p>Under Serial No. 26, the Bill has proposed to increase the reduced rate of sales tax for health insurance services and Government sponsored Sehat Card Plus Programme.</p>	<p>1%</p>	<p>10%</p>
<p>Under Serial No. 27, the Bill has proposed to increase the reduced rate of tax on cold storage services including other forms of warehousing of agriculture produce regardless of their corporate or non-corporate status.</p>	<p>1%</p>	<p>2%</p>
<p>The Bill has proposed to add Serial No. 29A, as follows:</p> <p>29A. Services for intraprovincial and interprovincial travel or transportation (including carriage) of persons by road through buses, coaches, coasters, wagons, jeeps, cars, taxies and other motor vehicles meant for passengers' transport or other traveling or transportation services.</p> <p>The Bill has also proposed to add the clarification under Serial No. 29A that in case of interprovincial transportations, value of sales tax would be reduced by</p>	<p>Not present.</p>	<p>5% without input tax adjustment.</p>

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50% where such services originate or terminate in the Province.		
For Serial No. 34; Services provided or rendered by under writers including sponsorship services.	1% without any input tax adjustment.	2% without any input tax adjustment.
For Serial No. 36; Services provided or rendered by auctioneers.	1% without any input tax adjustment.	2% without any input tax adjustment.
For Serial No. 39; Services provided or rendered in respect of quality assurance, quality control, quality inspection (including pre-inspection), quality verification, or certification including verification or certification of quality or standards under the ISO regime.	1% without any input tax adjustment.	2% without any input tax adjustment.
For Serial No. 41; Ride-hailing or ride-hail services like Uber, Careem, Biler, and Lyft, regardless of the mode, manner or dynamics of the business system involved in such services.	2% without any input tax adjustment.	5% without any input tax adjustment.
For Serial No. 44; Services relating to or in respect of the installation, erection, commissioning or other permanent structure affixed/linked/tied placement (whether in full or part) of any industrial, mechanical or electrical plant, machinery or equipment (excluding installation of domestic equipments etc. for residential use).	1% without any input tax adjustment.	2% without any input tax adjustment.
Management services including fund and asset management services.	Not present.	15%.



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