

Deloitte.



**Restoration of Sales Tax on Renting of
Immovable Property Services vide Sindh Sales
Tax on Services (Amendment) Act, 2018**

Restoration of Sales Tax on Renting of Immovable Property Services vide Sindh Sales Tax on Services (Amendment) Act, 2018

1. Introduction

The Sindh Sales Tax on Services (Amendment) Bill, 2018 has been recently passed by Provincial assembly of Sindh whereby the taxability of renting of immovable property services (which was previously declared as illegal by the Hon'ble Sindh High Court vide order dated August 18, 2017) has been attempted to be restored back with effect from July 01, 2015.

2. Background

The renting of immovable property service was originally brought within the scope of taxable services under the Sindh Sales Tax on Services Act, 2011 (SSTSA) through Sindh Finance Act, 2015 by way of insertion of entry no. 9806.3000 'Renting of Immovable Property Services' in the First and Second Schedules to the SSTSA. The corresponding definitions were inserted by adding sub sections (72B) 'Renting of Immovable Property' and (72C) 'Renting of Immovable Property Services' to the Section 2 of the SSTSA.

The initial applicable rate was the reduced rate of 6% with no input tax admissibility which was later increased to 8% in 2016 and then reduced to 3% in 2017. The recipient of services were held responsible to withhold and deposit the 100% sales tax involved on such services.

The aforesaid insertion was then challenged before the Sindh High Court (SHC) on the following premises:

- The definition of renting of Immovable property Services as defined under (72C) though covered within its scope services in relation

to renting of immovable property but not the renting of immovable property itself.

- The renting being provision of right to use an immovable property merely, is not a service.
- The renting of immovable property is not covered within the scope of economic activity as defined under Section 4 of the SSTSA which is the main ingredient as per Section 3 for a service to be taxable under the SSTSA.

The aforesaid deficiency in the definition provided under Section 2(72C) was later removed vide Sindh Sales Tax on Service (Amendment) Ordinance, 2015 as regularized through Sindh Sales Tax on Service (Amendment) Act, 2016. This amendment Act also validated the applicability of the provisions of renting of immovable property through insertion of non-obstante Section 84 to the SSTSA giving overriding effect to such amendment and to the proceedings by officers of SRB for levy, collection, recovery of tax on renting of immovable property, over any judgments of the court and any other law for the time being in force.

However, despite aforesaid amendments, the questions as to whether renting of immovable property itself is a service and that the same involves execution of economic activity or not, remained unanswered.

3. SHC Order declaring the levy of sales tax on renting of immovable property services illegal

On August 18, 2017, the SHC, while declaring the applicability of Sindh sales tax on renting of immovable property services as unconstitutional, disposed of various petitions filed on this matter holding that the renting of immovable property is not a taxable service since the term economic activity though includes in its scope lease, license etc. of a movable property, but not of an immovable property. The said order of SHC has been challenged by SRB authorities before the Hon'ble Supreme Court of Pakistan (SCP).

4. Amendment vide Sindh Sales Tax on Services (Amendment) Act, 2018

Through recent amendment Act, clause (b) of Subsection (1) of Section 4 of the SSTSA has been replaced in the manner explained in the table below whereby the scope of the term economic activity has been amended to include therein the supply of immovable property by way of renting, leasing and licensing etc.:

| Original clause (b) of Section 4(1) prior to substitution | Clause (b) after substitution vide SST Amendment Act of 2018 |
|---|---|
| The supply of movable property by way of lease, license or similar arrangement; | An activity of supply of movable or immovable property by way of lease, rent, license or other similar arrangement; |

Through the aforesaid Act of 2018, a proviso to the Section 84 of the SSTSA (Validation) has also been inserted whereby the effect of the sales tax levied on renting of immovable property services under the SSTSA has been validated retrospectively (i.e. since July 01, 2015) with overriding effect over any judgement of court and any other law for the time being in force.

5. Our understanding

We understand that through this amendment, the Sindh Government has attempted to override the impact of SHC's judgment by broadening the scope of the term 'economic activity' by including therein the activity of supply of immovable property by way of renting, leasing etc., with its retrospective validation by virtue of insertion of proviso to Section 84 of the SSTSA.

Hence, it is highly likely that the SRB may initiate proceedings for recovery of Sindh sales tax on renting of immovable property services with effect from July 01, 2015 while taking the plea that the instant amendment has overcome all the deficiencies identified in the SHC's order.

We are of the view that the above amendment Act may be challenged before the SHC on the constitutional ground that rent is not a 'service'.

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

Deloitte Yousuf Adil Chartered Accountants (Deloitte Pakistan) is a Member of Deloitte Touche Tohmatsu Limited, providing audit, consulting, financial advisory, risk management and tax services, in four cities across the country. For more information, please visit our web site at www.deloitte.com/view/en_PK/pk/index.

This publication contains general information only, and none of the Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.