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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT.

NOTIFICATION

Peshawar, dated the : 4th March, 2020.

No. SO(FR) FD/9-11/2020. -In exercise of the powers conferred by section 113 of the Khyber Pakhtunkhwa Finance Act, 2013 (Act No. XXI of 2013), the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA SALES TAX ON
SERVICES (AUDIT) RULES, 2019.

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Sales Tax on Services (Audit) Rules, 2019.

(2) These rules shall apply to all audits, except sections 14 and 51 of the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013).

(2) These rules shall come into force at once.

2. **Definitions.**---(1) In these rules, unless there is anything repugnant to the subject or context,-

(a) "Act" means the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013);

(b) "audit team" means the audit team, which prepare contravention report for adjudication purposes, in special circumstances;

(c) "authorized officer" means an officer, authorized by the Authority or Collector, as the case may be, for the purpose of audit under these rules; and

(d) "enforcement staff" means the enforcement staff, nominated by the Authority or Collector for the purpose, as specified under sub-rule (2) of rule 9.

(2) Words and expressions used, but not defined in these rules shall have the same meaning, as assigned to them under the Act.

2. **Variety of sales tax audit.**---Audit of a registered person may be undertaken under these rules in different forms and modes including desk audit, surprise audit, partial audit, advisory audit, scheduled audit, unscheduled audit, issue-oriented or issue-specific audit,

Asstt. Legal Officer
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Law Department

refund audit, detailed or full audit, special audit, investigative audit, including fraud audit, forensic audit, combined or joint audit in collaboration with other tax authorities etc and nothing shall restrict the Authority or its officers from switching over from one form of audit to another form during the course of audit proceedings.

4. Purposes of audit in general.---The main purpose of audit under these rules may atleast include either one or more or all of the following:

- (a) the purchases and sales are correctly recorded and declared;
- (b) the assessments of tax made and declared are correctly based on the recorded purchases and sales;
- (c) all purchase and sale invoices, including goods' declarations where imported tangible inputs are involved and debit or credit notes, if any, are securely available with the registered person;
- (d) internal accounting system and financial controls of the business are safe against any probable financial or tax maneuvering or mischief;
- (e) the records including books of account, ledgers, registers and other documentation prescribed under the applicable tax laws are correctly maintained;
- (f) tax declarations along with prescribed statements are correctly prepared and filed;
- (g) all payable tax amounts have been worked out correctly and deposited properly;
- (h) input tax adjustments or credits have been taken correctly and only to the admissible extent, application of input adjustment restrictions, if any, shall be properly checked;
- (i) all relevant bank statements are available on record;
- (j) banking coverage to transactional payments is being correctly observed as prescribed under the Act;
- (k) there is no under-reporting of taxable activities or suppression of purchases and sales or under-assessment and non or under-tax payment; and

- (l) the claims of the registered person whether about tax credits or adjustments, carry forwards or about refunds are correct from all angles and dimensions.

5. **Selection for audit and allied issues.**---(1) The Authority or Collector may select any registered person or class of registered persons for the purpose of audit and may cause such person or persons audited by an officer or officers of the Authority authorized in this behalf.

Explanation.---In these rules, wherever the expression "authorized officer" has been used, it shall mean the officer authorized to conduct audit and where more than one officers have been so authorized as an audit team, unless otherwise ordered by the Authority or Collector, the senior most officer in the team.

(2) Nothing in these rules shall restrict the Authority or the Collector from transferring any audit case or cases from one authorized officer or audit team to another or changing the size or composition of the audit team.

6. **Main basis for audit selection.**---(1) While making selection for audit, reliance may be made on one or more of the following grounds or factors:

- (a) returns and related statements are either not filed, filed not on time or are filed with errors, mistakes, discrepancies, misinformation, anomalies, misreportings or inaccuracies etc;
- (b) tax payments are generally or habitually not made on time or are made irregularly like piece meal deposits;
- (c) payments are usually made short of declared tax assessments;
- (d) irregular or abnormal fluctuations exist in input tax adjustments or carry forwards;
- (e) unusual variations in stocks and inventories are noticed either in or through returns, including statements or otherwise;
- (f) habitual tendency of filing incomplete particulars, data or information in the declarations or statements;
- (g) sudden or unexpected decline in turnover reducing tax assessments and tax payments;


- (h) overall tax behavior or tax conduct is such that immediate scrutiny or verifications of the taxable business affairs are warranted to ensure accuracy of tax compliance;
- (i) sufficient grounds exist creating doubts about any tax-related mischief, offence or fraud;
- (j) sufficient information is available or received about the tax-specific offensive or fraudulent moves or acts;
- (k) the previous audits have discovered irregularities or violations susceptible to repetitions;
- (l) audit is necessitated by intelligence including insiders' disclosures or whistle-blowing factors;
- (m) tax authorities need to understand the internal dynamics or complexities including use of IT or digital technologies or intricate management or operation techniques of the taxable business;
- (n) direction of Government or request from any other tax or non-tax authority;
- (o) audit request of the registered person to meet his any genuine lawful requirement; and
- (p) any other ground or factor not covered above.

7. **Scope of audit.**---Before commencing any audit proceedings, the authorized officer shall make all-out effort to clearly decide about the scope of audit taking into account the type and purpose of audit being initiated, character and dynamics of the registered person's business, the information and data already available or which can be made available with or can be collected by the authorized officer from the Authority or other Government sources during the course of audit.

Explanation.---For the purpose of this rule, defining scope, besides determining the time period for which audit is required to be conducted, means advance identification of the fields, areas, transactions or affairs of registered person's business activities and commercial operations together with the type and range of records, documents and information required to be examined and scrutinized during the audit.

8. **Conduct of audit.**---(1) While conducting audit, the authorized officer shall, before embarking upon the audit, with due secrecy, make a step-wise outline for the audit with a comprehensive check-list for each step and for this purpose he must consult sector notes, Authority audit guidelines including previous audit reports and their outcome, available academic literature through internet research or otherwise and acquire full understanding about the market dynamics of the relevant business. He must also thoroughly go through and understand the tax compliance history of the registered person from the system-based computerized data retrievable under the Authority information management and data analytics system.

(2) In order to structure and organize audit preparation on more relevant lines, the authorized officer may at least cover the following areas:

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- (a) trends of input-output ratios and their matching with the known sector standards;
 - (b) exemptions availed in case of both inputs and outputs;
 - (c) particulars and tax behavior of the major input suppliers and output buyers, other than consumers from the general public;
 - (d) information about imports and exports by the registered person;
 - (e) history of previous audits and their results;
 - (f) details of previous adjudications and litigations of the registered person;
 - (g) non-tax laws-related statutory audit reports of the business including balance sheet and profit and loss accounts;
 - (h) overall tax performance in comparison to other similar registered businesses;
 - (i) identification of sensitive areas of the business vulnerable to intentional tax-related violations; and
 - (j) any other important aspect, record or information considered relevant to the intended audit.

(3) Before starting the audit process, the authorized officer may, if need be, thoroughly interview the registered person or his authorized representative or both to fully understand the exact nature, dynamics and other relevant features of the business or economic activity of the registered person.

(4) The audit shall be conducted in such a methodical, systematic and comprehensive manner that scrutiny or examination shall be started from simple and small transactions and records to major and complex transactions and records.

(5) The observations or objections, developed during the audit, shall be recorded instantly and may be discussed with the registered person or his authorized representative and his views, if any, shall be footnoted under each observation or objection. The registered person may furnish his views in writing, in which case gist of the views shall be footnoted as aforesaid. Likewise, the relevant documentary incriminating evidence in support of the audit observation or objection too shall be collected and taken into custody immediately.

(6) No such document, information or data shall be demanded from the registered person as is already available with the Authority either in its computerized system or otherwise and can be retrieved from its own sources.

(7) Sanctity and privacy of the records of the registered person shall be given due regard and if the authorized officer or any member of the audit team needs to take photocopies of any record or document, each such photocopy shall be got signed from the registered person or his authorized representative. Similarly, commercial confidentialities of the registered person shall be duly honored. In case of any hardship, the authorized officer or any member of the audit team shall be proceeded under the relevant efficiency and disciplinary rules or regulations for the time being in force.

(8) Where the size of the business activities of the registered person is too large to cover their whole range, the authorized officer may restrict the audit coverage to rationally selected portions of the records and documents provided that in case any serious violation is discovered from the scrutiny of such selected records or documents, the authorized officer, may, with the approval of Authority or Collector, extend the audit coverage to the larger size or whole of the records and documents.

9. Mutual convenience-based audit mode.---(1) Advance intimation shall be given to the registered person enabling him to keep his records, documents and information ready for audit purposes as specified by the authorized officer, in the audit intimation letter.

(2) Particulars of the authorized officer or, as the case may be, of the audit team, specifying the head of the team shall be conveyed to the registered person and dates, with tentative time span and venue of the audit, shall be decided in consultation with him; provided that where the authorized officer understands that the audit is being avoided, he may proceed according to his own audit plan and time schedule and nothing shall restrict him to take legal action against the registered person in case of non-cooperation for or avoidance of audit continues.

(3) Every audit observation or objection shall be discussed with the registered person or his authorized representative and his viewpoint shall be duly considered before finalizing the observation or objection; provided that the authorized officer may drop the observation or objection if he is satisfied that no irregularity, violation or tax evasion has been committed by the registered person or no revenue loss has taken place. Written copies of the audit observations or objections may be given to the registered person if so requested by him.

(4) The authorized officer shall try his best to avoid such situations to emerge as are likely to increase the cost of conducting audit either for the registered person or for the Authority and where it is unavoidable to use any tangible resource of the registered person like office furniture, office equipment such as computer, printer and photocopier etc, stationary and logistics etc, the use shall be kept at bare minimum level.

(5) Where it has been decided to conduct audit at the business or office premises of the registered person, the authorized officer shall try to do audit work during the usual working hours of the registered person provided that limitation of timings shall not be applicable if audit is converted to investigative audit or investigation.

(6) Stock-taking of the inventory of inputs, outputs or stocks-in-trade shall be taken in the presence of the registered person or his authorized representative and results of such stock-taking shall be reduced in writing and got signed from the registered person or his authorized representative.

10. Conversion of ongoing audit into investigation.---(1) Where during the course of audit, the authorized officer discovers any criminal tax violation or tax fraud, he may, with the approval of Authority or Collector, convert his audit into an investigative audit or investigation and inform the registered person accordingly disclosing the reasons of such conversion if so requested by the registered person.

(2) In case the authorized officer, is of the view that further investigation should be carried out by the enforcement staff, he shall inform the Authority or Collector, as the case may be, who shall allow handing over of the remainder proceedings of the audit activity to the enforcement staff specifically nominated for the purpose. The enforcement staff shall, on the conclusion of their work, prepare contravention report for adjudication purposes and if need be, for taking up for prosecution as provided under the Act, rules and regulations.

11. Tax assessments during audit.---(1) As the principal purpose of audit is identification of compliance deficiencies and tax payment gaps and to make good the tax losses, it shall be the primary responsibility of the authorized officer or the audit team to immediately inform the registered person about the discovered non or short tax payment and persuade him to pay the same along with default surcharge and penalty as per the Act thereby enhancing the tax productivity of the audit.

(2) Where so desired by the registered person, the authorized officer or audit team may either assist him or make for him a tax assessment which may be treated as provisional if the registered person despite having made payment of the assessed liability wants to contest the assessment through formal adjudication and appellate process.

(3) Every provisional tax assessment shall be passed through the prescribed adjudication process at the hands of the competent adjudicatory authority starting from issuance of show cause notice through hearing to formal appealable original adjudication order.

12. Voluntary tax payments during audit.---(1) Notwithstanding the difference of opinion, if any, about the size, quantum or vires of the tax liability discovered and worked out during the course of audit, all voluntary tax payments, during or after audit, shall be welcomed, encouraged and facilitated with special attention.

(2) All statutory discounts and concessions, in default surcharge and penalty, shall be admissible in respect of voluntary tax payments made under sub-rule (1).

13. Treatment of excess tax payments.---Where a registered person has made any tax payment either voluntarily or otherwise and it is subsequently determined through adjudication including appeals that excess payment has been made, the registered person shall be allowed to take tax credit of such excess paid amount in his subsequent or future monthly returns and the authorized officer or audit team which had conducted the relevant audit shall keep watch through the computerized system of the Authority so as to ensure that tax credit is not availed over and above the actual excess payment.

14. Conclusion of audit.---(1) Once the authorized officer has completed the audit, he shall formally through a letter inform the registered person about the factum; provided that before issuing any such letter, the authorized officer shall satisfy himself that no further document, statement, information or data is required to be taken from such person and a copy of every such letter shall invariably be endorsed to the Authority or Collector.


(2) Where a registered person has so requested in writing, the authorized officer may record an audit-certification at appropriate place on the registered person's records, giving a precise description of the observations or objections made, undischarged tax liabilities discovered and the amounts of tax paid either voluntarily or otherwise during the audit; provided that a caveat shall be suffixed to every such certification to the effect that the certification does not grant any immunity to the registered person from any future audit and investigation for the same period or periods covered in the audit.

15. **Preparation of audit report.**---(1) The authorized officer or audit team shall conclusively firm up his views and findings drawn from the audit conducted by him or it before writing the audit report.

(2) Each audit report shall consist of at least six parts as follows:

- (a) the first part shall be called "**preamble**" and shall contain full information covering the name of the authorized officer (of all officers including head in case of audit team), date(s) of audit, date(s) of last audit, name and address of the registered person, status of the registered person, registration number, date of registration, audit period and list of the sources of literature, reports including audit reports, record including adjudication and litigation files, documents and computer-generated statements;
- (b) the second part shall be called "**tax profile**" and shall include full description of the taxable, and exempt, if any, services, particulars of the exemption notification(s) availed, if any, month-wise summary of purchases and sales volume and tax paid thereon, input-output ratios calculated from (returns declarations), both unconfirmed and confirmed previous tax demands, if any, and brief description on previous adjudication and litigation cases with latest final results and amount of taxes paid or recovered or as the case may be, payable or recoverable in consequence thereof;
- (c) the third part shall be called "**conduct of audit**" and shall include brief description of stage or step-wise audit proceedings, interviews conducted, convenience and difficulties experienced in or during audit, deficiencies noticed in the audit planning or audit process, level of the cooperation or resistance from the registered person, list of the records, documents, data and information provided by the registered person as scrutinized and examined during audit and precise description the tax-related and procedure-related audit observations or objections made during the audit, registered person's response or stance thereon. Brief facts of stock-taking if conducted during audit shall also be stated in this part;
- (d) the fourth part shall be called "**audit findings**" and shall contain detailed description of the tax-related observations or objections together with the citation of all relevant legal provisions violated, the amount of tax including surcharge, till date, and penalty

worked out and details of procedure-related violations with amounts of the proposed penalties with their relevant legal provisions. The amounts paid by the registered person separately for voluntary and non-voluntary deposits during audit indicating the extent to which the statutory discounts or concessions have been availed on voluntary payments, shall be clearly shown in this part of the audit report. Details of the incriminating or other evidence collected during audit in support of the audit findings shall also be given here;

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- (e) the fifth part shall be called "**Audit Summary**" and shall contain a complete tabulated presentation of all the tax-related and procedural violations with amounts of assessed tax, including penal surcharge and penalty and procedural violations with proposed penalties. Payments already made shall also be shown in the table. All relevant provisions of law including penal clauses shall be quoted against each reported violation and a comprehensive draft show cause shall be attached with the report. This part shall also contain under a separate heading well-justified proposal for future requirements of monitoring and audit in respect of the audited registered person;
- (f) The sixth part shall be called "**Recommendations**" and shall contain solemn suggestions from the authorized officer or audit team for next actions about follow-up measures like adjudication, enforcement actions like posting of staff, way-outs for the earliest possible realization of the recoverable amounts of tax. Suggestions for future guidance and facilitation to the registered person to ensure better and more productive compliance standards from him may be given in this part of the report.

(3) The aspects of the audit report, included in sub-rule (2), shall be treated as minimum guidelines and the authorized officer or audit team, while writing the audit report, may, if needed or considered necessary, add other relevant and important views, material, information or data to make the report further informative and comprehensive.

15. **Distribution and follow-up of audit report.**—(1) The audit report shall be distributed along with its enclosures, if any, in such a way that two copies shall be retained by the authorized officer, in his office for future official use, one copy shall be sent to the Authority or Collector, as the case may be, and one copy shall be handed over to the competent adjudication officer ensuring that proposed draft of show-cause-notice is invariably attached therewith. One copy of the audit report shall also be given to the concerned registered person either through courier or otherwise.

(2) Nothing shall bar the authorized officer or audit team to consult or take guidance or advice from his seniors, other than adjudicating officer, before, during or after the audit on any factual, legal, procedural or audit-report-related question, issue or matter.

(3) The authorized officer or audit team, which has conducted the audit, shall be responsible, not in persona but in rem, to follow up the adjudication process and help the adjudicating officer to decide the case as quickly and judiciously as possible without biasedly or prejudicially influencing the adjudicating officer in the use of his own professional prudence in making quasi-judicial judgement in the case. The authorized officer or audit team shall also keep follow up at appeal stages and in Courts if the registered person has gone for litigation prior to or after availing the remedies under the Act; provided that under no circumstances, registered person shall be discouraged from making tax payments during the currency of adjudication or litigation proceedings.

Accountant General
Govt of Khyber Pakhtunkhwa
Law Department

Secretary to
Government of the Khyber Pakhtunkhwa
Finance Department.

Endst: No .SO(FR) FD/9-11/2020.

Dated: 4th March, 2020

Copy is forwarded of the above for information & necessary action to the: -

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. Inspector General of Police Khyber Pakhtunkhwa.
4. The Secretary to Governor, Khyber Pakhtunkhwa.
5. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. All District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Manager, Government Printing Press, Peshawar.

Yours Faithfully,

(Fazal Hussain)

Dy: Secretary (Regulation-I)

P.T.O

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