

*Reference: Circular # 15/Taxperts/2023      Wednesday, 15<sup>th</sup> February, 2023*

**Gst rate increase from 17% to 18%**

The government intends to increase the GST rate from 17% to 18% with immediate effect. As we all are aware government is in negotiation with an international donor agency for the revival of the discontinued lending facility.

The government in order to achieve the revenue targets set by the international agency is in the process to levy new taxes and duties. In this regard, according to the media reports a finance bill will table before the national assembly and senate today.

The government is likely to generate Rs55 billion more through a 1 percent increase in GST – from 17pc to 18pc. The remaining Rs55bn will be collected through an increase in excise duty on airline tickets, and sugary drinks, and an increase in withholding tax rates.

The Federal Board of Revenue (FBR) today has issued SRO178 to enhance a federal excise duty on locally manufactured cigarettes which would generate up to Rs60bn in taxes on tobacco products.

According to the information circulated in media GST rate increase has already taken place on the Customs Weboc system, though the Finance Bill is supposed to be presented before the parliament today i.e. 15th Feb 2023.

The immediate increase of the tax rate raises question among the general public. It is interesting to observe similar sort of immediate rate incremental measures were taken in the past year 2013 where the GST rate was increased from 16 % to 17%. The matter went to the honorable Supreme Court whereby it was held unconstitutional. The relevant part of the

judgment reported as **2013 SCMR 1491** on this issue is reproduced hereunder for general understanding: -

**Quote** “48. Above are the reasons for the short order of even date, which is reproduced hereinbelow:--

(i) The Government is not authorized to impose or increase Sales Tax from 16% to 17% on the value of taxable supplies, i.e. by inserting in the Finance Bill (Money Bill) 2013-2014 a declaration under section 3 of the Provisional Collection of Taxes Act, 1931 [hereinafter referred to as 'the Act, 1931'] as such declaration neither has the status of legislation nor sub-legislation, therefore, it has no force of law.

AND

Immediate recovery of Sales Tax from 16% to 17% on the value of taxable supplies w.e.f. 13-6-2013 is unconstitutional being contrary to Articles 3, 9, 24 and 77 of the Constitution;

(ii) Under proviso to rule 20(2)(c) of the Sales Tax Special Procedures Rules, 2007, 9% in addition to the Sales Tax prescribed under section 3 of the Sales Tax Act, 1990 imposed or recovered from the consumers on CNG is unconstitutional and contrary to Articles 3, 9, 24 and 77 of the Constitution as well as section 3 of the Sales Tax Act;

(iii) Section 4 of the Act, 1931 as a whole is declared unconstitutional being contrary to Article 70 of the Constitution, which lays down the procedure for legislation;

(iv) Section 5 of the Act, 1931 does not lay down parameters for the purpose of refund of the recovered taxes to the consumers, as such, in absence of any workable mechanism, it is not enforceable in its present form;

(v) As a consequence of above declaration, the Federal Government has no lawful authority to levy, impose and recover Sales Tax @ 17% from 13-6-2013 on the value of taxable supplies made in course or furtherance of any taxable activity until passing of the Finance Bill (Money Bill) 2013-14, which has already been tabled before the Majlis-e-Shoora;

(vi) The excess amount equal to 1% (17%-16%) of the Sales Tax recovered on the petroleum products/CNG or any other taxable supplies w.e.f. 13-6-2013 onwards, thus is refundable to consumers and concerned authorities accordingly are directed to deposit it with the Registrar of this Court subject to passing of the Finance Bill (Money Bill) 2013-14 by or under the authority of the Majlis-e-Shoora;

If the Sales Tax is imposed by the Majlis-e-Shoora to be recovered with retrospective effect, same shall be paid to the Government, otherwise appropriate orders will be passed for its disbursement;

(vii) The Government is also directed to deposit 9% out of 26% of the Sale Tax on CNG as per notification dated 13-6-2013 in the same manner as it has been noted above;

(viii) A statement shall also be filed by the Government showing the amount of Sales Tax recovered @ 9% under proviso to rule 20(2)(c) of the aforesaid Rules 2007 on value of the CNG from the consumers in addition to declared Sales Tax of 16% imposed under section 3 of the Act, 1990 as this amount is also to be refunded to the consumers, for which appropriate order shall be passed subsequently;

(ix) As prices of essential commodities mentioned in the Sixth Schedule to the Act, 1990 have exorbitantly increased according to the media reports, therefore, Federal Government and the Provincial Governments are directed to take action under sections 6 and 7 of the Price Control and Profiteering and Hoarding Act, 1977 to keep the prices consistent as per the Sixth Schedule under section 13(1) of the Act, 1990 (Essential Commodities);

(x) Pending passing of the Finance Bill (Money Bill), 2013-14, Sales Tax shall be recovered from consumers on the taxable supplies including petroleum products and CNG at the rate prescribed under section 3 of the Sales Tax Act; and

(xi) The OGRA shall issue revised notification fixing prices of CNG as per above observations forthwith recovering Sales Tax @16% Sales Tax on taxable supplies till passing of Finance Bill (Money Bill), 2013-2014 by the Majlis-e-Shoora". **Un-Quote**

We, however, understand this time considering the critical economic position, commitment with the international lenders, strength of the ruling coalition parties, and scheduled sessions of the National Assembly and Senate, these revenue measures will likely to get approved and legitimize within today to avoid any legal complications.

We will share further details once the supplementary Finance Bill 2023 is approved and available.

**TEAM TAXPERTS**