

Government of Pakistan
Federal Board of Revenue
[Inland Revenue Wing]

C. No. 2(103) Int. Taxes Ops/14

Islamabad, the 25th May, 2016

1. All the Chief Commissioners Inland Revenue,
Regional Tax Offices / Large Taxpayers Units.
2. All the Director Generals, Inland Revenue.

Subject: **GUIDELINES ON CONFIDENTIALITY OF EXCHANGE OF INFORMATION AMONGST CONTRACTING STATES AND JURISDICTIONS.**

The Foreign Governments and Jurisdictions engage in information exchange only on the assurance that the information provided shall only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Accordingly, in addition to the protections provided by the confidentiality provisions of information exchange instruments, the contracting states and jurisdictions also impose strict confidentiality requirements on information collected, received, or supplied for tax purposes.

2. It may be appreciated that the prime objective of signing bilateral and multilateral tax agreements with other countries and jurisdictions is to avoid double taxation of income and prevent fiscal evasion by the entities operating in more than one jurisdiction. All such tax treaties and agreements invariably contain specific provisions on the exchange of information. Pakistan has signed bilateral agreements on avoidance of double taxation with 63 foreign countries. Pakistan is also signatory to the SAARC Limited Multilateral Agreement and has applied to become Party to the Multilateral Convention on Mutual Assistance in Tax Matters. All such agreements and conventions provide for secrecy and confidentiality when it comes to the exchange of information amongst the contracting states and jurisdictions.

3. Article 26 of the OECD Model Tax Convention, which has also been adopted by the United Nations Model, provides that that any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the convention. It has been made abundantly clear that such person or authority shall use the information only for the aforesaid purposes and that the information received by a Contracting State may not be used for any other purpose unless the competent authority of the supplying state authorizes such use. While Pakistan is in the process of updating Article 26 with the contracting states, it is however imperative that in practice, the

exchange of information mechanism is kept in line with the aforementioned international standard.

4. Needless to emphasize that the provisions of an international tax treaty, tax information exchange agreement, multilateral convention or a similar arrangement or mechanism override the provisions of domestic law, as laid down in section 107 of the Income Tax Ordinance, 2001. This includes the exchange of information for the prevention of fiscal evasion or avoidance of taxes on income chargeable under the Income Tax ordinance, 2001 and under the corresponding laws in force in that other contracting state.

5. The fiscal statutes of Pakistan also provide for confidentiality of the information thus obtained or exchanged. In the Income Tax Ordinance 2001, for instance, section 107 provides that any information received or supplied, and any concomitant communications or correspondence made with governments of foreign countries, under a tax treaty, a tax information exchange agreement, a multilateral convention, a similar arrangement or mechanism, shall be kept confidential. Similarly, sections 56A, 56B of the Sales Tax Act, 1990 and sections 47A, 47B of the Federal Excise Act, 2005, covers the issue of confidentiality of such information and data, received or supplied.

6. It may not be out of place to apprise that Global Forum on Transparency and Exchange of Information for Tax Purposes has emphasized confidentiality of information during Pakistan's Peer Review Phase-2. The Global Forum has indicated that although current practice regarding EOI procedures appears to be in line with the international standards; however, Pakistan may take further measures regarding confidentiality of information obtained / provided through the EOI requests. FBR has informed the Global Forum that no EOI information shall be disclosed if the requesting jurisdiction specifically indicates for not disclosing the same or such disclosure may hinder an ongoing investigation. Even otherwise, such information is required to be kept confidential.

7. In view of foregoing facts and circumstances, the field formations are specifically requested to ensure that;

(a) All information received, or supplied, in relation to EOI Requests are kept confidential.

(b) The confidentiality provisions apply to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

- (c) The EOI record is kept under strict supervision, in separate folders, in proper lock and key, and is not mixed with the main record of the taxpayers.
- (d) No information is disclosed if the requesting jurisdiction has indicated that it should not be disclosed or such disclosure would hinder an ongoing investigation.
- (e) The information is not used for any purpose other than the aforementioned international standard and the relevant agreement forming the basis for EOI.
- (f) While obtaining information from the taxpayer or any third party, the purpose for which the information is being obtained is not disclosed. In case the taxpayer or any third party insists on the purpose for obtaining such information, the matter is referred to FBR for appropriate decision. FBR would provide necessary response and may also consult the treaty partner, if so required.
- (g) In case a taxpayer requests to inspect the exchanged information, the matter is referred to FBR for decision. FBR will consult the requesting jurisdiction before communicating any decision in this regard.


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