



9th May, 2018

TL18/0905/1A

The Registrar,
Supreme Court of Pakistan,
Constitution Avenue,
Islamabad.

For Attention of the Human Right Cell,

Sub: Chief Justice takes Suo Motu Notice of Deduction of Rs 40 on Mobile Phone
Cards of Rs 100 & HRC No 28276-S/2012 & HRC No, 1790-S/2013
Additional Issue to Non-payment by 5 Cellular Companies of WHT Rs 20Billion per
Annum, Causing Loss of about Rs. 160 Billion in last 8 years

Dear Sir,

Transparency International Pakistan would also like to bring to the notice of the Honorable Court, another tax evasions of by 5 Cellular companies of final service tax, as WHT Rs 20 Billion per annum, causing loss of about Rs. 160 Billion in last 8 years to Exchequer.

Law was made by Parliament through Finance Act 2009 and the service providing companies were made chargeable to 6% Minimum Tax under Section 153(1) (b). But illegally FBR issued Circular 6/2009, claiming that service providing companies were exempt from Minimum Tax. The Federal Tax Ombudsman took notice of this unlawful act of FBR functionaries under Own Motion intervention 2012 PTD 554 = 108 TAX 155, and recommended action against the concerned officers who were responsible for issuing this unlawful circular. The FBR withdrew Circular No 6 of 2009 on 26.04.2011.

But later on FBR inserted its law, Clause 79 declaring service providing companies as exempt from Min. Tax through SRO No 1003.

Although FBR had withdrawn the Circular No 6/2009, yet review petition was filed before the FTO in support of Circular 6, which was rejected by the FTO. **Cellular companies filed case in high court and took stay order, and did not pay the WTH @ 6%.**

In Budget of 2015, FBR proposed that 6% Minimum Tax under Section 153(1)(b) is declared as **“Adjustable”**. However, TI-Pakistan requested Prime Minister to withdraw this amendment secretly inserted in Finance Bill 2015, by FBR, which may cause loss of tax of Rs 20 billion annually, vide letter dated 11th June 2015, **Annex-A**.

Resultantly, government withdrew the “Adjustable” clause, and increased the Service provider tax from 6% to 8%.

TI Pakistan reported this corruption to NAB vide its letter dated 29th July 2015, about tax evasions of by 5 Cellular companies of WHT Rs 20 Billion per annum. **Annex-B**



Transparency International had drawn attention of Chairman NAB towards allegations of misuse of authority by few senior FBR officials, causing annual loss to exchequer of Rs 30 billion, tax not being paid to FBR by 5 Cellular Companies.

Chairman NAB, according to a news report, has reportedly ordered inquiry on TI Pakistan letter on 14th August 2016. **Annex-C**

We are enclosing the 5 years table of Tax being collected by FBR from Service Provider under Section 153(1) (b), prepared by FBR for years 2010-11-11, to 2014-15. Mobile Services and other service providers tax collection shows that Mobile Companies Tax paid was Rs 517 million in 2011, and decreased by 90% to Rs. 48 million in **2015 Annex-D**.


This is to point out that according to PTA website, Mobile consumers in 2010-11 were 108.89 Million, and in 2015-16 consumers were increased by 30%, to 133 million. **Annex-E**

The Honorable Supreme Court of Pakistan, on TI Pakistan letter sent to HRC Cell, took suo moto action, and started two HR cases, HRC No 28276-S/2012 & HRC No, 1790-S/2013.

Transparency International Pakistan request the Chief Justice Pakistan to please take up this issue of about Rs 160 Billion tax loss to exchequer due to Mobile Companies, within new SMC on deduction of Rs 40 on mobile phone each card of Rs 100.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With Regards,


Justice (R) Dr. Ghous Muhammad
Trustee- TI-Pakistan

Enclosed Annex-A, B, C & D



11th June 2015

Muhammad Nawaz Sharif,
Prime Minister Pakistan,
Prime Minister House,
Islamabad

Appeal to Save the Country from Corrupt Mafia in FBR

Sub: Collusion of FBR with Service Providers Viz. Cellular phone Companies, Internet companies etc. causing over **Rs 30 Billion annual loss**, and also refund of over **Rs.170 Billion** for years 2009-2015

Respected Sir,

Transparency International Pakistan has received a complaint on a very serious issue of providing huge tax benefit to some favored taxpayers by changing the income tax law retrospectively through present Budget (Finance Bill 2015): **Annex-A** (with various annexures).

The complainant has reported following alleged illegal acts being committed ;

1. That the Legislation approved by Parliament in the past to levy/impose/charge "**Minimum Tax**" under Section 153(1)(b) of the Income Tax Ordinance, 2001 @ 6% of Gross Receipts on all service providers (corporate and non-corporate).
2. That on the suggestions of officers of FBR, who are alleged to be in collusion with major service providers, mainly Cellular phone Companies, the "**Minimum Tax**" under Section 153(1)(b) of the Income Tax Ordinance, 2001 @ 6% of Gross Receipts on all service providers has been rendered ineffective through Budget (Finance Bill-2015) , which has made this **Minimum Tax** as **Adjustable Tax**, and that will be applicable retrospectively w.e.f 2009.
3. That in Finance Bill-2015 a PROVISIO is sought to be placed on the statute (in section 153) whereby tax deducted at source by way of **Minimum Tax** has been declared "**adjustable**" (*which ultimately means Refundable too*) Retrospectively, as the return of income filed deemed to have been assessed u/s 120(1) of the Ordinance. Thus in one stroke FBR has given up / surrendered revenue of over **Rs.170 Billion** and a very huge loss to the National Exchequer in the Tax Years 2009, 2010, 2011, 2012, 2013, 2014 and 2015.
4. Huge Loss to National Exchequer has been computed on the basis of Annual Report issued by the Pakistan Telecommunication Authority (PTA) on their website www.pta.gov.pk:

<u>Tax Years</u>	<u>Revenues</u>	<u>I. Tax</u>
2009	333.8	20.028
2010	355.6	21.336



2011	367.3	22.038
2012	409.2	24.552
2013	439.5	26.37
2014	465.6	27.936
2015*	465.6*	27.936*
TOTAL		170.196 Million

* Estimated based on figures of 2014 reported by PTA.

5. That the most crucial finding/observation recorded by the FTO in Secretary Revenue Division Vs Waheed Shahzad Butt (2013 PTD 2159) is an eye opener; what is going on with the National Exchequer under the umbrella of Circular/Clarification Mafia in the FBR:

“Mr. Aftab Ahmad, the Chief ITP, stated that he SIGNED the FBR Circular No. 6 on 18-8-2009 under pressure from Member DT, Mr. Khalid Aziz Banth.

...This office is concerned with the motive of Mr. Banth in pressurising his subordinates to issue Circular No. 6. The attendant circumstances tend to show that he was doing this for improper motives.

---Secretary Inland Revenue, on 6-9-2011 confirmed that Circular No.6 was wrongly issued---Chief Income Tax Policy, also stated (during the hearing of the Review Application) that Circular No.6 of 2009 was unlawful and he had signed that Circular under pressure---

---The conflicting sequence of issuing of various Circulars and S.R.Os. leading to insertion of Cl. 79 in the Second Schedule of the Income Tax Ordinance, 2001 through S.R.O. 1003 dated 31-10-2011 being wilful and mala fide came under the definition of "maladministration"

6. That in the summer of 2009, a Lahore based tax lawyer (herein after referred to as “Lawyer”) came to know of tax exemption certificates having been issued by the Commissioner-IR in LTU Islamabad and RTO Karachi to corporate service providers including **mobile phone companies**. Lawyer immediately got in touch with the officers concerned and reminded them that issuance of such certificates was unwarranted in view of the Minimum Tax levy and in response the exemption certificates were hastily withdrawn.
7. That within just six (6) days of this incident, FBR issued a Circular No. 6 of 2009 dated 18.08.2009 that explained that the Minimum Tax levy u/s 153(1)(b) of the Ordinance did not apply to corporate service providers. There was no mention of FBR's earlier clarification in Circular No. 3 of 2009 dated 17.07.2009 and practical illustrations given therein explaining levy of Minimum Tax on corporate and non corporate service providers, equally. No sooner was Circular No. 6 of 2009 in the field, exemption certificates were again issued to the service provider companies including cellular companies from whom they had earlier been withdrawn. Lawyer again got in touch with the concerned Commissioners and was now told that exemption certificates were re-issued to cellular service providers in the light of the latest FBR clarification issued through Circular No. 6 of 2009 that explained the import of



amendments placed on the statute by Finance Act, 2009.

8. That invoking FTO's own motion jurisdiction under section 9(1) of the FTO Ordinance 2000, Lawyer filed a complaint **C.No.577/2011 *Waheed Shahzad Butt Vs Secretary Revenue Division Islamabad (2012 PTD 554)*** on the illegal issuance of exemption certificates particularly by RTO's Karachi and LTU Islamabad after amendments to section 153 of the Ordinance were placed on the statute by Finance Act 2009. Lawyer alleged that significant loss to revenue had occurred as a result of the issuance of exemption certificates to major cellular companies whose turnover ran in billions and also to other significant corporate service providers, including companies providing courier and security services.
9. That after conducting investigation in Complaint No. 577/2011, the FTO held that FBR's Circular No. 6 of 2009 dated 18-8-2009 was wrongly issued and the Commissioners issued Exemption Certificates contrary to law and in departure from FBR's earlier clarifications in the matter, which is tantamount to mal-administration as defined under section 2(3) of the FTO, Ordinance, 2000. The FTO accordingly recommended that **appropriate action be taken against officials who approved/issued Circular No.6 of 2009 dated 18-08-2009 as well as those who issued Exemption Certificates to unduly benefit corporate service providers.**
10. That just as FBR had taken a somersault on 26.04.2011 and withdrawn Circular No. 6 reinstating the status quo ante, on 07.02.2012 FBR performed yet another about-face and in another startling turn of events filed a review application, R.A 12/2012 before the FTO against his decision in C No 577/2011 (2012 PTD 554). Believe it or not, FBR now argued that Circular No. 6 of 2009 was, after all, the correct interpretation of the law pertaining to corporate service providers and corporate service providers were not subject to charge of Minimum Tax under section 153(1)(b) of the Ordinance!
11. That FBR said that no *mens rea* (guilty mind) was evident in the conduct of FBR functionaries and therefore no disciplinary action warranted against them. **Aftab Ahmed**, the FBR functionary under whose signature FBR **Circular No.6** was **issued on 18.08.2009** and by a strange coincidence also later **withdrawn on 26.04.2011**, during hearing in review petition he was asked to explain how this situation came about. From the deposition submitted before the FTO dated 25.09.2012 it was evident that he had considerable reservations against the issuance of Circular No. 6 from the beginning. **He said that the thought that Parliament had enacted the Minimum Tax on services for all categories of taxpayers, corporate and non-corporate and it was not right to exclude Companies from its purview, troubled him greatly.** He candidly acknowledged that **he was under pressure from the then Member Direct Taxes, FBR, Mr Khalid Aziz Banth** who it appeared had made up his mind that Companies deriving income from services rendered were not subject to levy of 6% Minimum Tax under Section 153(1)(b) of the Ordinance. **Mr Khalid Aziz Banth**, then Member CBR Direct Taxes, was also asked by the FTO to explain his position with regard to levy of 6% Minimum Tax on gross receipts from services rendered. He made a **written deposition dated 24.09.2012** before the FTO.
12. That as a result of changes in Section 153 made through Finance Act 2011 the law with regard to levy of Minimum Tax now became very clear.



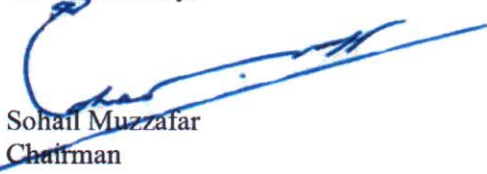
13. That the Departmental officials who have connived in attempting to defeat the alternative Minimum Tax provision enacted by Parliament through the Finance Act 2009 by issuance of ill conceived Circular No 6 of 2009 and SRO 1003(I)/2011 were needed to be proceeded against under the law.

The complaint is examined by TI Pakistan, and prima facie it appears that FBR has suggested this law in connivance with service providers and their Tax consultants, who have reportedly charge billion of rupee fees from them in past. This law if passed will cause annual loss of over Rs 30 billion, which is almost 1.25 % of FBR annual collection.

The Prime Minister of Pakistan is requested to kindly take action against those responsible for such illegal act to defeat the national exchequer, under his mandate and his commitment for **Zero tolerance for Corruption**. It is therefore, humbly requested to kindly intervene in the name of rule of law and this unlawful and dirty move may kindly be ordered to be dropped immediately and issue order to take strict lawful action against the FBR officials responsible for this move to provide huge unlawful benefit to blue eyed taxpayers retrospectively with effect from Tax Year 2009.

Transparency International Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

Yours sincerely,



Sohail Muzzafar
Chairman

Enclosures.

Copy forwarded for immediate action to protect the huge revenues for our poor nation, under the rules regulations to:

1. Mr. Khurshid Shah, Leader of Opposition & Chairman PAC, National Assembly.
2. Chairman, NAB, Islamabad. With request to take action against the conspirators under NAO 1999.
3. Minister of Finance, Islamabad,
4. Federal Tax Ombudsman, Islamabad. With request to take action against the conspirators under FTO Law
5. Registrar, Supreme Court of Pakistan, Islamabad.



TRANSPARENCY INTERNATIONAL-PAKISTAN

29th July, 2015

5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defence Housing Authority, Karachi.
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E-mail: ti.pakistan@gmail.com
Website: www.transparency.org.pk

Mr. Qamar Zaman Chaudhary,
Chairman,
National Accountability Bureau (NAB),
Islamabad.

Sub: Complaint against FBR Members for Alleged Efforts of Corruption in Granting Change of Status from Minimum Tax Region to Adjustable Tax Region for the Service Providers.

Dear Sir,

Transparency International Pakistan has received a complaint against four FBR officers, as alleged by the complainant regarding allegation of corruption as mentioned in the subject quoted above (Annexure A).

This is to inform the Chairman, that on a similar complaint received TI-Pakistan had informed the Prime Minister vide its letter dated 11th June, 2015 about the "Collusion of FBR with Service Providers Viz. Cellular phone Companies, Internet companies etc. causing over Rs. 30 Billion annual loss, and also refund of over Rs. 170 Billion for years 2009-2015" (Annexure B). Copy of the complaint was also forwarded to Chairman, NAB.

Result was that the Minister of Finance withdrew the amendment and also increased the withholding tax from 6% to 8% and applied this law to all service providers.

FBR is in the habit of not working in the interest of Pakistan, which is also evident from the response of FBR on the recommendations of NAB Prevention Committee on Tax Evasion (Annexure C) which was sent by Deputy Chairman, NAB to Chairman, FBR, on which four reminders were also sent. FBR has not given any response to NAB on the implementation of these recommendations.

Chairman, NAB is requested to examine the complaint against the four officers of FBR as alleged by the complainant, and if the complaint is found correct, Chairman is requested to take action against all those who are responsible for collusion under NAB Ordinance NAO 1999.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption

With Regards,

Sohail Muzaffar
Chairman

Copies forwarded for the information with request to take action under their mandate to:

1. Secretary to Prime Minister, Islamabad.
2. Chairman, Prime Minister's Inspection Commission, Islamabad.
3. Registrar, Supreme Court of Pakistan, Islamabad.
4. Managing Director, PPRA, Islamabad.

BUSINESS RECORDER

Lahore, Monday 15 August 2016, 11 Ziquad 1437

Ex-FBR officials

NAB to probe minimum tax matter

RECORDER REPORT

ISLAMABAD: The National Accountability Bureau (NAB) has decided to investigate the matter of minimum tax against few former officials of Federal Board of Revenue (FBR) including former officials and others for misuse of authority in relaxing tax regime for services sector, causing huge loss to the national exchequer.

It is learnt that decision was taken in NAB's Executive Board Meeting (EBM) Chaired by Chairman Qamar Zaman. EBM decided that inquiry was authorized against ex-officers/officials of FBR and others. In this case, the accused persons were alleged for misuse of authority in relaxing tax regime for some service providers.

Earlier, NAB has decided to authorize the complaint verification against Officers/Officials of FBR in issuance and subsequent withdrawal of Circular No. 6 of 2009 as well as SRO 1003 of 2011 issued by FBR. Issue pertains to minimum tax

under Section 153(1)(b) of the Income Tax Ordinance, 2001 for corporate sector service providers.

Transparency International had drawn attention of Chairman NAB towards allegations of misuse of authority by few senior FBR officials as well as Appellate Tribunal-IR Members. It has received a complainant from a Lahore based lawyer wherein it was claimed that four senior officials including FBR members, ATIR member and present Chairman ATIR are allegedly involved in providing illegal benefits to service provider companies which has resulted into huge loss to the kitty, lawyer alleged.

When contacted a tax expert said that law was amended by Parliament through Finance Act 2009 and the service providing companies were made chargeable to 6% Minimum Tax under Section 153(1)(b). However, in a surprising move, FBR issued Circular 6/2009, claiming that service providing companies were exempt from Minimum

Tax. The Federal Tax Ombudsman took notice of this unlawful act of FBR functionaries under Own Motion intervention in Waheed Shahzad Butt Vs Secretary Revenue Division (2012 PTD 554 = 108 TAX 155) and recommended action against the concerned officers who were responsible for issuing this unlawful circular. The FBR withdrew Circular No. 6 of 2009 on 26.04.2011. Later, the FBR inserted Clause 79 declaring service providing companies as exempt from Min. Tax through SRO No. 1003. Although FBR had withdrawn the Circular No. 6/2009, yet review petition was filed before the FTO in support of Circular 6, which was rejected by the FTO.

Later in 2015, the FBR attempted to make an amendment in Section 153(1)(b) proposing amendment through Finance Act 2015 to exempt service providing companies from Min Tax retrospectively with effect from Tax Year 2009.

GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE
(Inland Revenue Wing)

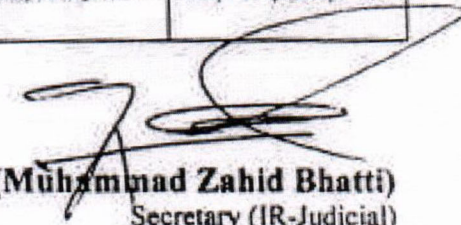
Subject: COLLECTION OF MINIMUM TAX ON SERVICES RENDERED BY THE COMPANIES UNDER SECTION 153(1)(b) OF THE INCOME TAX ORDINANCE, 2001

Please refer to your U.O. No. 4(1) Misc-30/5719/TO-1/2015/1625297 dated 07.12.2015 on the subject above.

The figures for collection of tax under section 153(1) (b) for the year 2010 to 2015, as required by worthy FTO, has been obtained from the office of Member IT and are given below, for onwards submission to the worthy FTO please.

TOTAL COLLECTION U/S 153(1)(B) ITO 2001

Years	Corporate Sector.		Non Corporate Sector	(Rs. in millions)
	Tele Network Mobile Companies	Other Services Providing Companies	Non-Corporate Service Providers.	Total
2010-11	517,053,872	10,307,207,588	16,520,761,161	27,345,022,621
2011-12	13,97,893,913	15,083,591,422	20,284,946,763	35,368,538,185
2012-13	331,933,915	16,188,166,340	20,557,447,457	37,077,547,712
2013-14	435,967,689	19,487,266,118	24,326,697,919	44,249,931,726
2014-15	48,281,094	24,337,709,743	29,318,938,303	53,704,929,140


(Muhammad Zahid Bhatti)
 Secretary (IR-Judicial)

✓ **Second Secretary (TO-I) Federal Board of Revenue, Islamabad**
 FBR's U.O.No.5 (28) IR (Jud) 2015/35094-R dated 14.3.2016

Annex-E

Category	PMCL(Jazz)	PTML(Ufone)	CMPAK(Zong)	Telenor	Warid	Total
2006-07	26466451.00	14014044.00	1024563.00	10701332.00	10620386.00	63159857.00
2007-08	32032363.00	18100440.00	3950758.00	18125189.00	15489858.00	88019812.00
2008-09	29136839.00	20004707.00	6386571.00	20893129.00	17886736.00	94342030.00
2009-10	32202548.00	19549100.00	6704288.00	23798221.00	16931687.00	99185844.00
2010-11	33378161.00	20533787.00	10927693.00	26667079.00	17387798.00	108894518.00
2011-12	35953434.00	23897261.00	16836983.00	29963722.00	13499835.00	120151235.00
2012-13	37121871.00	24547986.00	21177156.00	32183920.00	12706353.00	127737286.00
2013-14	38768346.00	24352717.00	27197048.00	36571820.00	13084823.00	139974754.00
2014-15	33424268.00	17809315.00	22102968.00	31491263.00	9830620.00	114658434.00
2015-16	39118521.00	19833670.00	25251329.00	38020771.00	11017174.00	133241465.00
2016-17	52470638.00	18397981.00	28084677.00	40804820.00	0.00	139758116.00
Jul-17	52325198.00	18361997.00	28423969.00	40670590.00	0.00	139781754.00
Aug-17	52719374.00	18333129.00	28475681.00	40441316.00	0.00	139969500.00
Sep-17	52617231.00	18489816.00	28916205.00	40735819.00	0.00	140759071.00
Oct-17	53420853.00	18639721.00	29464429.00	40879315.00	0.00	142404318.00
Nov-17	53494998.00	18816214.00	29852520.00	41174599.00	0.00	143338331.00
Dec-17	53625876.00	18973384.00	30202932.00	41723445.00	0.00	144525637.00
Jan-18	54035798.00	19308980.00	30534042.00	42116882.00	0.00	145995702.00
Feb-18	54571546.00	19595008.00	30827833.00	42542149.00	0.00	147536536.00
Mar-18	55117456.00	19890781.00	31139251.00	42954429.00	0.00	149101917.00