

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

25/OM/2019

Dated: 17.01.2019* HQ Islamabad

The Secretary,
Revenue Division,
Islamabad/State Bank of Pakistan,
Karachi.

... Respondent

Dealing Officer : Mr. Aftab Ahmad, Advisor :
Appraisal Officer : Mr. Manzoor Hussain Kureshi, Advisor
Departmental Representative : Nemo

FINDINGS

This in an Own Motion (OM) investigation, initiated while exercising powers conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against systemic maladministration of the Department, (Deptt) whereby the non-resident aspirants before opening a foreign currency account, were required to file returns of income.

2. Precisely, a large number of non-resident citizens of Pakistan origin, were facing hardship in operating their foreign currency bank accounts maintained in Pakistan. They were required to file returns of income, at the time of opening of bank accounts, on a self contradictory interpretation issued by the State Bank of Pakistan (SBP) vide Circular letter No. 5 dated 12th April 2018 read with Protection of Economic Reforms (PER) (Amendment) Ordinance, 2018. The treatment was *prima facie* in violation of the express provisions of Section 114 of the Income Tax Ordinance 2001 (the Ordinance) whereby the non-residents were not under an obligation to file returns of their foreign income. Thus on account of conflicting interpretation of the SBP, the non-residents foreign currency account holders had to go through this hardship.

Date of registration with the FTO Sectt:

3. The matter was sent for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the FBR vide letter dated 15.03.2019 submitted comments of the Member (IR-Policy) FBR, Islamabad dated 14.03.2019. It was contended that it is the "resident individual" who is required to file return of income under Section 114 as defined in terms of Section 82 of the Ordinance. It was further contended that cumulative reading of Section 114 of the Ordinance, PER (Amendment) Ordinance, 2018 and the SBP's Circular No. 05 dated 12th April 2018, clearly show that a non-resident was not required to be a "filer". The bank authorities might had some internal administrative issue, which can only be resolved by the SBP.

4. The Deputy Director SBP also submitted comments vide letter dated 19.04.2019, contending that keeping in view the issue, clarification had been issued by the Director Exchange Policy Department (EPD) SBP to all authorized dealers (Banks) vide EPD Circular Letter No. 7 dated 19th April 2019.

5. Evidently, the issue was related to the banks misinterpretation of law, which has duly been clarified by the SBP vide EPD Circular Letter No. 7 dated 19th April 2019, contents whereof are reproduced below:

"Attention of Authorized Dealers is invited to the second provision of sub-Section of the Section (5) of the PERA (PERA) 1992 which inter alia, states that:

"provided that no cash shall be deposited in an account of citizen of Pakistan resident in Pakistan, unless the account holder is filer as defined in the Income Tax Ordinance, 2001 (XLIX of 2001)"

2. It has come our notice that some Authorized Dealers not allowing non-residents to open and maintain foreign currency accounts on the pretexts that they are not appearing as 'filer' in the Active Taxpayer's List of FBR.

3. However, it is evident from the aforementioned Proviso that the instructions, contained therein, are not applicable to non-residents.

4. An updated copy of the PERA, 1992 is enclosed herewith for information and meticulous compliance."

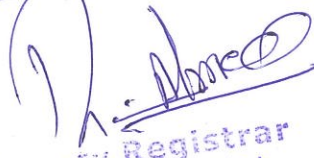
6. In view of the clarification issued by the SBP, vide Director EPD's Circular letter No. 07 of 2019 dated 19th April, 2019 the systemic issue under reference stands resolved. The investigation is, therefore, closed. File be consigned to record.

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Dated: 13/5/2019
Zn/HUK

agreed for reporting

Certified to be True Copy


Deputy Registrar
FIO Secretariat
Islamabad