



30th January, 2014

Mr. Tariq Bajwa,
Chairman,
Federal Board of Revenue,
FBR House,
Constitutional Avenue,
Islamabad

**Sub: FBR responsible for Loss of over Rs 80 Billion in last 7 years, Evasion
of Excise Duty by PTCL, Pakistan Tobacco, OGDCL, Mari Gas,
PTA, Pakistan Oilfields and others.**

Dear Sir,

Transparency International Pakistan in a CMA #534-K/2013 filed in the Suo Moto Case # 16/2011 regarding law and order situation in Karachi, on 29th October 2013 was asked by the then Honorable Chief Justice of Pakistan to provide a rough figure of annual leakage in collection of revenue by FBR.

The Honorable Supreme Court was informed that public is paying taxes, but the businessmen are not fully depositing the Revenue in Treasury resulting in an annual Tax evasion of over Rs 2,000 billion. On the Honorable Court's question as to how to recover the lost revenue, a report was submitted in the Honorable Supreme Court on 30th October 2013 and a copy was handed over to you by TI Pakistan's Adviser in the Supreme Court on the instructions of the Honorable Chief Justice.

It appears that no progress has been made by FBR to increase the revenue on the lines suggested by TI-Pakistan.

It is alleged that the tax evasion occur in connivance with FBR officials since the last seven years which was recently exposed by the media. The allegations are as follows:

1. In what appears to be a major scam, more than Rs 80 billion Excise Duty has been evaded over the past seven years by the parties providing franchise services, but the country's top tax machinery has put the matter on the back burner.
2. The amount is a tip of the iceberg because the Federal Board of Revenue (FBR) is not willing to investigate the scam for obvious reasons.
3. The Federal Excise Duty introduced in 2006 at a rate of five per cent was increased to 10 per cent in June 2008, which may be reflected on documents but the increase in Collection is negligible.



4. The FED is leviable on royalty fee, technical fee and franchise fee annually, but the FBR's inability to recover the amount from big franchise owners speaks volumes. Can it not be classified as malpractice?.
5. At the same time, no FED was paid by WAPDA and other similar organizations which are paying royalty on crude oil, natural gas and Hydel power generation.
6. According to the FED Act 2005, franchise is an authority given by a franchiser to a franchisee which is contractually or otherwise granted a right to produce, manufacture, sell or trade in or do any other business activity in respect of goods or to provide service or to undertake any process identified with franchiser against a fee or consideration, including royalty or technical fee.
7. It will not be out of place to mention here that Official data shows that regional tax offices (RTOs) in Karachi and Lahore have collected income tax on franchise and technical fees, but no FED has been recovered as required under the law. It is pertinent to mention that during the 2006-08 period, the RTO Karachi collected Rs3.067bn as income tax on royalties and technical fees, but did not collect FED on them.
8. **The Lahore RTO collected Rs718.008 million as income tax on the same account. However, it collected a laughable Rs30,000 on account of FED. Is this not a Crude joke being played on National Exchequer.**
9. In comparison to performance of Lahore RTO, the RTO Islamabad collected Rs12.721 million FED on royalty and technical fee during the 2006-08 period.
10. Syed Mohammad Hassan, a Karachi-based chartered accountant, contested the FED collection figures and said that an amount of Rs21.05bn could have been collected only from five companies assessed in the large taxpayers unit (LTU), Islamabad, between 2006 and 2013. The companies include OGDCL, Mari Gas, Pakistan Oilfields, PTCL and Pakistan Tobacco. No FED has been collected on royalty on oil and gas, and Hydel power generation, since 2006.
11. Budget documents suggest that under the NFC award, Wapda paid Rs263.861bn to the provincial governments as royalty on hydel power generation from 2006 to 2012.
12. According to Mr Hassan, the FBR should have collected Rs22.260bn excise duty.
13. The government also received Rs304.461bn as royalty on oil and gas from 2007 to 2013 and the FBR should have collected Rs28.745bn FED on this count alone.



14. Similarly, the Pakistan Telecommunication Authority (PTA) collected Rs90bn in 2009 and Rs89bn in 2010 on account of license fee, but the LTU Islamabad has yet to take up the issue of FED recovery with the PTA.
15. The issue was raised with the Federal Tax Ombudsman (FTO) in September 2010. Consequently, the FTO directed the chief commissioners of LTUs to get a third party audit conducted to have credible basis for ascertainment of the difference in figures and evasion of tax if any involved and submit a compliance report within 45 days.
16. The FBR has neither submitted the compliance report despite several reminders by the FTO nor is willing to probe the scam and curb tax evasion.
17. In January 2011, the FTO ruled on a review application that FED was properly charged, collected on franchise service as per law by all LTUs and RTOs. It also recommended that figures of franchise service receipts be declared in income tax returns by taxpayers as per law. For implementation of the order, the FTO asked for compliance within 30 days, but the FBR has yet to take action.

TI Pakistan would like to inform the Chairman that above if the above allegations are proved correct, they will fall within the purview of National Accountability Ordinance, 1999, (quoted below) as Corruption and Corrupt practices.

9 (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices-

(iv) if he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse 3 or dependents or any other person, any property, valuable thing, or pecuniary advantage; or*

(ix) if he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security to any person; or

(x) if he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan Penal Code, 1860 (Act XLV of 1860) with regard to any property including money or valuable security entrusted to him by members of the public at large;

This is also to point out that under Section 9 (b) of NAO 1999 these illegal actions are serious and cognizable Offences. It states:

*b) All offences under this Ordinance shall be non-bailable and, notwithstanding anything contained in section 1[426, 491,] 497, 498 and 561 A or any other provision of the Code, or any other law for the time being in force no Court 2*** shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance.*

The Chairman is requested to take immediate measure to examine allegations, which will result in the collection of Rs 80 billion evaded revenue.



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

Regards,

Sohail Muzaffar
Chairman

Copies forwarded for information with a request that an appropriate action under the law be taken against all concern who are guilty of causing loss of Rs.80 Billion to National Exchequer.

1. Secretary to the Prime Minister, for information of the Prime Minister of Pakistan, P.M. Secretariat, Islamabad.
2. Chairman NAB, Islamabad.
3. Federal Tax Ombudsman, Islamabad,
4. Minister of Finance, Islamabad.
5. Registrar, Supreme Court Pakistan.