

KCO BLOGS 2021

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FATF RECOMMENDATIONS RELATED TO DNFBPs AND CHALLENGES FACED BY FBR

INTRODUCTION:

The FATF research highlighted a trend in the use of complex commercial arrangements by money launders (ML) and terrorism financiers (TF) to hide their money trail. These arrangements often use the services of professionals such as lawyers, accountants and company secretaries. Arising from these typologies, the FATF standards require countries to improve their Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) measures on DNFBPs.

RISKS RELATED TO DNFBPS

The “DNFBP”, or Designated Non-Financial Businesses and Professions is the FATF catch-all for any business or profession that poses a money laundering risk but cannot be classified as a financial institution. Thus, the risks related to this sector lie in the potential misuse for ML/TF. Some countries realized these risks and, therefore, adopted measures in an attempt to prevent the misuse of non-financial businesses and professions in ML/TF. What is classed as a DNFBP varies depending on jurisdiction. Usually, at least the following professions are included:

- Auditors, external accountants, and tax advisors
- Casinos and other gambling service providers
- Company service providers
- Dealers in precious metals
- Lawyers
- Notaries and other independent legal professionals
- Real estate agents
- Trusts

FBR: MEASURES AND CHALLENGES

In order to address concerns of FATF, Pakistan introduced amendment in the Anti-Money Laundering Act, 2010 [AML, 2010] through Anti-Money Laundering (Second Amendment) Act, 2020, signed by the President on September 22, 2020. Section 6A of AML, 2010 delegates powers to Federal Board of Revenue (FBR) to regulate Designated Non-Financial Businesses and Professions (DNFBPs), namely real estate agents, jewellers, dealers in precious metals and precious stones, and accountants, who are not members of the Institute of Chartered Accountants of Pakistan and the Institute of Cost and Management Accountants of Pakistan.

FBR, in exercise of powers conferred under AML, 2010, made regulations namely “*Federal Board of Revenue Anti-Money Laundering and Countering Financing of Terrorism Regulations for DNFBPs, 2020*” [“the Regulations”] through SRO 924(1)2020 dated September 29, 2020, to regulate the above-mentioned DNFBPs.

FBR issued the Regulations to comply with the conditions under FATF, however, the Regulations being generic in nature, do not seem to meet the standards provided in guidelines issued by Asia/Pacific Group (APG). The ultimate goal of getting out of grey list can be achieved through issuance of industry specific regulations and establishing independent anti-crime agency. Unless such steps are taken, the illicit flows of funds will remain unchecked, keeping the country vulnerable to Money laundering and Terror Financing. (ML & TF)

(i) Real Estate Sector:

While comparing registered “Real estate agents” with Return Filers, it emerges that the total number of “Real Estate Agents” registered with FBR are approximately 16,000 (excluding builders and developers) and return filers for tax year 2020 are around 10,000. According to the World Bank estimate, the size of a country’s real estate assets constitutes between 60 and 70% of the country’s total wealth; if these estimates are applied to Pakistan, the estimated size of the real estate sector would be \$300 to \$400 billion.

FBR can improve its enforcement in this sector through access to data from real estate regulatory authorities, one established for Islamabad Capital Territory (ICT), and others from provinces and from websites of private parties to enforce the said Regulations. Further, there are numerous associations of real estate agents in each city of Pakistan and their directory is available on the website: <https://www.pakrealestate.com/>

(ii) Dealers in precious metals and stones:

As per the definition given in Regulation 2(k) of the Regulations “jeweler” has been defined as “a person who is a bullion dealer or engaged in sale of jewelry, precious stones and metals including all articles made wholly or mainly of gold, platinum, diamonds of all kinds, precious or semi-precious stones, pearls whether or not mounted, set or strung and articles set or mounted with diamonds, precious or semi-precious stones or pearls, when they engage in a cash transaction with a customer of a value equivalent to two million rupees or more”.

The gold sector remained largely un-documented in the country. FBR has found that there are only 21,396 National Tax Number (NTN) holders out of total 60,000 jewelers in the country but on average only 9,000 filed returns in last five years.

The Official report submitted to Chairman FBR by the Directorate of Intelligence & Investigation (I&I) Inland Revenues disclosed that out of the total, only 15 percent of the jewelers filed their returns. The jewelers who possessed luxurious assets and lifestyle paid only Rs. 205 million tax along with tax returns in the last five years; the minimum tax amount paid with income tax returns was Rs. 26 million in one year and maximum paid amount was Rs. 62 million in the last five years, from 2014 to 2019.

The jewelers paid over Rs. 1 billion as withholding tax (WHT) to get refunds through electricity bills. Thus, on average, the filers among jewelers paid only Rs. 4,500 tax per person.

Interestingly, bullion import is almost negligible but jewelry shops in large cities have stocks of billions of rupees. Though, this is one of the prime sectors to be regulated under guidelines of FATF and AGP, but it is grossly neglected, vulnerable to ML/FT and largely undocumented.

(iii) Accountants:

Accountants have been defined in the Regulations as sole practitioners, partners or employed professionals within professional firms when they carry out the activities as specified in the AML Act. Those regulated by The Institute of Chartered Accountants of Pakistan (ICAP) and The Institute of Cost and Management Accountants of Pakistan (ICMAP) have been excluded.

Number of persons registered with FBR in this category are approximately 57,000 out of which around 37,000 are income tax filers. This is also a very low figure, therefore, FBR needs to collect data and enforce the said Regulations.

WAY FORWARD:

After remaining unsuccessful in last review of FATF in February 2021, FATF President Marcus Pleyer said in a press briefing that Islamabad had made “significant progress” but there remained “serious deficiencies” in mechanisms to plug money laundering and terrorism financing.

In June 2021, Pakistan is going to face yet another review of its remaining compliance of three action items; out of total, 27 under anti-money laundering and combatting financing of terrorism [AML-CFT] mandates agreed with Financial Action Task Force (FATF) in June 2018.

Remedial measures and concrete steps for enforcement of Regulations are required to be taken and FBR needs trained workforce in countering ML/CFT and get all the DNFBPs registered and compel them to file tax returns and keep prescribed records/documents under industry-specific regulations.

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