

F.No.500/12/2013-FT&TR-III  
Government of India  
Ministry of Finance  
Department of Revenue  
(Foreign Tax & Tax Research Division)  
\*\*\*\*\*

Dated: 12<sup>th</sup> May 2016

To,  
All Pr.CCsIT/DGsIT(Inv.)

Madam/Sir,

**Subject: Exchange of Information requests to British Virgin Islands (BVI)-reg.-**

British Virgin Islands (BVI) is one of the most important jurisdictions for India from the point of Exchange of Information (EOI) relationship. Over the past few years, India has sent several EOI requests to BVI under the India-BVI Tax Information Exchange Agreement (TIEA). A lot of requests are likely to be made to the BVI in near future in view of the investigations being carried out in the Panama Papers. Even though the EOI Cell of India has been making continuous efforts to improve the efficiency and efficacy of the information exchange process with BVI, a large number of deficiencies are being observed in the EOI requests sent by field officers.

2. In order to achieve better outcomes from requests for information made to the BVI, the following must be kept in mind by the field officers while making EOI requests:-

**2.1 Procedure for incorporating a company in the BVI:**

2.1.1 Any person who wishes to form a registered company in BVI must do so through a licensed Registration Agent (RA). The agent is required (amongst other things) to obtain client due diligence (CDD also sometimes referred to as "know your client" or KYC) to comply with the regulations.

2.1.2 There are more than 100 registered agents in BVI who provide company management business services like formation of companies, providing registered agent and registered offices, providing directors or officers and nominee shareholder licenses. The Financial Service Commission of BVI grants licenses to these RA to carry out these services for BVI companies as well as for companies incorporated or registered in a jurisdiction outside the Virgin Islands. One of the most popular service providers is Portcullis Group which has operations in BVI, Singapore, Cayman Islands, Hong Kong, Mauritius etc. The concerned BVI entity of the group is Portcullis TrustNet (BVI) Limited. Another service provider is Fidelity Corporate Services. As stated above, there are more than 100 such service providers.

2.1.3 The RA must properly identify and know the client and the beneficial owner(s) of the new company as per the requirement of law and the conditions of the Company Management License. Therefore, before the RA proceed with a new incorporation for any first-time client, they need to receive a few documents, such as, certified copy of passport, proof of address, etc., that identify and characterize the clients. Upon receipt of the due diligence information

and payment of requisite fees, RA prepares and files the Memorandum and Articles of Association and other mandatory documents required to register a BVI Business Company. The initial company formation paperwork is prepared and signed on client's behalf by the RA and there is no need for the client to sign any incorporation documents for a Business Company. In order to comply with the minimum domestic presence requirements in the BVI, RA provides a Registered Address and Registered Agent service for the client's new company.

2.1.4 Field officers may keep the above procedure in mind while making a request for information relating to a BVI company.

## **2.2 Shareholding of BVI Companies:**

2.2.1 Companies in BVI are not required to state their authorized capital. They need to simply state the number of shares they will issue but not the monetary value of the capital. Thus, a company may issue its shares at a "market value", or at a value that its first owners deem fit, depending on the capitalization requirements of the company. Thus, a company with the same 50,000 shares may raise substantially different amounts of capital from its would-be shareholders, depending on its capitalization needs and plans of the shareholders. Consequently, there are no requirements to have any amount of paid-up capital, or to pay it in by a certain deadline.

2.2.2 The details of shareholders of the company are not publically available. The law in BVI only requires that the shareholder information (Register of Shareholders) must be kept on file with the Registered Agent, where it is confidential and accessible only by the members of the company. However, the law also allows for the shareholder information to be filed with the Registry of Companies as an option - if the shareholders so want.

2.2.3 A very important feature to keep confidentiality about shareholding is "keeping shares registered in the name of nominee and not in the name of actual owner". For example, Indian resident X having a company ABC in the BVI can make person Y and Z as the shareholders of the company ABC. Person Y and Z can either be individual or corporate entity. There are few companies who provide these types of shareholders services. Some subsidiary companies of Portcullis TrustNet (BVI) Limited which provide shareholding and directorship services are Execorp Limited, Shrecorp Limited etc. In such cases, there may an agreement/correspondence between actual owner/beneficial owner and nominee shareholders. Therefore, while making an EOI request, it may be essential to seek information about beneficial ownerships with underlying documents.

## **2.3 Directors of BVI Companies:**

2.3.1 In the BVI, Business Companies need to have a minimum of one director, either a private individual or a corporate entity, which may be resident of BVI or any other jurisdiction. If director is not a resident in BVI, the BVI authorities may not be in a position to provide information of the director. Therefore, in such situation field authorities should make separate EOI request to the country where the director is resident.

## **2.4 Identification of the BVI Entity:**

2.4.1 Any EOI Request sent to BVI is first matched by the BVI authorities with their existing database and the company number is obtained. Thereafter, request for obtaining

information is made either to the company concerned or any other authority believed to be in possession of the information sought. BVI authorities can proceed with the EOI request only when they are able to identify the company from their database. Therefore, it is necessary that the name of the company as well as the company number should be correctly identified in the EOI proforma. Further, name of the BVI entity must also be carefully written in the EOI Request to avoid any spelling errors.

2.4.2 In response to many EOI Requests, the BVI authorities have stated that the BVI entity mentioned in the EOI request was not found in their database and they have sought additional information about the company, such as company number. Field officers should, while making the EOI request as well as when clarification is sought, provide all the available information so as to enable the BVI authorities to properly identify the company in question.

## 2.5 Requirement for Refrainment from Notification:

2.5.1 In the Proforma for sending EOI Request, there is Row Number 8 in which the option “*Request to refrain from notifying the taxpayer involved*” has to be filled up. It has been observed that in many cases field officers exercise this option and tick “Yes” without giving detailed justification for the same.

2.5.2 Under the laws of certain countries/jurisdictions, the taxpayer or the holder of the information has certain rights including a right to be informed or notified that a request for information concerning him has been made by another country/jurisdiction. However, in certain exceptional cases, the requesting country/jurisdiction can make a request that the taxpayer/holder of information may not be so notified. If a request to refrain from notifying the taxpayer(s) concerned is made, the reasons for the same must be clearly explained in the request. Such reasons could be that the information is of a very urgent nature and the process of prior notification to the taxpayer will delay supply of information or the prior notification is likely to undermine the success of the investigation being conducted.

2.5.3 A request to refrain from notifying the taxpayer should not be made in a routine manner and such request should be made only if it is essential and can be justified on the basis of documentary evidences. The reason that the taxpayer concerned is likely to file an appeal against the supply of information would generally not be a valid reason for making such a request.

2.5.4 Field officers must also keep in mind that this option should not be exercised while seeking information that is not likely to be in possession of the BVI tax authorities, but instead is likely to be available only with the taxpayer. In such a situation, if the request to refrain from notifying the taxpayer is made, then the BVI authorities may not be able to approach the taxpayer to obtain the requested information. It may also be noted that information like details of bank account, immovable property etc. are generally not readily available with tax authorities. Therefore, this option should only be exercised only in exceptional cases.

## 2.6 Demonstrating “Foreseeable Relevance”:

2.6.1 Under the TIEA between India and the BVI, the Competent Authorities are obliged to exchange information which is foreseeably relevant for administration and enforcement of the domestic laws concerning taxes. The standard of “foreseeable relevance” requires that the

requesting State provides an explanation as to how the information requested would be relevant for the tax affairs of the taxpayer concerned relating to investigation, assessment or collection of taxes. The standard provides that the Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

2.6.2 It is, therefore, essential that while making the initial EOI request all the relevant facts and background of the case are clearly brought out and the relevance of information for the purposes of administration and enforcement of Indian tax laws is spelt out in sufficient detail. These details should be provided in Form A/Row 12 relating to “relevant background”. This will help the BVI authorities to provide the information requested, prevent legal challenges to proceedings in accessing information, if any, and will, therefore, obviate the need for further clarifications sought from the Indian authorities by BVI.

## **2.7 Large number of questions in the request:**

2.7.1 It has been observed that large numbers of questions which are vague and not foreseeably relevant are being asked in our EOI requests. Even in some cases, there are more than 40 questions in the EOI request. Field authorities are advised that a more focused approach may be considered while formulating an EOI request. Further, request for voluminous information should be avoided as it may become counterproductive on account of the following reasons:

- The request may be considered as having been made in a casual and perfunctory manner and may not receive adequate attention by the BVI authorities.
- In a request with a long list of questions, information which is more critical may be missed out by BVI and therefore the useful information may not be received by us.
- Though BVI authorities may genuinely want to provide assistance, they may not be able to do so as they would need to collect the requested information from various sources, which they may not be able to do in a timely manner.

2.7.2 In cases where investigation is at a preliminary stage and not much of detail is available, it is suggested that the initial EOI request may ask for only limited information relating to ownership and incorporation, financial accounts maintained, bank accounts maintained in BVI and outside BVI including KYC details, details of immovable/movable property held, etc. It may be noted that, if in a case any additional information is required, the same may always be requested through additional EOI requests.

## **3. Clarifications sought by BVI:**

3.1 A large number of EOI requests are pending with the BVI and one of the main reasons for delay in receipt of information from BVI is that the clarifications sought by BVI are not provided in a timely manner. Such delays are viewed unfavourably by the BVI Competent Authority. Also, in such cases, requests are sometimes treated as “closed” by the BVI Competent Authority for want of clarifications, depriving us of the valuable information which would have been useful for investigation/assessment.

3.2 Therefore, whenever a clarification is sought by the BVI authorities, the same must be provided within 15 days of receipt of clarification as specified in Manual on Exchange of Information. It is the responsibility of the Range/Unit Heads to ensure that the clarifications sought by the foreign Competent Authority are provided within specified time. The Pr.CsIT/Pr.DsIT may review the position in this regard from time to time, particularly in respect of pending BVI cases, and issue necessary directions to the Range/Unit Heads to ensure that the clarifications sought are provided in a timely manner.

#### 4. Feedback in BVI cases:

4.1 It is also relevant to know how the information received from BVI (there are many such cases) has been actually utilized by the field authorities. In many cases, BVI has provided crucial ownership information including beneficial ownership information. However, field authorities have not yet provided the feedback to the EOI Cell on the utility of the information received as prescribed in the Manual on Exchange of Information.

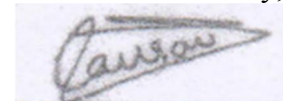
4.2 Analysis of the data on utilization of information may be useful in understanding the modus operandi of tax evasion as well as deciding the most efficient and effective course of action to tackle tax evasion through BVI and other jurisdictions. Therefore, Pr.CsIT/Pr.DsIT may review the position in this regard from time to time and issue necessary directions to the Range/Unit Heads to ensure that the prescribed feedback is provided in a timely manner.

5. In view of the above, I am directed to request you to direct the Pr.CsIT/Pr.DsIT(Inv):

- (i) To take due care while signing the proforma for EOI request to BVI and ensure that all essential elements and facts have been clearly brought out in the request;
- (ii) To ensure that all requests to the BVI are made in accordance with the guidance provided in the Manual on Exchange of Information as well as paragraph 2 above;
- (iii) To review all cases where requests have been made to the BVI authorities and provide clarifications pending, if any, to the FT&TR division latest by **31.05.2016**;
- (iv) To review cases where information/part information has been received from the BVI and provide initial/final feedback as per proforma prescribed in the manual latest by **30.06.2016**.

6. This issues with the approval of Chairman, CBDT.

Yours faithfully,



(Gaurav Sharma)

Under Secretary to the Government of India

Copy to:

Data Base Cell with the request to upload it on [www.irsofficersonline.gov.in](http://www.irsofficersonline.gov.in)