

# Ultimate Beneficial Ownership – Reporting under Income Tax Law

29 November 2023

## Prologue

The doctrine of corporate veil to separate the corporate structure from its owners (members) remains to be the hallmark of corporate structure.

However, the global regulators and watchdogs in instances, whilst investigating the events and transactions, have pierced through this veil to identify the effective / underlying ultimate beneficial owners. Over the years the significance of identifying the Ultimate Beneficial Ownership (UBO) has grown considerably as the regulators across the globe endeavor to beef up efforts to combat financial misconduct and promote transparency. The revelation of UBO information is primarily intended to curtail financial crimes including but not limited to tax evasion and avoidance, as it unveils the real substantive beneficiaries and rendering it arduous for individuals to conceal their identity generally by building corporate structures.

Pakistan of late has remained under compliance monitoring of the Financial Action Task Force (FATF). Amongst other aspects, FATF has much stressed the need to build and effectively monitor the framework for combatting money laundering and countering terrorist financing.

Various laws and frameworks have been introduced / amended in line with the government's commitment to adhere to the standards set by FATF.

In this backdrop, the income tax law has also been amended accordingly. The Finance Act 2022 added Section 181E, to the Income Tax Ordinance, 2001 [Ordinance] requiring the Companies and Associations of Persons (AOPs) to electronically disclose and update their beneficial owner details. The specific reporting requirements have been notified vide SRO 117(I)/2023 dated August 28, 2023 (SRO), introducing a new Chapter XIII A Record of Beneficial Owners in the Income Tax Rules, 2002 [Rules].

In the following commentary, we have given an insight into the provisions and reporting framework introduced as above.

## Definitions

The term “Beneficial Owner” has been defined in section 2(7A) of the Ordinance whereas other terms have been defined in the SRO as follows:

### Beneficial owner

*a natural person who –*

- (a) ultimately owns or controls a company or association of persons (AOP), whether directly or indirectly through at least twenty-five percent shares or voting rights; or
- (b) exercise ultimate effective control, through direct or indirect means, over the company or association of persons including control over the finances or decisions or other affairs of the company or association of persons.

### Chain of ownerships

All the legal entities and the legal arrangements through which the ownership rights (shareholdings) of a company or AOP are ultimately held by the natural person.

### Contractual association

The legal tie or contractual tie of two or more persons and/or legal entities and/or legal arrangements on the basis of a contract executed by the parties of the contract.

### Direct means

- i. Exercise of control by a natural person including exercise of ultimate control over a company or AOP through direct ownership i.e., without having ownership of intervening legal person or persons between the natural persons and the company or AOP, as the case may be, or
- ii. exercise of control through voting rights.

### Indirect means

Exercise of control through means other than the direct means, and includes but not limited to means of control through (i) chain of ownership; (ii) joint control arrangement; (iii) contractual associations; (iv) personal or family connections; or (v) senior managerial position.

### Joint control arrangement

A situation where two or more natural or legal persons, each having ownership or voting rights of less than twenty-five percent, but their aggregate ownership or voting rights is twenty-five percent or more in a company or AOP and exercise or may exercise control over that company or AOP for being associates to each other in terms of section 85 of the Income Tax Ordinance, 2001 (XLIX of 2001); and

### Ultimate effective control

A situation in which ownership or control is ultimately exercised through direct and indirect means.

## The reporting requirements

The reporting framework and the timelines as applicable on the Companies and Association of Person (AOPs) are summarized below:

Description	Timelines	Prescribed form
New registrants	Upon registration	BOF-01
Existing registrants	31 December 2023	BOF-01
Subsequent changes	Within 30 days	BOF-01
Subsequent confirmation of no change	Along with the return of income	BOF-02

The prescribed forms BOF-01 and BOF-02 mentioned are required to be submitted electronically. These are annexed with this publication for comprehension.

## Non-profit organizations etc.

In the case of a non-profit organization as defined under section 2(36) of the Ordinance, the settlor, trustee, founder, promoter, beneficiary, class of beneficiary, as the case may be, will be the beneficial owners of the nonprofit Organization.

Provided that where the beneficiary or class of beneficiary of the non-profit organization is general public, the beneficiary or class of beneficiary of such non-profit organization shall be exempted from the requirement of providing information of beneficial owners under this rule.

## Particulars to be reported.

The sub-rules 1 to 7 of Rule 83C prescribe the details to be submitted in case of ultimate effective control exercised through direct ownership rights, chain of ownerships, joint control arrangement, voting rights, contractual associations, personal or through family connections with the owners, directors or management and senior managerial position or other indirect means respectively.

Such details form part of the form BF-01 annexed herewith.

## Identification of the Ultimate beneficial owner through cascading

Rule 83D provides a cascading process for identifying and recording UBO information through three successive tests as follows.

### Test 1

The test 1 aims to identify beneficial owner(s) who exercise(s) ultimate effective control over the company or AOP through direct/ indirect ownership and voting rights.

### Test 2

The test 2 aims to identify the beneficial owner(s) who exercise(s) ultimate effective control over the company or AOP through Contractual associations and personal and/or family connections with the owner/ directors/ management.

If there is doubt under Test I as to whether a person with direct/indirect/joint ownership interest or direct/indirect voting rights is a beneficial owner, or where no natural person exerts control through ownership interests and voting rights, then the particulars of a natural person(s) exercising control over company or AOP through means of control other than ownership and voting rights, then ownership and voting rights, are obtained by application of Test 2.

### Test 3

The test 3 aims to identify the beneficial owner(s) who exercise(s) ultimate effective control over the company or AOP through senior managerial position(s).

Where no natural person is identified under Test 1 and Test 2 above, reasonable measures shall be taken to verify the identity of the relevant natural person(s) who holds(s) senior managerial position(s) in the company or AOP.

The form BOF-01 has been developed to identify the ultimate beneficiary through this cascading process.

**We understand that mostly the corporate structures would be able to identify the UBOs under the test 2 or test 1.**

### **Record retention**

Every company or AOP shall retain the records of all beneficial owners for a period of ten years from the date when the beneficial owners of that company or AOP, as the case may be, cease to be the beneficial owners of that company or AOP.

The Board shall retain the records of beneficial owners of all companies and AOPs registered with the Board for a period of ten years from the date when that company or AOP ceases to be registered with FBR.

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**Record of Beneficial Owner  
prescribed under section 181E of Income Tax Ordinance, 2001**

RECORDS OF BENEFICIAL OWNER(S)			
Cascading Tests and Application	Sr. No.	Category of Beneficial Owner(s)	Information to be Obtained
<b>Test 1</b>  The test aims at identifying, obtaining and verifying the particulars of the beneficial owner(s) who exercise(s) ultimate effective control over the company or AOP through direct/indirect ownership and voting rights.	1	Particulars of beneficial owner(s) who exercise(s) ultimate effective control over the company or AOP through direct ownership rights (shareholding) of twenty-five percent or more.	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth
			Nationality of beneficial owner(s)
			CNIC/NICOP/NTN/Passport number(s)/ Foreign National Identity number of beneficial owner(s)
			Percentage of shareholding/ownership interest held by the beneficial owner(s)
			Date of acquisition of ownership interest
			Residential and Commercial addresses of the beneficial owner.
	2	Particulars of the beneficial owner(s) who exercise ultimate effective control over the company or AOP through ownership rights of twenty-five percent or more through chain of ownerships.	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth
			Nationality of beneficial owner(s)
			CNIC/NICOP/NTN/Passport number(s)/Foreign National Identity number of beneficial owner(s)
			Particulars of all legal owner(s) i.e., all legal entity(ies) or/and arrangement(s) through which the company or AOP is indirectly owned by the beneficial owner(s).
			i. Name(s) of the legal owner(s)
			ii. Type of legal owner(s) involved in chain of ownership (e.g., Joint Stock Company, Limited Liability Company, Foundation, Trusts etc.)
			iii. Country of Registration/Incorporation of legal owner(s)

RECORDS OF BENEFICIAL OWNER(S)			
Cascading Tests and Application	Sr. No.	Category of Beneficial Owner(s)	Information to be Obtained
			iv. Incorporation/Registration detail(s) of the legal owner(s) i.e., Incorporation number, date of incorporation and name of registering authority.  v. Registered addresses of the legal owner(s)
			Percentage of shareholding/ownership interest held by the beneficial owner(s)
			Date of acquisition of ownership interest
			Residential and Commercial addresses of the beneficial owner.
	3	Particulars of the beneficial owner(s) who exercise ultimate effective control over the company or AOP through joint control arrangements.	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth
			Nationality of beneficial owner(s)
			CNIC/NICOP/NTN/Passport number(s)/Foreign National Identity number of beneficial owner(s)
			Details/nature of relationship between the beneficial owners involved in joint control arrangement. <ul style="list-style-type: none"> <li>▪ Relatives [For example, Mr. X who holds x percentage of ownership interests in M/s ABC company/AOP is the spouse of Ms. Y who holds y percentage of ownership interest in the same company/AOP].</li> <li>▪ Friends</li> <li>▪ Other associates (Please specify)</li> </ul>
			Percentage of shareholding/ownership interest of each beneficial owner involved in joint control arrangement
			Date of acquisition of ownership interest by each beneficial owner
		Residential and Commercial addresses of the beneficial owner(s).	

RECORDS OF BENEFICIAL OWNER(S)			
Cascading Tests and Application	Sr. No.	Category of Beneficial Owner(s)	Information to be Obtained
	4	Particulars of the beneficial owner(s) who exercise ultimate effective control over the company or AOP through voting rights.	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth
			Nationality of beneficial owner(s)
			CNIC/NICOP/NITN/Passport number(s)/Foreign National Identity number of beneficial owner(s)
			Details of voting rights that provide control to the beneficial owner(s).
			Percentage of voting rights held by the beneficial owner(s)
			Residential and Commercial addresses of the beneficial owner.
<b>Test 2</b>  The test aims at Test 2 aims at Identifying, obtaining and verifying the particulars of the beneficial owner(s) who exercise(s) ultimate effective control over the company or AOP through contractual associations and personal and/or family connections with the owners/directors/ management of the company or AOP.  If there is doubt under Test I as to whether a person with direct/ indirect/joint ownership interest or direct/indirect voting rights is a beneficial owner, or where no natural person exerts control through ownership interests and voting rights, then the particulars of a natural person(s) exercising control over company or AOP through means of control	1	Particulars of beneficial owner(s) who exercise ultimate effective control over the company or AOP through contractual association.	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth
			Nationality of beneficial owner(s)
			CNIC/NICOP/NTN/Passport number(s)/ Foreign National Identity number of beneficial owner(s)
			Nature and details of the personal / family connection which provides effective control to the beneficial owner [e.g., Mr. X (the beneficial owner) has influence over the company or AOP for being associated to Mr. Y (company's managing director)].
			Residential and Commercial addresses of the beneficial owner.
	2	Particulars of the beneficial owner(s) who exercise ultimate effective control over the company or AOP through personal and/or family connections with the	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth

RECORDS OF BENEFICIAL OWNER(S)			
Cascading Tests and Application	Sr. No.	Category of Beneficial Owner(s)	Information to be Obtained
other than ownership and voting rights, are obtained by application of Test 2.		management/owners/ directors of the company or AOP.	Nationality of beneficial owner(s)
			CNIC/NICOP/NTN/Passport number(s)/ Foreign National Identity number of beneficial owner(s)
			Nature and details of the personal/family connection which provides effective control to the beneficial owner [e.g., Mr. X (the beneficial owner) has influence over the company or AOP for being associated to Mr. Y (company's managing director)]
			Residential and Commercial addresses of the beneficial owner.
<p><b>Test 3</b></p> <p>Test 3 aims at Identifying, obtaining and verifying the particulars of beneficial owner(s) who exercise(s) ultimate effective control through senior managerial position(s).</p> <p>Where no natural person is identified under Test 1 and Test 2 above, reasonable measures shall be taken to verify the identity of the relevant natural person(s) who holds(s) senior managerial position(s) in the or AOP.</p>	1	Particulars of the beneficial owner(s) who exercise ultimate effective control over the company or AOP through senior managerial positions (e.g., senior managing officer who has the power to appoint and remove majority of directors or control over the affairs of the company) and other indirect means of control.	Name of beneficial owner
			Father's name/Spouse's name
			Date of Birth
			Nationality of beneficial owner(s)
			CNIC/NICOP/NTN/Passport number(s)/ Foreign National Identity number of beneficial owner(s)
			Position held by senior managing officer and the nature of control he/she exercises in the company or AOP. [For example, Mr. X the CEO of the company holds the power of appointing or removing the Directors of the company].
			Date of acquisition of senior management position in the company or AOP
Residential and Commercial addresses of the beneficial owner.			

**Note:** The 3 Tests represents a cascading process and shall be applied in succession when a previous test has been applied but has not resulted in the identification of all beneficial owner i.e., Test 2 shall only be applied in case if there is doubt as to whether a person with controlling ownership interest is a beneficial owner, or where no beneficial owner has been identified as a consequence of application of Test 1. Similarly, Test 3 shall only be applied in case the information about all beneficial owners is not recorded or captured by application of Test 1 and Test 2.

**Form BOF-02**

**Certificate of Confirmation in respect of  
Beneficial Owner prescribed under Rule 83A(6) of Income Tax Rules, 2002**

**1.** This is to certify that the particulars of the Beneficial owners in respect to  
M/s \_\_\_\_\_  
(Name of the Company/AOP/Trust/NPO) holding NTN \_\_\_\_\_  
provided to FBR under Section 181E of Income Tax Ordinance, 2001 were updated latest on  
\_\_\_\_\_ (Day/Month/Year) in accordance with the rules  
prescribed under Chapter XIII A of Income Tax Rules, 2002.

**2.** This is to further certify that the particulars of the Beneficial Owners in respect of  
M/s \_\_\_\_\_  
(Name of the Company/AOP/Trust/NPO) holding NTN \_\_\_\_\_  
updated latest on (Day/Month/Year) remained unchanged for tax year \_\_\_\_\_.

**Authorized Signatory for**

**M/s** \_\_\_\_\_

**Dated** \_\_\_\_\_

