

# THE FEDERAL TAX OMBUDSMAN ISLAMABAD

## COMPLAINT No. 0083 & 99/OM/2023

Dated: 20.11.2023<sup>1</sup> HQ, Islamabad

The Secretary,  
Revenue Division,  
Islamabad.

The Chief Commissioner-IR,  
Large Tax Office,  
Islamabad.

... Respondents

Dealing Officer	:	Mr. Muhammad Naseer Butt, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representatives	:	(i) Ms. Sumayya Qayyum, DCIR, LTO, Islamabad
		(ii) Ms. Sobia Mazhar, ADCIR, LTO, Islamabad

## FINDINGS/RECOMMENDATIONS

Based on the multiple news items and reports published in print and social media FTO Secretariat initiated Own Motion Investigation into tax affairs of Islamic International Medical College, vide OM No.0083/OM/2023 and Islamic International Dental College, vide OM No.0083 & 99/OM/2023. The comments of the Secretary and Chief Commissioner-IR, LTO Islamabad were requisitioned in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. Comments were received from LTO, Islamabad vide letter dated 11.12.2023 and 16.01.2024, which were examined and placed on file.

2. Hearing notices u/s 9(2) of the FOIR Act, were issued for various dates and detailed hearing was held on 17.01.2024 to seek clarification on discrepancies found in the documents provided by

<sup>1</sup> Date of registration in FTO Sectt.,

the department. In response to the hearing call, Ms. Sumayya Qayyum, DCIR and Ms. Sobia Mazhar, ADCIR from LTO Islamabad attended hearing as Departmental Representatives (DRs) and issues were discussed with them in detail. During hearing DR produced documents which were examined and placed on file. After having examined all the available documents and discussions held with the DRs, the Own Motion is disposed of as under.

### **BACKGROUND OF OWN MOTION INVESTIGATION:**

The background of above referred OM is detailed as below.

3. Currently, in addition to Public Sector Medical & Dental Colleges there are around 75 PMDC approved Medical and 43 Dental Colleges in Pakistan. Though PMDC maintains a structured regulatory mechanism yet tax matters of these private colleges have not been appropriately attended by FBR. During the past few years there has been regular reporting in the national press (details attached) as well in various medical related websites about the irregularities and violation of tax laws committed by Private Medical Colleges in Pakistan. Most recently, a report has been published in the '**Business Recorder**' dated 25.07.2023.

4. The above referred report contains a detailed account of the maladministration with reference to irregularities committed by Trusts controlling the medical colleges, especially improper compliance of withholding taxes, non-conformity with stipulations attached to NPO status, irregularities committed while issuing approvals under section 2(36) of the Income Tax Ordinance 2001 and lack of well-structured audit of withholding taxes. The main issues involved in the above referred report are briefly summarized as below;



- i. The trusts controlling medical colleges get approval u/s 2(36) of the Income Tax Ordinance, 2001, however, thereafter misuse the same i.e. are running commercially for profit.
- ii. The Trusts/Private Medical Colleges do not get the approval u/s 2(36) of the Ordinance 2001, renewed periodically, thus keep on flouting law.
- iii. Private Medical Colleges are not discharging their tax withholding obligations properly.
- iv. There is no proper withholding tax audit conducted by FBR field offices.
- v. Fees charged from overseas students are not reflected in accounts for taxation
- vi. Allegedly, the Private Medical Colleges siphon off receipts from overseas students, to unknown accounts, thus depriving the Tax Department from due withholding on the same.
- vii. The controlling Tursts & Medical Colleges also do not conform to the rules and regulations of PMDC as regards to charitable functions; the very basis for claiming exemption.
- viii. The Private Medical Colleges suppress their receipts as declared before the Tax Department.
- ix. The Private Medical Colleges get heavy donations from affluent parents in the range of 14 Lacs to 40 Lacs but do not declare in accounts subject to audit.
- x. Mostly controlling Trusts are being run as family enterprises on commercial basis.

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5. The contents of the above referred press report exhibit serious threats to proper taxation, withholding taxes and also to the charitable functions of these entities. Prima facie, the above given malpractices and violations occur because of lack of stringent and well-defined periodic audit of tax withholding and approval regime u/s 2(36) of the Income Tax Ordinance, 2001.

6. According to the data available, the said dental college is being assessed in LTO Islamabad. The above-mentioned account necessitates that an Own Motion Investigation may be carried out into the tax affairs of Private Medical Colleges and Trusts.

7. In view of above given account, Own Motion Investigation into tax affairs vide No.0083 and 99/OM/2023 was initiated in the case of Islamic International Medical College.

8. FBR was asked to furnish parawise comments, especially explaining the following queries;

- i. **Islamic International Medical & Dental College** avails exemption u/s 2(36) or it is taxable entity?
- ii. Statutory Withholding Statements for the last 05 years have been timely filed by the **Islamic International Medical & Dental College** or enforced by LTO Islamabad.
- iii. When was conducted the last Withholding Audit in respect of **Islamic International Medical & Dental College**.
- iv. When was conducted review of exemption u/s 2(36) in respect of **Islamic International Medical & Dental College**.
- v. Number of faculty of qualified professionals hired by the College with the break of regular teaching faculty and professionals covering clinic side. Withholding statement u/s 149 matches with this declaration or not.
- vi. Any communication by LTO to concerned IR field formations sharing the details of hired professionals for the purposes of Broadening of Tax Base.
- vii. Agreement between Islamic International Medical College and Social Security department/company has ever been examined by LTO or not?

The information on the following prescribed format was also be provided.

Sl. No	Name of Case	Status NPO or PO (Tick relevant)	Date of Approval granted u/s 2(36)	Date of Renewal of Approval	Audit conducted (Mention Tax Years)	Withholding Audit conducted (Mention Years)	Remarks

9. The LTO Islamabad filed written comments wherein they stated that M/s. Islamic International Medical College Trust (Old name "Islamic International Dental College" vide NTN: 1419634 falls in the jurisdiction of LTO Islamabad. The department further stated that regular withholding audit u/s 161/205 is conducted by the assessing authorities. Detail para wise comments as under;

- (i) The taxpayer avails exemption u/s 2(36) of the Ordinance as per order vide dated 28.12.2021, grant for tax years 2021 and 2022. However, the application filed for renewal of approval for tax year 2023 was dismissed dated 17.05.2023. After conducting review of exemption, approval u/s 2(36) of the Ordinance was granted dated 06.11.2023 for tax year 2023 and tax year 2024.
- (ii) Further, statutory withholding statement u/s 165 for the last 05 years has been filed detail is as under;



Tax Year	Withholding Statements u/s 165	Withholding Statements u/s 149
2019	Monthly statements filed	Filed
2020	Filed (July 2019-Dec 2019) (January 2020 to 30.06.2020)	Filed
2021	Monthly statements Filed (July-Sep-2020)	Filed
2022	Quarterly Statement filed	Filed
2023	Quarterly Statement filed	Filed

- (iii) The case for tax years 2018 and 2019 and tax year 2021 are under withholding audit proceedings u/s 161/205 of the Ordinance.
- (iv) Review of exemption was last conducted dated 06<sup>th</sup> September, 2023 for tax year 2023 and tax year 2024.
- (v) Para (V to VII) are subject to the disposal of withholding audit. Withholding audit proceedings u/s 161/205 of the Ordinance for the tax years 2018, 2019 and 2021 are in progress. Notice u/s 161(1A) for Tax Year 2018 was issued on 27.11.2023 for compliance by 05.12.2023 and notice under Rule 44(4) of the Ordinance for Tax year 2019 was issued on 28.11.2023 for compliance by 07.12.2023. After discussion with the AR and on receipt of final reply by the taxpayer number of facility of qualified professionals hired by the college with the break of regular teaching faculty would be ascertained.

10. The same information was also provided on (Annexure A) as under;

S#	Name of Case	Status NPO or PO (Tick relevant)	Date of Approval granted u/s 2(36)	Date of Renewal of Approval	Audit conducted (Mention Tax Years)	Withholding Audit conducted (Mention Years)	Remarks
1	Islamic International Medical College Trust (IIMCT)	NPO	06.09.2023 Tax Year 2023 and 2024	06.09.23	<b>2014</b> (u/s 214C of the Income Tax Ordinance <b>2015</b> u/s 214D (the case is pending vide writ Petition No. 2109/2021 before the Hon'ble Islamabad High Court	<b>2014</b> u/s 124/132 passed dated 27.10.2023. <b>2015</b> u/s 161/205 dated 10.04.2018 <b>2016</b> u/s 161/205 dated 10.04.2018.	Withholding audit for the tax years 2021, tax year 2018 and tax year 2019 are in process. After final reply tax demand if any, will be ascertained and intimated accordingly.

11. The parawise comments and other related documents by the Department have been thoroughly examined. As per comments, the Islamic International Medical ^Dental College was registered on 01.07.2002 and is regularly filing withholding tax statements u/s 165 of the Ordinance, 2001. As per record, the taxpayer avails exemption u/s 2(36) of the Ordinance as per order dated 28.12.2021, granted for tax years 2021 and 2022. However, the application filed for renewal of approval for tax year 2023 was dismissed dated 17.05.2023. After conducting review of exemption, approval u/s 2(36) of the Ordinance was granted dated 06.09.2023 for tax year 2023 and 2024.

12. As per record the department conducted audit for tax year 2014 u/s 214C of the Ordinance. For Tax year 2015 audit u/s 214D conducted which is pending due to writ petition No.2109/2021 before the Hon'ble Islamabad High Court. Similarly for Tax year 2017 order u/s 121 of the Ordinance has been passed. However, no audit for the earlier years was under taken by the department despite the fact that the college is registered with the department since 2002.

13. No break up of receipts into local receipts, fees received from overseas and foreign students has been obtained by the department nor has the same been disclosed in the accounts by the college. No information has been obtained about donations received if any by the college. No information was provided or requisitioned regarding visiting faculty members. The LTO Islamabad has not shared the details of employees/professionals with the concerned IR formations for the purpose of broadening of tax base. No independent information was obtained regarding teaching faculty and Doctors providing professional services.



14. After analysis of the documents the following discrepancies and anomalies were found which were confronted to the department for further clarification;

- i. *The trust is running Riphah University as well which has been allocated separate NTN (1549767-4). How the tax affairs of a Trust enjoying exemption u/s 2(36) are being maintained piecemeal.*
- ii. *Trust colleges charge fee in Dollars as well but apparently while submitting Bank A/Cs no foreign currency A/Cs have been declared.*
- iii. *In 2018 vide letter CP NO.540 dated 19<sup>th</sup> February, 2018 Directorate General I&I-IR had raised certain inherent flaws in the case of instant Trust. (Copy placed opposite). LTO Islamabad must confirm the action/remedial measures as the same pitfalls may impact the subsequent TYs.*
- iv. *Withholding Statements are claimed to have been filed but neither were furnished nor requisitioned & analyzed."*

15. The LTO Islamabad filed parawise reply vide letter dated 16.01.2024 wherein, they stated that pursuant to scrutiny of record and meeting held with the Authorized Representative of the taxpayer Mr. Syed Muhammad Imran from Nasir Absaar & Co in the office of the concerned deputy commissioner it has been ascertained that approval under section 2(36) of the Ordinance was granted by the concerned commissioner on 06.09.2023 for the tax year 2023 and tax year 2024 respectively.

16. The department further stated that statutory withholding tax statements under section 165 of the Ordinance for the last five years have been filed by the taxpayer and withholding tax audits under section 161/205 of the Ordinance for the tax years 2018, 2019 and 2021 are in progress. The department further stated that comprehensive reply/rebuttal in respect of the observations is given as under;

17. With regard to first query regarding separate NTN for Riphah University, it is clarified by the department that Riphah International

University has been established, formed and incorporated under a Federal Charter under Riphah International University Ordinance, 2002 as a body corporate. Consequently, the University was allotted a separate NTN 154976 and currently falls in the jurisdiction of Corporate Office, Islamabad.

18. The department further stated that examination of the relevant documentation /record in the shape of Trust Deed, Charter, Registration Certificate, Bank accounts and Audited Financial Statements as well as Returns of Income reveals that both the aforementioned entities are separate persons in terms of section 2(42) of the Ordinance read with section 80 of the Ordinance for tax purposes and are rightly furnishing independent tax returns and audited accounts.

19. As regards second query regarding foreign currency bank account, the department stated that the audited financial statements depict the cash and cash equivalents as a line item which includes all the bank accounts including foreign currency accounts if any. The complete detail of bank accounts maintained by the Trust as furnished by the A.R of the appellant has been provided. The college maintains 66 banks accounts and the foreign currency account is being reflected in the said list which is maintained in the Meezan Bank Limited.

20. The department further stated that as per the management/AR of the appellant, the foreign currencies held by the organization are translated into Rupees being the functional and reporting currency and any exchange gain or loss is accordingly incorporated in the Profit or loss account. Therefore, no discrepancy arises.



21. The letter issued by I & I vide letter CP No. 540 dated February 19<sup>th</sup>, 2018 relates to the observations in respect of M/s Riphah University having a separate NTN: 1549767-4 which currently falls in the jurisdiction of the Corporate Tax Office, Islamabad. As the report of I&I does not relate to Islamic International Dental College so no further explanation is required for this own motion case.

22. With regard to final query, the department further stated that statutory withholding statements u/s 165 for the last 05 years have been filed by Ms. Islamic International Medical & Dental College Trust NTN: 1419634. The tax office provided copy of annual withholding statement filed u/s 149 for tax year 2023 and tax year 2015 by way of proof that withholding statements are being regularly filed by the said college. **Perusal of the withholding statement u/s 149 for tax year 2023 shows total payment of Rs. 1739 million on which tax of Rs. 61 million has been deducted.** The withholding statement for salary for tax year 2015 also reflected salary paid to individual salaried persons. **The gross salary has been paid at Rs. 307 million against which tax of Rs. 13 million has been deducted.** It is further observed that withholding audit is underway for tax years 2018, 2019 and 2021.

### **FINDINGS:**

23. The details & documents furnished by LTO Islamabad have been examined and following glaring acts of omissions and commissions were noticed;

- (i) Withholding statement filed for TY 2023 reflects that tax deducted from salaries u/s 149 is not deposited regularly as per rules, rather college follows its own patterns.
- (ii) Tax deduction at **Rs. 61 million** against salaries over **Rs. 1.7 billion** needs recheck as apparently the amount appears grossly understated. Professional colleges survive on faculties and certainly not rely on low paid menial workers.
- (iii) In addition to Medical & Dental Colleges, the controlling Trust is also running Doctor of Pharmacy, Doctor of Physical Therapy and

BS Medical Lab Technology. Parawise comments filed by LTO don't take cognizance of receipts, expenses and withholding statements pertaining to these and similar other programmes run by the Trust.

(iv) The controlling trust is running the following Hospitals as well'

- Ripah International Hospital
- Islamic International Dental Hospital
- Pakistan Railway Hospital
- Max Health Hospital

Revenue receipts from all the four hospitals and revenue generated through above referred institutions is clubbed together but while filing withholding statements no segregation is made leaving the whole details vague and manageable.

(v) The controlling Trust is not only sponsor of Ripah University, with multiple campuses in Pakistan it is also running the following overseas institutions.


- ***Ras Al Khaimah College of Dental Science, UAE***
- ***Riphah Medical College Kyrgystan***

The above institutions have certainly been established by the Trust using tax free income generated in Pakistan but income churned out by the said institutions remains undeclared in Pakistan.

(vi) In addition to the above omissions & commissions mentioned in para 13 also constitute maladministration in terms of section 2(3)(ii) of the FTO Ordinance, 2000.

### **RECOMMENDATIONS:**

24. In view of above, FBR to direct:

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- (i) the concerned Commissioner-IR to address the acts of omissions and commissions detailed at Para 23 above;
  - (ii) obtain information about local fees, overseas and foreign fees and check proper declarations thereof in the tax return and take appropriate action under the relevant provisions in case of any discrepancy;
  - (iii) the concerned Commissioner-IR to proceed on the same lines as suggested at (ii) above in respect of donations if received;
  - (iv) the concerned Commissioner-IR to obtain and analyze segregated lists of employees of Islamic International Medical College so as;



- a. to see whether all the faculty members, reflecting at college website are being regularly subjected to withholding taxes at source;
  - b. to see how all employees receiving taxable salaries are borne on Tax Roll and in cases of default details be shared with the concerned tax offices for BTB purposes;
  - c. to see how the share from practice at college teaching Hospital is being paid to specialists and what is the mechanism for tax deduction at source.
- (v) report compliance within 60 days.

  
(Dr. Asif Mahmood Jah)  
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)  
Federal Tax Ombudsman

Dated: 16.2. 2024  
Akif

Approved for reporting