

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2704/SGD/IT/2022

Dated: 24.06.2022* R.O. Sargodha

Mr. Masudur Rasool,
House No. 73/74 Block No.31
Sargodha.

...Complainant

V e r s u s

The Secretary
Revenue Division
Islamabad

... Respondent

Dealing Officer	: Dr. Muhammad Akram Khan, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Complainant in Person
Departmental Representative	: Mr. Muhammad Tahir Munawar ACIR RTO, Sargodha.

FINDINGS / RECOMMENDATIONS

This complaint has been filed u/s 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (TO Ordinance) against deduction of withholding tax on the payments received against **examination duties** of colleges and universities @ 10 percent.

2. Briefly, the Complainant as senior subject specialist at Quaid Academy Educational Development Sargodha has been filing return of income since last 25 years. According to the complainant deptt deducted withholding tax@ 10 percent on the payment received against examination duties of colleges and universities which is unjustified. Being a Govt employee, he pays all the taxes i.e. SNGPL, Electricity, Mobile etc. The complainant prayed to be spared from such unjustified taxes.

3. The complaint was sent for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance,

* Date of registration in FTO Sectt.

2000 read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner IR, RTO, Sargodha vide letter dated 18-07-2022 submitted comments of the Commissioner-IR, Withholding Zone RTO, Sargodha dated 18.07.2022. On merits, it was contended that as per section 153 (1) (b) of the income Tax Ordinance, 2001 every prescribed person/ withholding agent is under legal obligation to deduct tax from the payment made against the services at the rate specified in Division iii of part iii of the First Schedule to the income tax Ordinance, 2001. Depty contended that the complainant falls under the head "**Rendering services**" and tax was deducted in accordance with the law. Further, deduction of tax on services is a matter of income tax policy and FBR being the premier tax collecting agency is only enforcing this policy. Depty also raised objection on the jurisdiction as per section 9(2)(b) of the Hon'ble FTO Ordinance 2000 as the matter pertains to tax policy and assessment of income. Hence no element of mal-administration is involved in the instant case.

4. Both the parties heard and record perused.

FINDINGS:

5. Perusal of the record reveals that there are two issues which need detailed deliberations:

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- i. Payments on account of **examination duties** is a supplemental income in the hands of teaching community. Though the amount so received is mostly meager yet the payers (Education Boards/Universities) being 3rd party, other than employer, the receipt cannot be held as Salary Income.
- ii. FBR's withholding rates on services u/s 153(1)(b) of Income Tax Ordinance, 2001 create distinction between certain **specified services** and **other services** with tax rates ranging from 1.5 % to 10%. The following summary illustrates this statement.

i. In case of transport services, freight forwarding services, air cargo services, courier services, manpower outsourcing services, hotel services, security guard services, software	<ul style="list-style-type: none"> • <u>3% of the gross amount.</u> • Persons not appearing in the Active Taxpayers' List: The applicable tax rate is to be
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<p>development services, IT services and IT enabled services as defined in section 2, tracking services, advertising services (other than by print or electronic media), share registrar services, engineering services including architectural services, warehousing services, services rendered by asset management companies, data services provided under license issued by the Pakistan Telecommunication Authority, telecommunication infrastructure (tower) services, car rental services, building maintenance services, services rendered by Pakistan Stock Exchange Limited and Pakistan Mercantile Exchange Limited, inspection, certification, testing and training services, oilfield services, telecommunication services, collateral management services, travel and tour services</p>	<p>increased by 100% (Rule-1 of Tenth Schedule to the Ordinance),</p>
<p>ii. In case of rendering or providing of services other than as mentioned at (i) above; a) In case of company b) In any other case c) In respect of persons making payment to electronic & print media for advertising services</p>	<ul style="list-style-type: none"> • <u>8% of the gross amount.</u> • <u>10% of the gross amount</u> • <u>1.5% of the gross amount</u> <ul style="list-style-type: none"> ❖ Persons not appearing in the Active Taxpayers' List: The applicable tax rate is to be increased by 100% (Rule-1 of Tenth Schedule to the Ordinance), ❖ No deduction of tax where payment is less than Rs. 30,000/- in aggregate during a financial year <p>[S.153(1)(b)]</p>

- iii. Though FBR provides threshold of Rs. 30000, yet this limit is too meager to provide any genuine relief to low paid teaching community.
- iv. Due to its peculiar nature of job and role in nation building the Teaching Community as a whole deserves kind and compassionate tax treatment; at least nondiscriminatory.

In view of above current tax withholding rates on examination duties/ Services is discriminatory and needs to be reviewed by FBR.

RECOMMENDATIONS:

6. FBR is directed to review the current tax withholding on examination duties/ Services and the same may be rationalized in the following manner:

- i. By making examination duties/ Services part of specified services having 3% tax rate;
- ii. By increasing the existing basic threshold of Rs 30000 to Rs. 1000000/200000 per annum;
- iii. By categorizing instant Services as “**Income Tax from Other Sources**” u/s 39(1) of Income Tax Ordinance, 2001.


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

Dated: 23.8. 2022

Approved for reporting