

# Super Tax under section 4C of the Income Tax Ordinance, 2001

The honorable Sindh High Court, vide its short judgment passed on December 22, 2022, has held that:

- Super tax under section 4C of the Income Tax Ordinance, 2001 shall be applicable from tax year 2023. Consequently, it shall not be applicable to tax year 2022
- Super tax @ 10% applicable to a class of persons to tax year 2022 is discriminatory, hence, ultra vires to the Constitution.
- This judgment will remain suspended and the bank guarantees given by the petitioners will remain intact for sixty days.

## Background

The Finance Act 2022 imposed super tax under section 4C of the Income Tax Ordinance, 2001 on tax years 2022 & 2023 at:

S. No.	Income	Rate	Tax Year	Income
1	Less than Rs.150 million	0% of the income	2022 and onwards	"Income" here is the sum of: (i) Profit on debt, dividend, capital gains, brokerage, and commission; (ii) Taxable income (other than brought forward depreciation and brought forward business losses) under section 9 of the Ordinance, excluding amounts specified in clause (i); (iii) Imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i); and (iv) Income computed, other than brought forward depreciation, brought forward amortization, and brought forward business losses under Fourth, Fifth and Seventh Schedules.
2	Rs.150 million to Rs. 200 million	1% of the income		
3	Rs.200 million to Rs. 250 million	2% of the income		
4	Rs.250 million to Rs. 300 million	3% of the income		
5	Exceeding Rs.300 million	4% of the income		
6	The persons engaged, partly or wholly, in the business of airlines, automobiles, beverages, cement, chemicals, cigarette and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar, and textiles, where the income of such persons exceeds Rs. 300 million	10% of the income		
7	Banking companies, where the income exceeds Rs. 300 million	10% of the income	2023 and onwards	

The taxpayers filed constitutional petitions in the honorable Sindh High Court against this tax on various grounds including the retrospective applicability of the tax on the tax year 2022, which had already ended before the enactment of the Finance Act 2022. The other grounds, as per the short judgment, included "that the super tax unlawfully vitiates vested rights accrued in past and closed transactions; is discriminatory; confiscatory; demonstrably devoid of any intelligible differentia having rational nexus with the object of classification; and amounts to impermissible double taxation."

The honorable Court has issued a short judgment. The detailed judgment will be issued in due course.

According to the short judgment of the honorable Court, the super tax shall be applicable from the tax year 2023. Consequently, it is not applicable to the petitioners for the tax year 2022. The super tax at the rate of 10% on the income of certain persons is discriminatory and thus ultra vires to the Constitution. This judgment will remain suspended and the bank guarantees furnished by the petitioners will remain intact for sixty days.

It is now to be seen whether and to what form and extent, the honorable Supreme Court of Pakistan allows interim relief to the FBR. Until then, the guarantees furnished by the petitioners with the petitions in the Sindh High Court will remain intact.