

**UPDATES ON**

## **CAPITAL VALUE TAX**

(Section 8 of the Finance Act 2022)

## **TAX ON DEEMED INCOME FROM IMMOVABLE PROPERTY**

(Section 7E of the Income Tax Ordinance, 2001)

## **SUPER TAX**

(Section 4C of the Income Tax Ordinance, 2001)

in the Light of

**FINANCE ACT 2022 AND 2023**

The Federal Government implemented three major revenue generation measures vide Finance Act 2022, aiming to increase tax collection from high earners and high net-worth taxpayers while also broadening the tax base. These taxes include:

- **Capital Value Tax** - 1% on offshore assets of resident persons exceeding Rs 100 million and 5% on vehicles having engine capacity exceeding 1300cc.
- **Deemed Rental Income:** 1% tax on the fair market value of certain immovable properties owned by resident persons in Pakistan.
- **Super Tax:** Targeting high-earning taxpayers, super tax was imposed with a maximum rate of 4%. However, persons in specified sectors with income exceeding Rs. 300 million were made subject to a higher rate of 10% for tax year 2022.

These taxes were made effective from the tax year 2022.

These taxes faced litigation in various high courts. Some of the petitions have been decided by the high Courts and the matters have reached to the Supreme Court of Pakistan, wherein the taxpayers have been mostly granted a stay against 50% of the tax payment.

The Finance Act 2023 brought certain changes to these taxes.

A summary of the legislations, modifications, and ongoing litigation is provided below. This publication is for general awareness only; consult the advisors for proper compliance with regulations.

## CAPITAL VALUE TAX

LEGISLATION (FA 2022)	AMENDMENTS (FA 2023)	LITIGATION
CVT at 1% applies to foreign assets outside Pakistan, having value exceeding Rs 100 million, encompassing movable and immovable assets like real estate, stock, bank accounts, etc. The value of these assets is determined based on total cost or fair market value converted to rupees using SBP's exchange rates.	No amendment	<p>The petitions filed by taxpayers were rejected by the Sindh High Court and Lahore High Court.</p> <p>The Sindh High Court ruled that the Federal Government, as per the constitutional authority granted in Article 141 and Article 142, can impose a tax on immovable property outside the province's territorial boundaries.</p> <p>The Supreme Court, vide interim order, has directed the petitioners to make payment of 50% CVT and furnish bank guarantee for the balance of 50%.</p>

# TAX ON DEEMED INCOME UNDER SECTION 7E

LEGISLATION (FA 2022)	AMENDMENTS (FA 2023)	LITIGATION
<p>The Finance Act 2022 imposed 1% tax on resident individuals' deemed income from immovable properties in Pakistan based on FBR-notified values.</p> <p>This tax is not applicable on:</p> <ul style="list-style-type: none"> <li>● One immovable property owned by the resident individual,</li> <li>● Any property generating income that is subject to tax under the Ordinance, and the applicable tax has been paid,</li> <li>● Immovable property acquired in the first tax year, provided tax under section 236K has been paid for it.</li> <li>● Properties with an aggregate fair market value, excluding specified assets, not exceeding Rs. 25 million.</li> <li>● Business premises of the persons on ATL</li> <li>● Agriculture land</li> <li>● Assets having FMV below Rs. 250 million, and</li> <li>● Assets owned by governments, local authorities, or registered builders/developers.</li> </ul>	<p>The Finance Act 2023 brought the following changes to the tax on deemed income:</p> <ol style="list-style-type: none"> <li><b>1</b> Following properties will only be excluded from the tax if the property holder's name appears on the Active Taxpayers' List (ATL), except where individual is not required to file income tax return and holds a certificate to that effect as provided under the Tenth Schedule. The excluded properties include: <ul style="list-style-type: none"> <li>● One immovable property owned by the resident individual.</li> <li>● Any property generating income that is subject to tax under the Ordinance, and the applicable tax has been paid.</li> <li>● Immovable property acquired in the first tax year, provided tax under section 236K has been paid for it.</li> <li>● Properties with an aggregate fair market value, excluding specified assets, not exceeding Rs. 25 million.</li> </ul> </li> <li><b>2</b> The Finance Act 2023 also stipulated that if the tax liability under section 7E is not fulfilled, the registrar or the person registering the transfer is required to refrain from registering the transfer of the subject property.</li> <li><b>3</b> In case the tax liability under section 7E remains unsettled, the transfer of the subject property cannot be registered by either the registrar or the person responsible for registering it. To ensure the implementation of this new condition, the FBR has recently released a circular providing guidelines on the application process.</li> </ol>	<p>The Lahore High Court has ruled that the deeming provisions under section 7E, along with the exclusion of certain persons from the tax levy under this section, are unconstitutional. The court suggested that the Federal Government may enact curative legislation to align the taxation of Capital Value of Assets within the scope of Entry No. 50 of Part I of the Federal Legislative List (FLL) in the Fourth Schedule to the Constitution.</p> <p>On the other hand, the Sindh High Court has rejected the taxpayers' petitions challenging this tax.</p> <p>Meanwhile, the Supreme Court granted a stay, subject to a 50% tax payment and a bank guarantee for the remaining 50%.</p>

# SUPER TAX

LEGISLATION (FA 2022)	AMENDMENTS (FA 2023)	LITIGATION																								
<p>Through the Finance Act 2022, the Government introduced the concept of super tax targeting high-earning taxpayers, which was required to be paid at the time of filing tax returns. The tax rates were set in slabs for the tax year 2022, with a maximum rate of 4%.</p> <p>Certain specified sectors were subject to an enhanced rate of 10% for tax year 2022 only. The higher rate of 10% applied in cases when the income exceeded Rs. 300 million and the person is engaged, whether 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.</p> <p>Banking companies were to be levied with 10% super tax for tax year 2023.</p>	<p>The Finance Act 2023 has revised the super tax rates as follows:</p> <table border="1" data-bbox="595 573 1046 987"> <thead> <tr> <th>Income (Rs.)</th> <th>Tax Year 2022</th> <th>Tax Year 2023 and onwards</th> </tr> </thead> <tbody> <tr> <td>Upto 150m</td> <td>0%</td> <td>0%</td> </tr> <tr> <td>150m-200m</td> <td>1%</td> <td>1%</td> </tr> <tr> <td>200m-250m</td> <td>2%</td> <td>2%</td> </tr> <tr> <td>250m-300m</td> <td>3%</td> <td>3%</td> </tr> <tr> <td>300m-350m</td> <td rowspan="4">4%</td> <td>4%</td> </tr> <tr> <td>350m-400m</td> <td>6%</td> </tr> <tr> <td>400m-500m</td> <td>8%</td> </tr> <tr> <td>&gt; Rs 500m</td> <td>10%</td> </tr> </tbody> </table>	Income (Rs.)	Tax Year 2022	Tax Year 2023 and onwards	Upto 150m	0%	0%	150m-200m	1%	1%	200m-250m	2%	2%	250m-300m	3%	3%	300m-350m	4%	4%	350m-400m	6%	400m-500m	8%	> Rs 500m	10%	<p>The Sindh High Court held super tax @ 10% on 13 selected sectors as discriminatory.</p> <p>The Lahore High Court (Single Bench) upheld the super tax @ 4% on tax year 2022, however, held that the rate of 10% for specified sectors is discriminatory. FBR's Intra-Court Appeal is pending in the High Court.</p> <p>The Islamabad High Court decided the petitions against this tax as follows:</p> <ul style="list-style-type: none"> <li>● Super tax is not be applied retrospectively to tax year 2022</li> <li>● Super tax @ 10% on specified sectors is discriminatory thus ultra vires to article 25 of the Constitution.</li> <li>● Super tax is not applicable to income under final tax regime.</li> <li>● Benefit of brought forward depreciation, brought forward business losses, and brought forward amortization allowances are available to compute income for the purpose of super tax.</li> <li>● Super tax is not applicable to exempt benevolent funds.</li> <li>● Super tax is not applicable to petroleum E&amp;P companies if the tax exceeds the threshold under the 5th Schedule.</li> </ul> <p>Hearing against orders of the High Courts is pending in the SC. The Supreme Court has, vide its interim Order, directed to pay super tax @ 4% to all the petitioners including those persons who were made subject to super tax @ 10%.</p>
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