



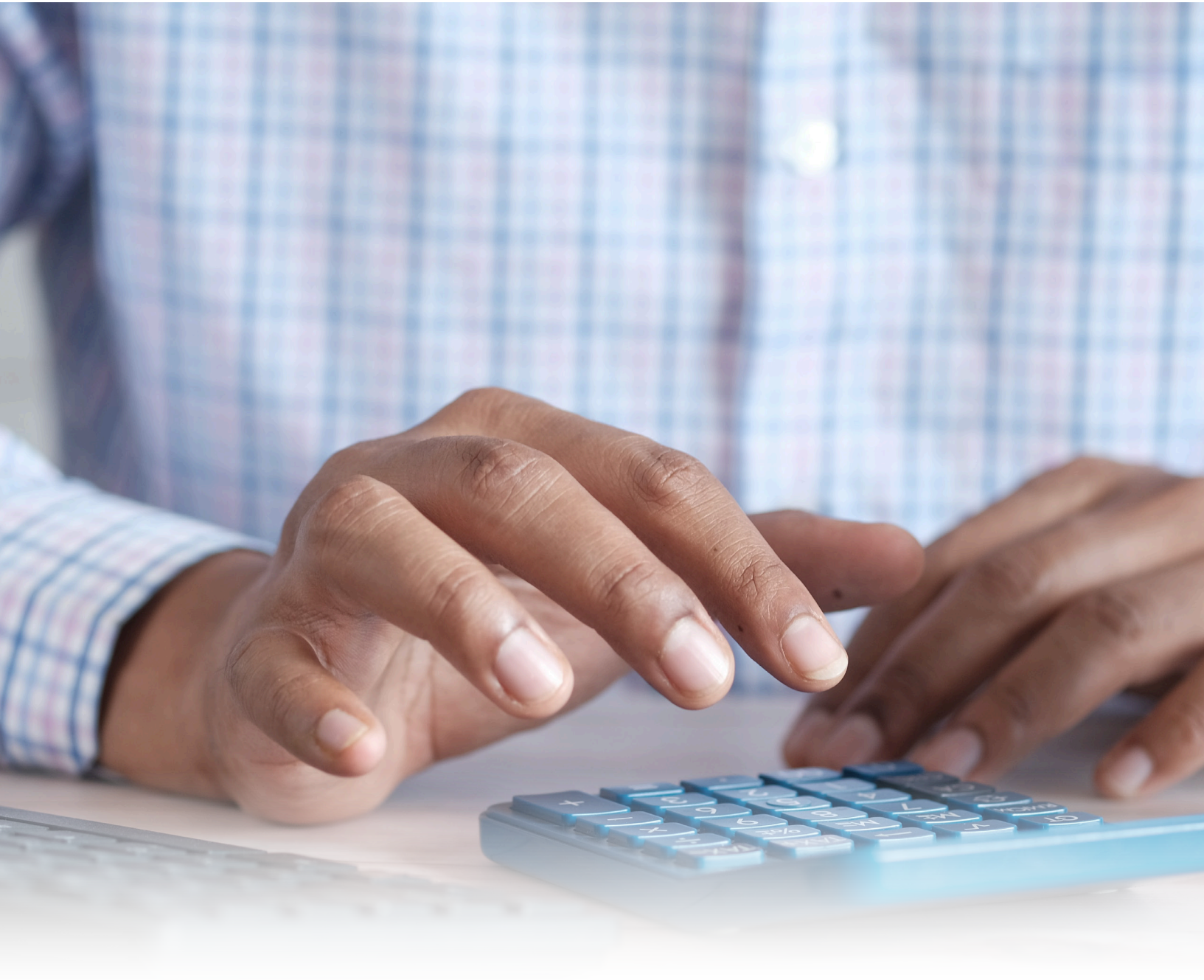
TAX UPDATE NEWSLETTER

BY BDO IN PAKISTAN

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Foreword

We feel immense pleasure in issuing our first **BDO TAX UPDATE NEWSLETTER**. We hope that this **NEWSLETTER** finds you in good health. The purpose of this **NEWSLETTER** is to update our readers on the recent development in the taxation laws of Pakistan vide Finance (Supplementary) Act, 2023, circulars and notifications and to provide a glimpse over the landmark judgments passed by the courts of law.

We would like to further inform our readers that this **NEWSLETTER** contains an elaboration of important notifications and circulars issued by the Federal Board of Revenue and Provincial Tax Authorities. Further, this document also contains our commentary on landmark judgements passed by the courts of law.

In the last, we wish that this **NEWSLETTER** benefits our readers and provide a speedy update over the current notifications and circulars issued by the **Federal Board of Revenue & Provincial Tax Authorities**.

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FINANCE (SUPPLEMENTARY) ACT, 2023

The Federal government has introduced direct and indirect taxation measures for complying with the conditions of the IMF program through issuance of two SROs on February 14th, 2023 and thereafter presenting Finance (Supplementary) Bill, 2023 [The Bill] in both the Houses on February 15th, 2023. which was asserted by the President of the Islamic Republic of Pakistan on February 28th 2023.

HIGHLIGHT OF THE TAXATION MEASURES INTRODUCED AS UNDER:

1. Adjustable advance tax on purchase of private limited company or public unlisted company shares at the rate of 10% of the fair market value of such shares.
2. Collection of advance tax on functions and gathering.
3. Increase in general sales tax rate from 17% to 18%.
4. Increase in FED on certain goods which includes cigarettes, aerated water, cement and sugary drinks.

BDO commentary on the Finance (Supplementary) Bill, 2023 is accessible on our website www.bdo.com.pk

INCOME TAX

Notifications / Circulars

Addition of new sub- rule (4) in rule 8 of the seventh schedule of the income tax ordinance, 2001 [ordinance]

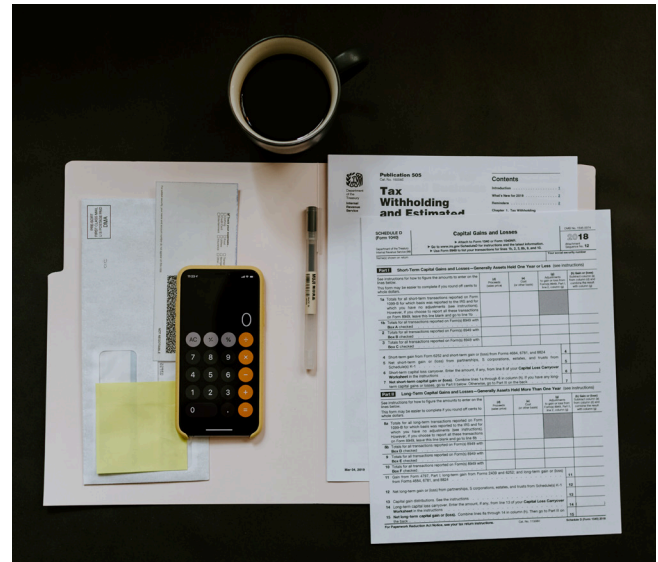
The FBR, vide SRO 213(I)/2023, dated 22nd February 2023, added a new sub rule 4 in Rule 8 of the Seventh Schedule of the Income Tax Ordinance, 2001 through which profit on debt and capital gain from debt and debt instruments approved by the federal government shall be exempt from tax chargeable under the Ordinance, derived by any non-resident banking company approved by federal government for the purpose of this sub-rule.

Rules for the sharing of declaration of assets of civil servants rules, 2023

The FBR, vide SRO 80(I)/2023, dated 1st February 2023, notified rules which is called the “Sharing of Declaration of Assets of the Civil Servants Rules, 2023” which has been published vide notification no. SRO 76(I)/2023, dated January 26th 2023. These rules shall apply for sharing the information with banking companies as defined under sub- section 7 of section 2 of the Income Tax Ordinance, 2001 and these rules shall apply for limited purpose of sharing of information in respect of civil servants in BS 17-22. These rules also contain compliance requirement, procedure and responsibility of the bank.

Amendment in the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in islamabad on May 13th, 2004

The FBR, vide SRO 82(I)/2023, dated January 30th 2023, notify the amendment in existing Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income between Pakistan and Tajikistan signed in Islamabad on May 13th, 2004.



Further amendment in the Second Schedule of the Income Tax Ordinance, 2001

The FBR, vide SRO 72(I)/2023, dated January 25th 2023, notified the amendment from words “ninety days” to expression “three months from December 1st 2022” in Clause 123 of Part IV of Second Schedule of the Income Tax Ordinance, 2001. Now, the exemptions on goods required and imported for relief operation for flood affected as certified by the National Disaster Management Authority/ Provincial Disaster Management Authority would commence three months from December 1st 2022.

Manual for exchange of information on request [EOIR]

The FBR, vide Circular No. 19 of 2023, dated January 27th 2023, circulate the manual which has been developed as a guide to the internal processes and procedures to be followed by field formation of Inland Revenue in general and the Directorate General of International taxes FBR Pakistan in particular in respect of all incoming and outgoing Exchange of Information on Request (EOIR) and spontaneous Exchange of Information (SEOI).

SALES TAX

Notifications / Circulars



Enhancement in standard rate of sales tax from 17% to 18%

The Federal Government while assuming the powers conferred on it under Section 3(2) (b) of the Sales Tax Act, 1990 [the Act], vide SRO 179(I)/2023, dated February 14th 2023 enhance the rate of sales tax in respect of taxable goods falling within the purview of sub-section 1 of section 3 of the Sales Tax Act, 1990 from seventeen percent to eighteen percent.

Exemption of whole sales tax on the import and supply of the donation consignments and relief items

The FBR, vide SRO 70(I)/2023, dated January 25th 2023, exempted for the period of three months from the 1st day of December 2022 the import and supply of the donation consignments and relief items as certified by the National Disaster Management Authority or a Provincial Disaster Management Authority for relief operation of flood affectees, from the whole of the sales tax.

Exemption of whole sales tax in respect of old contingent owned equipment (COE) or used stores of civil armed forces

The FBR, vide SRO 01(I)/2023, dated January 3rd 2023, exempt whole of sales tax in respect of old Contingent Owned Equipment (COE) or used stores of Civil Armed Forces, as the case may be, that were repatriated and have arrived at Karachi Port after completion of United Nations Peace Keeping mission in Darfur (Sudan).

Sales tax general order no. 6 of 2023 tier-1 retailer

Vide instant order dated January 10th 2023, a list of 81 identified T-1Rs has been placed on FBR's web portal allowing them to integrate with FBR's system by January 10th 2023. Failure to comply would result in disallowance of input tax claimed. Without any further notice or proceedings, creating tax amount by the same amount.



FEDERAL EXCISE DUTY

Notifications / Circulars

Enhancement in rate of federal excise duty on locally manufactured cigarettes

The Federal Government vide SRO 178(1)/2023 dated February 14th 2023 direct that the excise duty shall be levied and collected on fixed basis at the rates specified in column (4) of the Table below on the goods specified in column (2) of the said Table falling under Pakistan Customs Tariff heading specified in column (3) thereof, namely:

S.No (1)	Description of Goods (2)	Heading/ sub-heading (3)	Rate of duty (4)
1.	Locally produced cigarettes if their on-pack printed retail price exceeds nine thousand rupee per thousand cigarettes.	24.02	Rupees sixteen thousand five hundred per thousand cigarettes
2.	Locally produced cigarettes if their on-pack printed retail price does not exceed nine thousand rupees per thousand cigarettes.	24.02	Rupees five thousand and fifty per thousand cigarettes

Exemption of whole federal excise duty on the donation consignment and relief items goods

The Federal Government, vide SRO 71 (I)/2023, dated January 25th 2023, exempt for the period of three months from the 1st day of December 2022 the whole of federal excise duty leviable on the donation consignments and relief items as certified by the National Disaster Management Authority or a Provincial Disaster Management Authority for relief operation of flood affectees.



PROVINCIAL TAX LAWS OF PAKISTAN

Sindh Sales Tax on Services Act, 2011 - Notifications / Circulars

Condonation of the date for online submission of the option/election form “S” prescribed under rule 421 of the Sindh Sales Tax on Services Rules, 2011

The SRB, vide Circular no.01/2023, dated January 5th 2023 granted condonation in submission of Form “S” for the period of up to January 16th 2023. Upon election of Form “S” persons providing / rendering the services of software/ IT based system development consultants can opt for the payment of tax at the reduced rate of 3% [instead of standard rate of 13%] subject to the following conditions:

1. The service provider is registered with SRB showing tariff heading service of 9815.6000
2. The prescribed condonation fee is paid by January 16th 2023
3. The registered person will not carry forward any unadjusted input tax; and
4. The tax already paid at standard rate of 13% will not be refunded and the invoices will not be revised whether by issuing debit or credit note or otherwise.



CURRENT TAXATION ISSUES

The current taxation issues that are being currently faced by the taxpayers are as follows:

Supertax on high earning income under section 4C of the Income Tax Ordinance, 2001:

Super tax on high earning income under section 4C of the Income Tax Ordinance, 2001 is being implemented vide Finance Act, 2022 and applicable retrospectively W.E.F from Tax year 2022 and onwards. The levy of this newly implemented tax has been challenged by various taxpayers under courts of law as the taxpayers are reluctant to pay this new additional tax that has been imposed on them. [Refer topic Landmark judgements of the courts of law].

Tax on deemed income under section 7E of the Income Tax Ordinance, 2001:

Tax on deemed income under section 7E of the Income Tax Ordinance, 2001 is being implemented vide Finance Act, 2022 and applicable retrospectively W.E.F from Tax year 2022 and onwards which has been challenged by the taxpayers under courts of law as the taxpayers are reluctant to pay this new tax calculated on their deemed income. [Refer topic Landmark judgements of the courts of law].

Capital value tax, 2022

Capital Value Tax (CVT) has been levied, charged, collected and paid on the value of foreign assets at the rates specified in the First Schedule of section 8 of the Finance Act, 2022 for tax year 2022 and onwards. The CVT has been levied on various foreign assets where the amount of PKR converted using SBP exchange rate as on June 30th 2022 exceeds Rs. 100 Million. The levy has been challenged by the taxpayers under courts of law. [Refer topic Landmark judgements of the courts of law].

LANDMARK JUDGEMENTS OF THE COURTS OF LAW

1 - Section 4C super tax on high earning persons

As per The Finance Act 2022, the FBR has imposed Super Tax under section 4C of the Income Tax Ordinance, 2001 from tax year 2022 and onwards:

S.No (1)	Income Slabs	Tax Rates	Charging Year	Incomes
1.	Less than Rs. 150 million	0% of the Income	2022 & 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	2023 & onwards	
7.	Banking companies, where the income exceeds Rs. 300 million	10% of the Income		

The taxpayers filed constitutional petitions before the Honorable Sindh High Court against the said tax on various grounds including the retrospective applicability of the tax from the tax year 2022, which had already ended before the enactment of the Finance Act, 2022.

The Sindh High Court (SHC) judgment

The High Court of Sindh through a short order passed on December 22nd 2022, which was later on through a detailed judgment (January 13th 2023), had partly allowed the petitions filed against Super Tax imposed under section 4C of the Income Tax Ordinance, 2001 [the Ordinance] as introduced through Finance Act, 2022.

Facts of the Case

The Petitioners have challenged the constitutionality of Section 4C of the Income Tax Ordinance, 2001, and provisions appurtenant thereto, introduced vide Finance Act 2022, inter alia, upon grounds that the same 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.

Judgement / Conclusion

Description	Basis of Decision
Double Taxation	<p>The Courts have consistently maintained that the scope of a provision could not be extended by analogy or beneficent / equitable construction in order to prevent an anomaly and if a section of a taxing statute creates doubt or ambiguity then it ought not to be construed to extract a new added obligation, not formerly cast upon the tax payer. In such circumstances we do hereby find that super tax, levied once again, vide section 4C could not be recovered during the subsistence of the benefit / protection granted to the tax payer vide section 4B of the Ordinance.</p> <p>While we remain cognizant that the legislature cannot be bound by any representation provided to us on behalf of FBR, however, even in its present form the protection afforded vide section 4B of the Ordinance only extends till tax year 2022. Therefore, subject to the conclusion recorded in the preceding paragraph, section 4C of the Ordinance is reconciled to read that the levy contemplated therein shall be applicable from tax year 2023.</p>
Ultra vires to the Constitution	<p>(a)The Constitution confers fundamental rights upon citizens with respect to property, as per Articles 23 and 24 of the Constitution, and such rights could not be abridged by measures determined to be discriminatory. In the present facts the jury was constrained to observe that the Proviso could not survive the test of intelligible differentia, as it could not be demonstrated that imposition of a two hundred and fifty percent (250%) higher rate of super tax was based on any intelligible differentia, having nexus with the purpose of the law.</p> <p>Respondents' submissions did not even indicate, let alone establish, any qualifying intelligible differentia and that the entire justification advanced in support of the Proviso was prima facie predicated upon non-representative sampling.</p>
Levy of tax is discriminatory	<p>It is seen from the plain verbiage of section 4C that super tax has been imposed upon every person and the rate of taxation applicable is incremental, as per the appurtenant schedule. The classification determinant for the rate is the income threshold and the respondents' counsel have remained unable to demonstrate any reasonableness in so far as the sub classification undertaken vide the Proviso is concerned or any nexus with the object of the levy. Therefore, we are constrained to find the Proviso to be prima facie discriminatory, hence, respectfully remain unable to accord any lawful sanction thereto.</p>
Levy of tax is discriminatory	<p>The deliberation undertaken supra led us to conclude that super tax, levied once again vide section 4C of the Ordinance, could not be recovered during the subsistence of the benefit / protection granted to the tax payer vide section 4B of the Ordinance and the only avenue to save the conflicting provisions of the law was to harmonize the same. In addition thereto, the 1st proviso to Division IIB of Part I of the First Schedule to the Ordinance was found to be prima facie discriminatory and the respondents' learned counsel remained unable to demonstrate any intelligible differentia therein, having rational nexus with the object of classification.</p>
Applicability	To be implemented from tax year 2023



These petitions are allowed in terms of and to the extent specificity herein below:

1. Sections 4C of the Income Tax Ordinance 2001 is read to reflect that the levy shall be applicable from the tax year 2023.
2. Notwithstanding the foregoing, the first proviso to Division IIB of Part I of the First Schedule to the Income Tax Ordinance 2001 is declared to be discriminatory, hence, ultra vires to the Constitution.
3. The operation of the judgment i.e. the short order shall remain suspended for a period of sixty days.
4. The securities furnished shall remain intact for the sixty day period.

The reason behind the temporary hold on the judgment appears to be to maintain the securities provided. This has resulted in taxpayers who do not plan to pay the Super Tax for the tax year 2022 still have to furnish securities equal to the full amount of the Super Tax to the Nazir of the High Court.

According to the short judgment of the Honorable Sindh High Court, the super tax shall be applicable from 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. The operation on this judgment will remain suspended and the bank guarantees furnished by the petitioners will remain intact for sixty days.

The FBR filed petition before the Supreme Court of Pakistan against the said order.

The Supreme Court of Pakistan on February 16th 2023 passed the order wherein it was held that the taxpayers who are liable to pay super tax at the rate of 10% under the proviso shall deposit the same within one week at the rate of 4% which is applicable to assessee industries earning income exceeding Rs. 300 million as provided in Division II B ibid falling outside the proviso thereon. In the event that the respondents have furnished bank guarantees on the direction of the High court then the same shall be en-cashed by the petitioner to the extent of 4% tax.

The Sindh High Court on February 24th 2023 passed recovery order which clearly states that the Supreme Court of Pakistan judgement dated February 16th 2023 pertains to tax year 2022 and to all the person earning income exceeding Rs. 150 Million. Therefore, based on this judgement it is clear that Super tax has to be paid for tax year 2022. The only relief provided is that the sectors which were supposed to pay 10% tax are now only required to pay 4% super tax.

2 - Section 7E tax on deemed income

Through Finance Act 2022, FBR has imposed tax on deemed income of resident person on FMV of the properties exceeding 25m applicable from tax year 2022 and onward.

S.No	Charging Income	Exclusions
1.	For tax year 2022 and onwards, a tax shall be imposed at the rates specified in Division VIII C of Part-I of the First Schedule on the income specified in this section.	
2.	A resident person shall be treated to have derived, as income chargeable to tax under this section, an amount equal to five (5%) percent of the fair market value (FMV) of capital assets situated in Pakistan held on the last day of tax year excluding the following, namely:	<ul style="list-style-type: none"> (a) one capital asset owned by the resident person; (b) self-owned business premises from where the business is carried out by the persons appearing on the active taxpayers' list at any time during the year; (c) self-owned agriculture land where agriculture activity is carried out by person excluding farmhouse and land annexed thereto; (d) capital asset allotted to: <ul style="list-style-type: none"> (i) a Shaheed or dependents of a shaheed belonging to Pakistan Armed Forces; (ii) a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government; (iii) a war wounded person while in service of Pakistan armed forces or Federal or provincial government; and (iv) an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial governments, being original allottees of the capital asset duly certified by the allotment authority; (e) any property from which income is chargeable to tax under the Ordinance and tax leviable is paid thereon; (f) capital asset in the first tax year of acquisition where tax under section 236K has been paid; (g) where the fair market value of the capital assets in aggregate excluding the capital assets mentioned in clauses (a), (b), (c), (d), (e) and (f) does not exceed Rupees twenty-five million; (h) capital assets owned by a provincial government or a local government; or <ul style="list-style-type: none"> (i) capital assets owned by a local authority, a development authority, builders and developers for land development and construction, subject to the condition that such persons are registered with Directorate General of Designated Non-Financial Businesses and Professions.

		<p>“capital asset” means property of any kind held by a person, whether or not connected with a business, but does not include:</p> <p>(i) any stock-in-trade, consumable stores or raw materials held for the purpose of business;</p> <p>(ii) any shares, stocks or securities;</p> <p>(iii) any property with respect to which the person is entitled to a depreciation deduction under section 22 or amortization deduction under section 24; or</p> <p>(iv) any movable asset not mentioned in clauses (i), (ii) or (iii);</p>
		<p>The rate of under section 7E shall be 20% Under Division VIII C of Part-I of the First Schedule</p>

Petitions have been filed on the ground that it is ultra vires to the Constitution and also discriminatory; confiscatory; hence, void, ab-initio and liable to be struck down.

High court of Sindh in a short judgement order No. 2023 SLD 68 Equiv. Citation: (2023)127 TAX 247 = 2023 PTCL 118, dated October 28th, 2022 confirmed the imposition and application of the said tax on the grounds:

Grounds for Challenge

- **It is ultra vires to the Constitution and so also discriminatory; confiscatory; hence, void ab-initio and liable to be struck down**
- **Provincial Govt. is competent to levy such tax not Federal Govt.**
- **It is discriminatory as it provides certain exceptions and exclusions without providing any rational to such exclusions.**
- **It violets the fundamental rights as per Article 23 read with Article 253 of the Constitution.**

Judgement / Conclusion

Description	Basis of Decision
Federal Govt. is fully competent	<ul style="list-style-type: none"> • The impugned levy is in fact a tax on property and not a tax on any income generated by the Petitioners • The tax is on the deemed income and not on immovable property as contended • Even it is ordinary economic sense, the expression “income” includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it on-self. • As per settled law the legislature is competent to classify persons or properties into different categories subject to different rate of tax
Concept of Deemed Income	<ul style="list-style-type: none"> • The concept of deemed income has been held to be valid in various cases including the celebrated case of Elahi Cotton (Supra) pronounced by Hon’ble Supreme Court of Pakistan; and therefore, the impugned levy cannot be declared as ultra vires as contended on behalf of the Petitioners.
Not ultra vires to the Constitution	<ul style="list-style-type: none"> • For struck down the Article 25 of the Constitution, it must be demonstrated that the said law is not based on intelligible criteria • Does not have a nexus with the purpose of law • Constitutional mandate that a law should not be discriminatory is fulfilled • The competence to levy tax on different Classes of persons and merely for the fact the that someone is exempted from levy of such tax, it cannot be always pleaded that it is discriminatory • There is no concept of invalidating a levy or tax merely on this ground that the taxpayer does not have any such capacity to pay the tax • The Supreme court in Elahi Cotton case has held that levy of a tax in its operation may result in hardship or advantages or disadvantages to individual assesses which are accidental and inevitable
Levy of tax is not confiscatory and discriminatory	<ul style="list-style-type: none"> • The competence to levy tax on different Classes of persons and merely for the fact the that someone is exempted from levy of such tax, it cannot be always pleaded that it is discriminatory • There is no concept of invalidating a levy or tax merely on this ground that the taxpayer does not have any such capacity to pay the tax • The Supreme court in Elahi Cotton case has held that levy of a tax in its operation may result in hardship or advantages or disadvantages to individual assesses which are accidental and inevitable

Capital Value Tax, 2022 [CVT]

Background:

The Finance Act, 2022 has enacted CVT in respect of below-referred assets:

Category of Asset	Rate of CVT	Basis of Valuation	Person responsible to collect CVT	Applicability
a) motor vehicle held in Pakistan where the engine capacity exceeds 1300cc or in case of electric vehicles, the battery power capacity exceeds 50 kwh	1% of the value	(i) Where the vehicle is imported in Pakistan, the import value assessed by the Customs authorities as increased by duties and taxes leviable at import stage;	Collector of Customs at the time of import.	CVT is chargeable from July 1 st , 2022
		(ii) where the vehicle is manufactured or assembled locally in Pakistan, the ex-factory price inclusive of all duties and taxes;	Local manufacturer or assembler at the time of sale (in case of sale on installment, the CVT shall be collected at the time of payment of first installment).	
		(iii) where the vehicle is auctioned, the auction price inclusive of all duties and taxes;	Any person making sale by public auction or auction by tender (in case of sale on installment, the CVT shall be collected at the time of payment of first installment).	
		Notes: 1) The value stated in (i) through (iii) above shall be reduced by 10% for each year provided that the value shall be treated as zero after 5 years from year of acquisition of vehicle; 2) Motor vehicle registering authority shall collect CVT at the time of registration or transfer of registration if CVT on such vehicle has not been paid at time of import, purchase from local manufacturer or auction, as the case may be.		
b) Foreign assets of a resident individual where the value of such assets on last day of the tax year in aggregate exceeds Rs. 100 million. Foreign assets have been defined to mean any movable or immovable assets held outside Pakistan, whether directly or indirectly, and includes but not limited to real	1% of the value	The value shall be: (i) the total cost of the foreign assets on the last day of the tax year, in relevant foreign currency converted into Rupees as per exchange rates notified by State Bank of Pakistan for the said day; (ii) where the cost of foreign asset as provided in para (i) above cannot be determined with	The person holding the assets shall be liable to pay CVT at the time income tax return for the tax year is due.	From tax year 2022 and onwards

<p>estate, mortgaged assets, stock and shares, bank accounts, bullion, cash, jewels, jewelry, paintings, accounts and loan receivables, assets held in dependents' name, beneficial ownership or beneficial interests or contribution in offshore entities or trusts. Under entry 50 of Federal Legislative List, tax on capital value of immovable property can only be imposed by provincial government. However, it appears that such restriction is applicable only on immovable property situated in a province and not outside Pakistan.</p>		<p>reasonable accuracy, the fair market value of the asset on the last day of the tax year, in relevant foreign currency converted into Rupees as per exchange rates notified by the State Bank of Pakistan for the said day;</p>		
<p>c) such assets or class of assets as may be specified by Federal Government through notification in official Gazette</p>	<p>Not exceeding 5%. The manner of collection of CVT to be prescribed in notification</p>	<p>The basis of valuation shall be as specified in such notification.</p>	<p>Federal Government to notify the manner in which CVT is to be collected.</p>	<p>From tax year 2022 and onwards</p>

Various taxpayers, inter alia, possessing foreign assets through various petitions approached the High Courts of the country to challenge such CVT on the following grounds:

1. CVT enacted through Finance Act by way of an act of Parliament who has no legislative competence to levy such tax on foreign assets of the Petitioners, pursuant to the 18th Amendment to the Constitution, which has curtailed the power of levying any tax on immovable properties, being a provincial subject.
2. Article 142 of the Constitution empowers the Parliament to legislate on subjects enumerated in the Federal Legislative List only, whereas, there is a proviso to Entry-50 of the Federal Legislative List to the 4th Schedule of the Constitution that excludes the taxes on immovable property.

Judgement/ Conclusion

The SHC vide order dated December 30th 2022 dismissed the petitions and pronounced the following:

1. Article 142(c) of the Constitution when read in conjunction with Sub-Article (a) and Sub-Article (b) of Article 142, reflects that while enacting the 18th Amendment, the Provincial Autonomy though being expanded by only providing a Federal Legislative List in respect of competence of the Parliament. What is not within the competence of the Province will stand reverted to the Parliament. Article 142(d) clearly provides that Parliament shall have exclusive powers to make laws with respect of all matters pertaining to such areas in the Federation as are not included in any Province. This means that Parliament shall have competence to legislate in respect of all fields of legislation, which are either enumerated in the Federal Legislative List or otherwise and the only condition which has to be met is that such law shall not be in respect of any area, which is included within the Province. For the present purposes, it is not in dispute that the foreign assets including immovable properties do not fall in any area within the Province.
2. The issue as to the territorial limits as contemplated in Articles 141 and 142 still remains intact and what is not within the territorial limits of the Province will revert back to the Parliament.
3. A person who is a resident in Pakistan, is liable to tax in respect of his foreign income. Admittedly the foreign income is not earned within the territorial jurisdiction of Pakistan; but in terms of Constitutional provisions, which empowers the Parliament to levy taxes on income of a resident person; his income abroad is also taxed and such tax has never been disputed before the Court.
4. Pursuant to the Foreign Assets (Declaration and Repatriation) Act, 2018, the Petitioners as well as other taxpayers availed such amnesty and after paying requisite tax, they declared these properties under their Wealth Tax Returns. These are now part of the Wealth Tax Returns of the Resident taxpayers; therefore, even otherwise there is a nexus of these properties with the income and wealth of the resident taxpayers and there appears to be no impediment or restriction for the Parliament to levy the tax in question.

In the view of above, there is no justifiable reason to declare that section 8 of the Finance Act, 2022, as ultra vires to the Constitution.

DISCLAIMER:

This publication contains brief commentary on circulars and SROs issued during January 2023 and February 2023 and on important judgements.

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