



TAX PAK

Newsletter by

Tola Associates

June 2023

Address :

408, 4th Floor, Continental Trade
Centre Clifton Block-8, Karachi

Email & Website :

connect@tolaassociates.com
www.tolaassociates.com

Phone:

+92-21-35303294-6



CONTRIBUTORS



**Mr. Muhammad Furqan
ACA**
Head of Editorial Board



**Mr. Muhammad Amayed
Ashfaq Tola**
Co-Head of Editorial
Board



**Ms. Baria Khushnuma
Hashmi**
Contributor

CONTENTS

Tax Notifications/
Circulars

Corporate Notifications /
Circulars

Case Law 1: No Super Tax
(Section 4C) on Capital
Gains on Immoveable
property held for more
than 4 years, for Tax Year
2022

Topic of the Month :Super
Tax (Sections 4B and 4C)



Editorial Note

Asalam-o-alaikum and Eid Mubarak everyone! Hope this monthly issue of TaxPak finds you in good spirits and immaculate health! We welcome you to another edition of TaxPak, our monthly publication the purpose of which is to provide a monthly update on the ongoing tax related developments in Pakistan. Alhamdulillah, so far, we have been successful in our mission to educate about, and keep the public-at-large updated of, these developments on a monthly basis.

Moreover, we would like to apprise the readers of what information you can expect in this document. This newsletter contains an elaboration of important notifications and circulars issued by the Federal Board of Revenue ("FBR") and its provincial counterparts. Moreover, Notifications from the corporate regulatory body i.e., SECP are also discussed. As our main aim is to keep the masses updated regarding the developments in the Pakistani tax law, we usually discuss a (relatively) recent judgement passed by the courts of law. This edition of TaxPak discusses regarding a recent judgement passed by the Appellate Tribunal Inland Revenue ("ATIR") wherein it was held that super tax would not be applicable where capital gain was to be computed zero as per Section 37 the Income Tax Ordinance, 2001 ("ITO").

Towards the end of the newsletter, we have discussed our Topic of the month titled "Super Tax". The said topic provides an insight on the the Super tax under section 4B and 4C of the ITO and the judicial pronouncements regarding both the Sections.

All our readers are requested to visit our website www.tolaassociates.com, or download our mobile application in order to access previous published editions of this TaxPak along with other publications, and to stay updated of future notifications. Lastly, we request our readers to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

Warm Regards,

Tola Associates.

FBR Notifications

Income Tax Notifications

1. Draft Manual Income Tax Return Form

The FBR, vide SRO 745(I)/2023, dated 19th June 2023, issued draft further amendments in the Income Tax Rules, 2002 for suggestions and objections from all persons within seven days from the date of issue. In the notification, Draft manual income tax return for individuals was notified which will be applicable for the tax year 2023. For further reading: [FBR](https://download1.fbr.gov.pk/SROs/20236192061647326sro745-2023.pdf) (<https://download1.fbr.gov.pk/SROs/20236192061647326sro745-2023.pdf>)

2. Draft Electronic Income Tax Return forms

The FBR, vide SRO 746(I)/2023, dated 19th June 2023, issued draft further amendments in the Income Tax Ordinance, 2001 for suggestions and objections from all persons within seven days from the date of issue. In the notification, electronic return for companies, AOPs, Business Individuals, Salaried individuals, SMEs (Small and Medium Enterprises), Non-resident Pakistan origin person having no Pakistan source income, Retailers, Non-resident ship owner/charter, non-resident aircraft owner/charter, and manufacturers was notified which will be applicable for the Tax Year 2023. For further reading: [FBR](https://download1.fbr.gov.pk/SROs/20236192065522946SRO-746.pdf) (<https://download1.fbr.gov.pk/SROs/20236192065522946SRO-746.pdf>)

3. Draft Foreign Income and Assets Statement Form

The FBR, vide SRO 747(I)/2023, dated 19th June 2023, issued draft further amendments in the Income Tax Rules, 2002 for suggestions and objections from all persons within seven days from the date of issue. In the notification, draft amendments inserting Rule No. 36A-Foreign Income and Assets statement for the tax year 2023 and onwards was made. Under this amendment, a resident person shall submit the foreign income and assets statement for (a) the person's total foreign assets and liabilities as on the last day of the tax year; (b) in case any foreign assets were transferred from one to another, then the consideration for the said transaction; (c) complete particulars of foreign income/expenditure derived during the tax year and the expenditures wholly and necessarily for the purposes of deriving the said income.

The said return shall be accompanied with documents, statements and certificates as prescribed in the Ordinance/ rules/ circulars. Furthermore, in case of failure of submitting the return, penalty u/s 182 shall be enforceable. For further information: [FBR](https://download1.fbr.gov.pk/SROs/202361921695856SRO747-2023.pdf) (<https://download1.fbr.gov.pk/SROs/202361921695856SRO747-2023.pdf>)

4. Draft Amendments with respect to contribution to inland revenue common pool fund

The FBR, vide SRO 648(I)/2023, dated 2nd June 2023, issued draft further amendments to the Inland Revenue Reward Rules, 2021 wherein, along with the other various changes made in this rules, one of them was with regards to contribution to Inland Revenue Common Pool Fund 2023 wherein in 5% of the reward sanctioned to BS-17 officers and above and 2.5% to BS-16 and below shall be deposited in the Inland Revenue Common Pool Fund 2023. For further information: **FBR** (<https://download1.fbr.gov.pk/SROs/202362196265453DraftSRONo.648.pdf>)

The proposed amendments were incorporated vide SRO 687(I)/2023, dated 14th June 2023. For further reading: **FBR** ([https://download1.fbr.gov.pk/SROs/20236141561821804SRO687\(I\)2023dated14.6.2023.pdf](https://download1.fbr.gov.pk/SROs/20236141561821804SRO687(I)2023dated14.6.2023.pdf))

Sales Tax Notifications

1. Services of Cosmetic Surgery

The SRB, vide SRB-3-4/29/2023, dated 12th June 2023, issued further amendments to its earlier Notification No. SRB-3-4/10/2011, dated 18th October, 2011 wherein with effect from 1st July 2023, services of cosmetic dental surgery, orthodontics, aesthetic dentistry, and similar cosmetic dental services were taxable. Furthermore, an explanation was also inserted with respect to the above-mentioned services, wherein it was stated that these registered persons do not provide any other service other than services of cosmetic dental surgery, orthodontics, aesthetic dentistry, and similar cosmetic dental services. For further reading: **SRB** (https://www.srb.gos.pk/contents/Notifications/20230612_NOTIFICATION_29.pdf)

2. Exemption of the whole of sales tax against certain services

The SRB, issued Notification No. SRB-3-4/28/2023 dated 9th June 2023, wherein, exemption of whole of sales tax payable was granted on services directly received or procured by the Health Department, Sindh and funded by a grant from the Japan International Cooperation Agency (JICA) for the project of the extension of Maternal and Child Health Care facilities in Sindh with respect to the following service providers:

- (a) Service provided by persons engaged in contractual execution of work or furnishing supplies;
- (b) Contractors of building (water supply, gas supply and sanitary works), roads and bridges, electrical and mechanical works (including air conditioning), horticultural works, multi discipline works (turn-key projects as well) and similar works;
- (c) Management consultants;
- (d) Technical, scientific, and engineering consultants;
- (e) Construction services;
- (f) Erection, commissioning, and installation services.

The aforementioned services shall be eligible for exemption provided that they receive a certificate in a prescribed form from the authorized forum mentioned in the same notification, and that they shall file their tax returns showing such services in Annexure C while invoices shall be raised indicating the words “Exempt” and “Nil” in rate of Sindh sales tax and amount of Sindh sales tax respectively. For further reading: **SRB**

(https://www.srb.gos.pk/contents/Notifications/20230609_NOTIFICATION_28.pdf)

3. Further amendments to the Sindh Sales Tax on Services Rules, 2011

The SRB issued a Notification No. SRB-3-4/27/2023, dated 8th June 2023, wherein a new rule regarding Non-active taxpayers (“NATP”) was inserted. Through this addition, rules related to NATP were inserted wherein, a NATP shall be a person who was a registered person but failed to e-file his returns consecutively for 4 tax periods or was suspended, and as a result of this, his name/ registration number was removed from the Active taxpayers list (“ATL”). The Notification further discusses about the effects of being a NATP and thereafter being restored upon satisfaction of the following conditions:

- (a) NATP e-files the prescribed tax return and prescribed statement with an evidence of payment of tax due; or
- (b) The concerned commissioner of the SRB issues an order to such effect after satisfying itself that conditions for restoration of his status as an active taxpayer is complied with.

The notification also states that until the person’s name is restored, he shall not be entitled to:

- (a) Claim refund;
- (b) Avail any exemption/ concession;
- (c) Participate in the competitive bidding under the Sindh Public Procurement Rules, 2010.

Furthermore, it also states that sales tax paid on services from NATP will not be admissible and that the business premises of the NATP will be liable to be seized. For further reading: **SRB**

(https://www.srb.gos.pk/contents/Notifications/20230608_Notification_27.pdf)

4. Amendment in the Sindh Place of Provision of Services Rules, 2023 | Insurance Agent

The SRB vide Notification No. SRB/3-4/33/2023, dated 26th June 2023, issued an amendment where by the location of the insurance agent shall be considered as the place of provision of service and not the location of the office / branch of the insurance company. For further reading: **SRB**

(https://www.srb.gos.pk/contents/Notifications/20230626_NOTIFICATION_33.pdf)

SECP Notifications

June 2023

1. Amendments to SRO No. 592(i)/2023 dated 17th May 2023

The SECP issued corrigendum dated 01st June 2023, wherein it made certain amendments to an earlier issued SRO No. 592(i)/2023, dated 17th May 2023. The amendments provided the following:

(1) An Investment Advisor managing discretionary portfolio shall pay the Commission nonrefundable fee, computed on a percentage of discretionary portfolio subject to conditions related therein. Earlier, non-discretionary portfolio was also included in this percentage.

(2) Similarly, an Investment advisor shall compute average net assets of discretionary portfolio under management calculated on daily basis, unlike including non-discretionary as applicable before this amendment.

For further reading: **SECP**

(<https://www.secp.gov.pk/document/addendum-to-sro-592i2023/?wpdmdl=48112&refresh=649afd5f9a33e1687879007>)

2. Amendments to Collective Investment Schemes

The SECP, vide Circular No. 09 of 2023 dated 1st June 2023, made some amendments to prescribe minimum ratings for investments in short term instruments in various categories of open-ended Collective Investment Schemes (“CIS”). Furthermore, the SECP has directed AMCs to not take exposure in short term instruments below the rates prescribed in the same circular. However, if the AMCs have already taken exposure in the specified rated short term instruments, then they shall comply with the requirements within six months from the date of the circular.

For further reading: **SECP**

(<https://www.secp.gov.pk/document/circular-no-9-of-2023-short-term-rating-requirements-for-cis/?wpdmdl=47944&refresh=649afd827ec1d1687879042>)

Case Law

Where holding period of the immovable property exceeds 4 years, capital gain arising for tax year 2022 shall be zero for the purposes of Section 4C (Super Tax) as well

INTRODUCTION:

The Hon'ble Appellate Tribunal Inland Revenue ("ATIR") was moved by M/s. Sunehri Industries (Pvt) Ltd, Karachi ("Appellant") and The CIR Zone-I, CTO, Karachi ("Respondent") in respect of applicability of super tax imposed under section 4C of the Income Tax Ordinance, 2001 ("ITO") on capital gain on immovable property subject to zero capital gain.

BRIEF FACTS OF THE CASE:

The Appellant was issued a notice under section 4C of the ITO, creating tax liability against the capital gain of immovable property on which no capital gain tax was payable because holding period exceeded four years. However, despite the contention, an order was passed against the Appellant following which an appeal before the Commissioner Inland Revenue (Appeals-VII), Karachi ("CIRA") was filed which, was again unsuccessful. Thereby, being aggrieved of the decisions passed by the earlier authorities, the Appellant approached the ATIR for adjudication against the matter by raising the following question:

Whether computation of capital gains is for the purpose of income tax only or the same is for the purpose of levy of super tax under section 4C of the ITO too?

ARGUMENTS BY THE COUNSEL FOR THE APPELLANT:

The counsel for the Appellant argued that capital gain on immovable property in question did not fall within the ambit of section 4C of the ITO. Moreover, he also further pointed out that the procedure for computation of tax on capital gain had already been provided under section 37(3A) of the ITO, wherein, it was clearly stated that gain is to be computed at zero where **the holding period of an immovable property exceeds four years**. Since the property in the instant case was held for more than 4 years, capital gain was rightly computed as Zero. The learned Appellant also argued that super tax is chargeable on "income" whereas due to the holding period, the capital gain in this case was in fact zero. Therefore, the counsel for the Appellant contested that imposition of super tax cannot be charged at zero income from capital gain. The counsel for the Appellant also submitted that the Order was passed without providing an opportunity of being heard as the proceeding was culminated after only one hearing.

ARGUMENTS BY THE COUNSEL FOR THE RESPONDENT:

The counsel for the Respondent conceded that the subject property was indeed exempt from income tax under section 37(3A) of the ITO. However, he argued that the amount of capital gain declared irrespective of the exemption (Zero in this case), was income for the purpose of super tax, and therefore levy of super tax was correctly chargeable thereon.

FINDINGS OF THE ATIR:

The Hon'ble ATIR held that the law clearly states that where holding period of an immovable property exceeds four years, then gain on disposal shall be zero and no capital gains tax is chargeable thereon. The ATIR also found that the Learned Respondent gave an unscrupulous twist to the law of capital gain because it is the **gain** which is zero not the tax liability. Following which, the ATIR held that the capital gain was not only exempt in this instant case, but also was zero for computation purposes. The ATIR also held that two different computations of the same income were not possible for levy on income tax and super tax unless where law specifically provides so.

In respect of the opportunity of being heard, the ATIR held that it was a cardinal principle of law that an order affecting the rights of a party could not be passed without providing an opportunity of being heard to the affected party and referred to the judgement of the Supreme Court of Pakistan (PLD 1964 SC 410) wherein it was held that an opportunity of hearing was essential and in its absence the order so passed was void. Therefore, the appeal of the Appellant was allowed, and orders passed by the authorities below were held to be illegal and unlawful, annulling the impugned Orders on the points of law and on merits.

Topic Of The Month: SUPER TAX (SECTIONS 4B AND 4C)

Through the Finance Act, 2015 (“FA, 2015”) a new section 4B was introduced in the Income Tax Ordinance, 2001 (“ITO”) titled as “Super Tax for rehabilitation of temporarily displaced persons”. As per the said Section, the super tax under section 4B was imposed with effect from the Tax Year 2015 on the “**income**” of individuals, associations of persons and companies having income of 500 Million or above in the Tax Years. For the banking companies the super tax was imposed irrespective of the quantum of income. Whereby, the tax rates on the income of every person categorically was specified in Division IIA of Part I of the First Schedule of ITO.

For the purpose of calculation of Super Tax, income was defined to be the sum of the following:

- i. profit on debt, dividends, capital gains, brokerage and commission;
- ii. taxable income (other than brought forward depreciation and brought forward business losses) under section (9) of ITO, if not include 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, Seventh and Eighth Schedules.

The tax rates of super tax as specified in Division IIA of Part I of the First Schedule of the ITO were effective as under:

Sr. No	Person	Rate of Super Tax Under Section 4B						
		Rate (Percentage of Income)						
		Tax Year 2015	Tax Year 2016	Tax Year 2017	Tax Year 2018	Tax Year 2019	Tax Year 2020	Tax Years 2021 and 2022
1.	Banking Company	4%	4%	4%	4%	4%	4%	4%
2.	Person other than a banking company, having income equal to or exceeding Rs. 500 million	3%	3%	3%	3%	2%	0%	0%

Interpretation on Section 4B by the Hon'ble High Court of Sindh:

The vires of section 4B was challenged by taxpayers through various writ petitions before the Honourable High Court of Sindh ("SHC"). The same were dismissed by the SHC declaring the levy of Super Tax as constitutional and valid.

Later, being dissatisfied with the judgment of the SHC, the taxpayers preferred to appeal before the Honourable Supreme Court of Pakistan ("SCP"). The SCP was pleased to grant the Appellants the leave to appeal, and issued an interim Order in favor of the Taxpayer appellants and directed them to deposit 50% of the demanded super tax.

SUPER TAX UNDER SECTION 4C

Through the Finance Act, 2022 ("FA, 2022") a new section 4C has been introduced in the ITO titled as "Super Tax on High Earning Persons". According to the said Section, the super tax under section 4C has been made effective from the Tax Year 2022 and onwards. The imposition of super tax shall be on the "income" of every person except for the person whose income as envisaged in the section is below the threshold limit of Rs. 150 million. Whereby, the tax rates on the income of every person (other than banking companies) categorically been specified in Division IIB of Part I of the First Schedule of ITO.

Exception:

This section was not applicable to banking companies for the tax year 2022. However, the super tax is applicable on banking companies for tax year 2023, at 10% where the income exceeds Rs. 300 million.

The tax rates of super tax as specified in Division IIB of Part I of the First Schedule of the ITO, consequent to the amendments in Finance Act 2023 is as follows:

Sr.No	Income u/s 4C	TY 2022	TY 2023 and onwards
1.	Income upto Rs. 150 million	0%	0%
2.	Rs. 150 million to 200 million	1%	1%
3.	Rs. 200 million to Rs. 250 million	2%	2%
4.	Rs. 250 million to Rs. 300 million	3%	3%
5.	Rs. 300 million to Rs. 350 million	4%	4%
6.	Rs. 350 million to Rs. 400 million	4%	6%
7.	Rs. 400 million to Rs. 500 million	4%	8%
8.	Income exceeding Rs. 500 million	4%	10%

The rate of super tax for specified persons earning income more than Rs. 300 million is 10%.

Specified persons are the persons who are 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.

In case of banking companies for tax year 2023, the rate of tax shall be 10% where the income exceeds Rs. 300 million.

DECISION OF THE HONOURABLE HIGH COURT OF SINDH REGARDING SECTION 4C

The Honourable High Court of Sindh ("SHC") has held that Section 4C will not be applicable retrospectively, i.e for Tax Year 2022, as the same were past and closed transactions at the time of introduction of law. In relation to the proviso providing for a 10% super tax rate for certain specified sectors, as stated above, the SHC held the proviso to be discriminatory and lacking intelligible differentia.

Therefore, the SHC held that Super Tax under Section 4C shall not apply for Tax Year 2022, and will apply at 4% where the income exceeds PKR 300 million, regardless of the business sector from which the tax payer derives the income.

APPEAL AGAINST THE DECISION OF THE SHC TO THE SUPREME COURT BY THE RESPONDENTS

The Respondents (in the SHC petition) being aggrieved by the decision of the SHC filed an appeal before the Supreme Court of Pakistan ("SCP"). The SCP granted the Appellants the leave to appeal, and has issued an interim Order, whereby, the taxpayer Respondents were directed to deposit the super tax applicable to them (up to a maximum of 4%) within a week of the passing of the said Order by the SCP, or if they had submitted bank guarantees with the Nazir of the SHC, then those guarantees were directed to be encashed to the extent of 4% super tax.

DISCLAIMER

This newsletter is the property of Tola Associates and contents of the same may not be used or reproduced for any purpose without prior permission of Tola Associates in writing.

The contents of this newsletter may not be exhaustive and are based on the laws as of date unless otherwise specified. Tax laws are subject to changes from time to time and as such any changes may affect the contents.

The comments in the newsletter are a matter of interpretation of law and is based on author's judgments and experience, therefore, it cannot be said with certainty that the author's comments would be accepted or agreed by the tax authorities. Furthermore, this newsletter does not extend any guarantee, financial or otherwise. Tola Associates do not accept nor assume any responsibility, whatsoever, for any purpose.

This newsletter is circulated electronically free of cost for general public to create tax awareness in the country.