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**RIAZ AHMAD, SAQIB, GOHAR & CO.**

**Chartered Accountants**

# The Impact!

**UPDATE ON SUPER TAX  
UNDER SECTION 4C.**

**March 18, 2024**



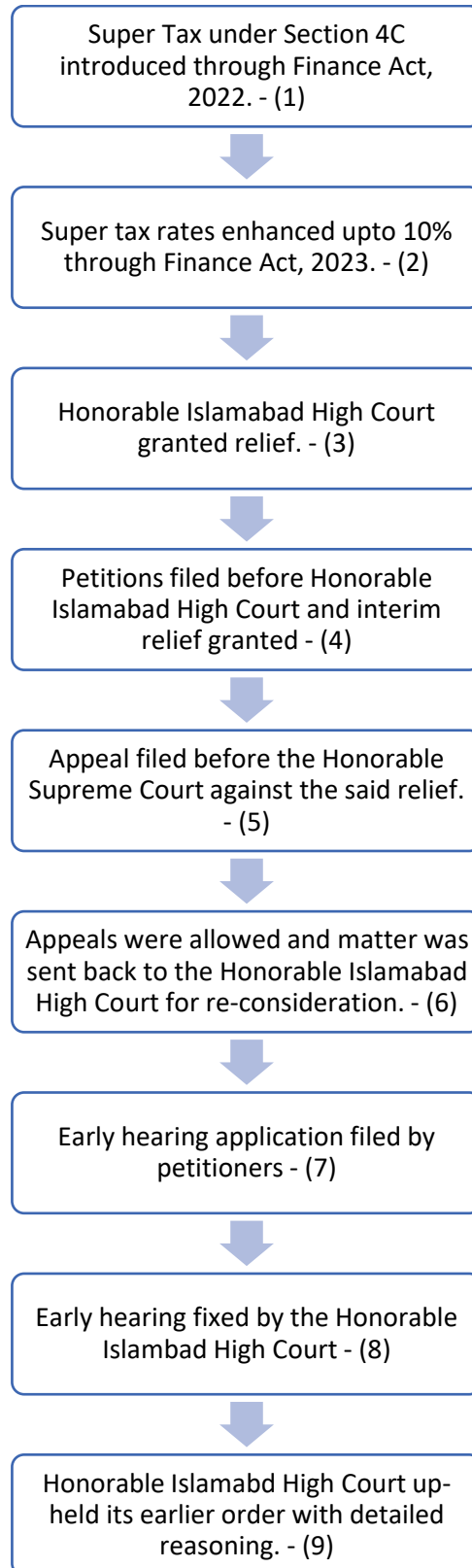
**Preamble:**

**Riaz Ahmad, Saqib, Gohar & Co. Chartered Accountants** is pleased to present herewith special update under the banner of *“The Impact”* bringing you the latest on the saga of super tax levied under Section 4C of the Income Tax Ordinance, 2001.

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**CHRONOLOGICAL OVERVIEW – TAX YEAR 2023**

### Detailed understanding:

- 1- Super Tax under Section 4C of the Income Tax Ordinance, 2001 was introduced through the Finance Act, 2022 (i.e. July 01, 2022), however, it stated that the said levy would be applicable from the tax year 2022. Initially it was understood that the said tax would only be levied for the tax year 2022.
- 2- Thereafter, through the Finance Act, 2023, the levy of this tax was extended to the tax year 2023 and onwards. Moreover, the applicable rates of this tax were also enhanced from the maximum rate previously being 4% to now being 10%.
- 3- This created an outcry amongst the industries of Pakistan and major business owners. Some of them had filed a petition before the Honorable Islamabad High Court through WP No. 4027 of 2022 in the case of M/s. Fauji Fertilizers and others versus the Federation of Pakistan. The Honorable Islamabad High Court thereafter granted relief to the taxpayers which is summarized as under:
  - Super Tax under Section 4C of the Income Tax Ordinance, 2001 to exclude all classes of income which are subject to final tax.
  - Allowed the adjustment of brought forward business losses, depreciation losses and amortization losses.
  - Declared the retrospective application of super tax under Section 4C of the Income Tax Ordinance, 2001 as invalid.
  - Super Tax ordered to not apply to the benevolent funds holding exemptions from tax under the other provisions of the Ordinance;
  - Super Tax ordered to not apply to petroleum and exploration companies to the extent its application results in the taxation of such companies exceeding the thresholds stipulated in Rule 4 of the Fifth Schedule to the Ordinance; and
  - All notices of demand or recovery impugned in the petitions were set aside.
- 4- Based on the above judgment, taxpayers from across Pakistan started to seek justice from the Honorable Islamabad High Court and petitions were filed against the levy of super tax as well as the enhanced rates introduced through the Finance Act, 2023. The Honorable Islamabad High Court was pleased to grant interim relief to the petitioners (across Pakistan) for the tax year 2023 against the retrospective application of enhanced rate of 10% introduced through Finance Act, 2023 and barring the Tax Authorities from raising any tax demand inconsistent with the judgment passed in the case of M/s. Fauji Fertilizers (discussed in point 3 above).

- 5- An appeal was filed before the Honorable Supreme Court of Pakistan against the interim relief granted by the Honorable Islamabad High Court. The said appeals challenged the jurisdiction of the Honorable Islamabad High Court and the maintainability of the petitions filed before the said Court by Petitioners who are resident in the provinces of Punjab or Sindh and the matter has already been decided by their Provincial Courts.
- 6- The Honorable Supreme Court of Pakistan while hearing these appeals directed the Honorable Islamabad High Court to first decide the question of maintainability through speaking order and then grant relief if any warranted and reverting the status of petitions filed in the Honorable Islamabad High Court as pending.
- 7- Application for early hearing of the matter was filed before the Honorable Islamabad High Court owing to the intention from the taxation authorities to raise demands pertaining to Super Tax under Section 4C of the Income Tax Ordinance, 2001 and initiate recovery proceedings while the matter of interim relief remained under adjudication.
- 8- The early hearing for the matter was fixed on March 04, 2023 and instructions were provided to not forcibly recover the amount of super tax from the taxpayers' bank accounts.
- 9- **Detailed judgment has now been issued by the Honorable Islamabad High Court through WP No. 2436 of 2023 in the case of Pakistan Oilfields and another versus Federation of Pakistan and others adjudicating as under:**
  - **That the petitions filed were maintainable asking for the declaratory relief against retrospective application of the super tax rates levied or revised by the Impugned Amendment**
  - **That the retrospective application of enhanced tax rates (up to 10%) revised through the Finance Act, 2023 shall not be applicable for the tax year 2023 or before i.e. maximum rate will remain upto 4%.**
  - **That the Federal Board of Revenue should issue directory instructions to all field formations to apply the enhanced tax rate prospectively and compute super tax liability which is not inconsistent with the judgment in the case of M/s. Fauji Fertilizers (discussed in Point No. 3 above).**
  - **Super tax payable as advance tax under Section 147 of the Income Tax Ordinance, 2001 has been held as valid.**
  - **Petitions where a person had already approached another court challenging the amendment introduced through Finance Act, 2023 or any other Act before coming to this court have been ordered to be dismissed.**

**“Document End.”**

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