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LEGAL UPDATE

**FEDERAL CONSTITUTIONAL COURT UPHOLDS
SUPER TAX VALIDITY & BROAD INCOME
DEFINITION**

The Federal Constitutional Court of Pakistan has issued a landmark short order resolving multiple constitutional challenges to the Super Tax imposed under Sections 4B and 4C of the Income Tax Ordinance, 2001.

KEY HIGHLIGHTS OF THE JUDGMENT FOR PROFESSIONAL SHARING ARE AS FOLLOWS:

• Validity of Section 4B (IDP Tax):

The Court upheld Section 4B as constitutionally valid for the tax year 2015 and onwards, holding that it constitutes a valid tax on income and does not fall within the category of a fee.

• Retroactive Application of Section 4C:

Section 4C has been declared constitutionally valid with retrospective application commencing from the tax year 2022. The Court clarified that the legislature is empowered to enact laws with retrospective effect and that the closure of a tax year does not bar the imposition of a new tax charge.

• Constitutional Validity of the Definition of “Income”:

The Court specifically upheld the statutory definition of “income” used for the computation of super tax under Section 4C. The computation mechanism was held to be valid notwithstanding the disallowance of brought-forward losses, depreciation, and amortization, and despite the inclusion of income heads subject to separate taxation. In this regard, the Court set aside earlier High Court judgments that had restricted or read down this definition.

• Sector-Specific 10 Percent Rate:

The enhanced super tax rate of 10 percent imposed on fifteen specified sectors for the tax year 2022 was declared reasonable and permissible under Article 25 of the Constitution.

• Industry-Specific Applications:

✓ Banking Sector: Banking companies are liable to super tax from the tax year 2023 onwards at the rates introduced through the Finance Act, 2023.

✓ Exploration and Production Companies: Super tax is applicable subject to the condition that the aggregate tax burden does not exceed the limits prescribed under the relevant Petroleum Concession Agreements and Rule 4 of the Fifth Schedule to the Income Tax Ordinance.

• Welfare Fund Exemptions:

Benevolent and provident funds holding valid exemption certificates are not liable to super tax. Commissioners have been directed to issue written orders confirming exemption upon submission of the relevant certificates.

This decision provides definitive legal clarity on the computation, applicability, and collection of super tax for high-earning individuals and major industries operating across Pakistan.