

# AFGHANISTAN

## TAX ADMINISTRATION LAW

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**[A note for readers of this English version: it is an unofficial translation of the Law. The authentic law is the versions Gazetted in Dari and Pashto.]**

# TAX ADMINISTRATION LAW

## CHAPTER 1 General Provisions

### Article 1 Authority of this Law

This Law has been enacted pursuant to Article 42 of the Constitution of Afghanistan.

### Article 2 Objectives

The objectives of this Law are as follows:

1. Manage the affairs of the taxation administration;
2. Provide for methods of collection of taxes under the tax laws; and
3. Set out the rights and obligations of taxpayers and the taxation administration.

### Article 3 Definition of Terms

(1) For the purposes of this Law, the following definitions shall apply –

1. “taxpayer” means a person who is required to fulfil tax obligations under the provisions of the tax laws;
2. “tax laws” means the Income Tax Law, the Value Added Tax Law, this Law and any other tax laws but does not include customs law;
3. “tax period” means the specified period of time related to fulfillment of any tax obligation as established under the tax laws;
4. “tax return” means an approved form of the taxation administration in which the tax liability is assessed and determined and based on which the payment is made;
5. “additional tax” means the tax that shall be collected, in accordance with the law, from a taxpayer for their failure to fulfil their obligation. Penalties imposed as a result of conviction by a court shall not be included in this definition;
6. “tax year” means a period commencing 1st day of Jaddi (Hijre Shamsi) and continuing till the last day of Qoase (Hijre Shamsi) in

the following year or such other period as approved by the taxation administration upon request of the taxpayer;

7. “taxation decision” means a taxation assessment and a decision by the Ministry of Finance under Articles 7, 11(3), 15(3) and (6), 16(1), 17(3), 19(2) and (3), 20, 21, 22, 23, 28, 29, 59 and 60 of this Law and a decision to refuse an application for registration under the Value Added Tax Law;
  8. “liquidator” means a person appointed in accordance with the law as liquidator, trustee in bankruptcy or mortgagee with the right of possession, or in the case of a deceased’s estate the executor or administrator of liquidation
  9. “third party” includes the following persons who:
    - owes or may in the future owe money to the taxpayer,
    - holds or may subsequently hold money for, or on account of, the taxpayer;
    - holds money of another person for payment to the taxpayer;
    - has authority to pay money to the taxpayer;
  10. “representative” includes the following persons –
    - a person appointed by the taxpayer in accordance with the law;
    - in the case of a company, the chief executive officer;
    - in the case of a partnership, any of the partners of the partnership;
    - in the case of a person in liquidation, the liquidator;
    - in the case of a non-resident person, any person in charge of their affairs in Afghanistan; and
    - in the case of a Government Office, a foreign government or political subdivision, any person responsible for the receipt or payment of funds on their behalf
    - in the case of a body of other persons not mentioned above, any person responsible for the receipt or payment of funds on their behalf;
  11. “tax accountant” means a person who obtains a business license from the taxation administration after meeting the requirements under subsection (1) of Article 33.
- (2) Terms that are not defined in this Law, if defined in another tax law shall have the same meaning in this Law.

**Article 4**  
**Implementing authority**

The Ministry of Finance is the main authority for implementation of this Law. Other Ministries, Government and non-government agencies when demanded shall assist the Ministry of Finance with the implementation of this Law.

**CHAPTER 2**  
**RIGHTS AND OBLIGATIONS OF TAXPAYERS**

**Article 5**  
**Taxpayer's rights**

- (1) A taxpayer shall have the right to:
  - (a) receive from the taxation administration, free of charge, tax returns, forms and assistance (technical support) to calculate, report and pay tax in accordance with the tax laws;
  - (b) receive written information from the taxation administration which concerns his/her tax situation;
  - (c) access information on the assessment and collection of his/her taxes and to request that any incomplete or incorrect data be updated or amended by the taxation administration;
  - (d) advocate his/her own interests before the taxation administration directly or through a representative;
  - (e) receive, as provided by the tax laws, a tax credit or a refund of tax overpaid;
  - (f) request and receive an explanation of the documents compiled by the taxation administration regarding him/her;
  - (g) use other rights provided by the tax laws and other laws.
- (2) A taxation employee shall have the following obligations towards a taxpayer:
  - (a) treat the taxpayer well and professionally;
  - (b) maintain confidentiality of the information collected about the taxpayer;
  - (c) provide written information regarding the taxpayer's tax situation, when requested by them;
  - (d) listen to the taxpayer when providing information.

**Article 6**  
**Taxpayer's obligations**

A taxpayer shall have the following obligations:

- (a) file an application for a Taxpayer Identification Number;
- (b) report on subsequent changes of data in the application for a Taxpayer Identification Number;
- (c) submit documentation and give information demanded by the taxation administration in accordance with the tax laws, regulations and relevant sub-legal acts;
- (d) keep relevant books and records for the purpose of tax determination;
- (e) correctly and accurately calculate taxes in accordance with the tax laws, regulations and relevant sub-legal acts;
- (f) not obstruct or prevent taxation employees in the lawful performance of their duties;
- (g) be present as required during audit or as requested by the taxation administration; and
- (h) comply with all other provisions of the tax laws.

**CHAPTER 3**  
**TAX RETURN AND ASSESSMENT**

**Article 7**  
**Delivery of tax return**

- (1) A taxpayer is required to file their tax return in accordance with the tax laws.
- (2) Where a taxpayer fails to file a tax return the taxation administration may, according to the relevant procedures (Tarzulamal), by notice in writing, request the taxpayer to file the tax return with the taxation administration within thirty days of receiving the notice.
- (3) The taxation administration shall review the tax return and if it has any deficiencies, request the taxpayer in writing to correct the deficiencies.

- (4) The taxpayer is required to correct the deficiencies or provide further information for the taxation administration within thirty days of receiving the notice.
- (5) Where a taxpayer with reasonable grounds cannot file their tax return by the due date under the tax laws, or by the due date under subsection (2) of this Article, they may apply in writing before the due date to the taxation administration for an extension of time to file the tax return.
- (6) The taxation administration shall review the application under subsection (5) of this Article and decide to allow or disallow the extension of time requested and shall notify the taxpayer of the decision in writing within 10 days of receiving the application.
- (7) An extension of time for filing the tax return shall not be more than three months from the due date under the tax laws and shall not change the due date for payment of the tax.

## **Article 8**

### **Tax return duly made and default assessment**

- (1) A taxpayer may file a tax return themselves or through a representative.
- (2) If a taxpayer fails to file a tax return or fails to correct deficiencies in a tax return under subsections (2) and (3) of Article 7 of this Law respectively, the taxation administration shall estimate the tax liability and issue an assessment notice to the taxpayer.
- (3) If the taxation administration receives new information based on which the tax liability is affected, an amended assessment notice shall be issued within five years of the date on which the tax return was due, or such period as provided by a tax law.
- (4) Where a taxpayer, with the intent of evading tax, fails to file a tax return or files an incorrect tax return the taxation administration may issue or amend an assessment notice at any time.
- (5) Where the taxation administration identifies that the collection of a taxpayer's tax liability for previous periods or the current period that will become due in the future is in jeopardy, the taxation administration shall issue an assessment notice for any of the periods.

### **Article 9**

#### **Determining tax when there are transactions between connected persons**

Where an amount paid or payable in a transaction between connected persons is different to an agreed amount between unconnected persons in a similar market transaction; for the purposes of determining the tax the amount paid or payable between unconnected persons in the market shall be taken into account.

### **Article 10**

#### **Avoidance of tax**

Where any person enters into any transaction or arrangement with the intent to cause reduction of tax, the taxation administration shall disregard or adjust such transaction or arrangement and determine the correct tax of the persons involved. In this case, the taxpayer shall pay the tax assessed.

## **CHAPTER 4 TAXATION DISPUTES**

### **Article 11**

#### **Objection**

- (1) If a taxpayer is dissatisfied with a taxation decision they may file an objection with the taxation administration in the approved form within forty five days of receiving the decision notice stating the grounds for objection.
- (2) If a taxpayer has reasonable grounds for not being able to file an objection within the period under subsection (1) of this Article they may apply in writing to the taxation administration for an extension.
- (3) If the taxation administration regards the grounds as reasonable, it shall approve the application under subsection (2) of this Article and shall inform the applicant in writing.
- (4) An extension of time for filing the objection shall not exceed fifteen days from the due date under subsection (1) of this Article unless the taxation administration decides differently in respect of the extension of time.
- (5) The taxation administration is required to make a decision within 60 days of receiving the objection and inform the taxpayer in writing within thirty days of the decision being made.

- (6) If the taxpayer does not receive a decision within 90 days of filing the objection they may appeal to the Tax Disputes Resolution Board and notify the taxation administration in writing of the appeal.

## **Article 12**

### **Dissatisfaction with the objection decision**

- (1) If a taxpayer is dissatisfied with an objection decision of the taxation administration they may apply within 30 days to the Tax Disputes Resolution Board for review.
- (2) If a party or parties to the dispute are dissatisfied with the decision of the Tax Disputes Resolution Board they may refer to a Court of competent jurisdiction within 30 days of receiving the decision, otherwise the decision of the Board shall be final and enforceable.
- (3) The taxation administration shall implement the final decision of the Tax Disputes Resolution Board or the Court upon written notification.

## **Article 13**

### **Validity of documents**

- (1) The validity of a taxation decision, a notice of decision or any other document issued or executed under any tax law shall not be voided because of any minor deficiency or mistake which does not affect the overall meaning of the document.
- (2) Subsection (1) of this Article shall apply provided the document mentioned is lawful and the person to whom it is issued is identified.

## **Article 14**

### **Burden of proof and other issues**

- (1) The taxpayer shall prove the incorrectness of the taxation decision at any stage of dispute under this Chapter.
- (2) Initiation of a taxation dispute cannot prevent collection of tax.
- (3) The taxpayer shall be limited in an application to the Tax Disputes Resolution Board or appeal to the Court to the grounds stated in the objection unless the Board or the Court grants the taxpayer leave to add new grounds.

## **CHAPTER 5 RECOVERY OF TAX**

### **Article 15**

#### **Payment of tax**

- (1) A taxpayer is required to pay their tax liabilities in accordance with the tax laws.
- (2) Where reasonable grounds exist a taxpayer may, for the purposes of extension of time to pay their tax liability, apply in writing to the taxation administration by the due date for payment under the tax laws.
- (3) In the case mentioned in subsection (2) of this Article the taxation administration may, considering reasons, financial position and documents presented with the application, grant an extension of time to pay tax or approve payment by instalment and notify the taxpayer in writing.
- (4) Where a taxpayer fails to pay the instalments the whole outstanding balance shall become payable.
- (5) The extension of time for payment or payment by instalments shall not preclude the imposition of additional taxes for late payment of the tax.
- (6) Where the taxation administration has reasonable documents and evidence that a taxpayer may leave Afghanistan before the due date for payment of tax, it shall become due on such date as specified by the taxation administration by notice in writing to the taxpayer.

### **Article 16**

#### **Collection of a taxpayer's unpaid tax from third parties**

- (1) The taxation administration may, without the consent of the taxpayer, by notice in writing collect any unpaid tax from third parties.
- (2) In the case mentioned in subsection (1) of this Article the third party shall pay in whole or in part the unpaid tax and additional tax related to it by the due date specified in the notice. The date for payment under the notice cannot be before the date of the third party's obligation to pay.

- (3) In a case mentioned under subsection (2) of this Article, a third party shall not be required to pay an amount in excess of the amount owed to or held for the taxpayer.
- (4) The third party required to deduct the amounts mentioned in the notice from salary and wages shall not deduct more than 20 per cent of such payments for the purposes of this Article.
- (5) The taxation administration shall deliver the notice under this Article to the third party and a copy to the taxpayer.

#### **Article 17**

##### **Change of tax recovery notice to a third party**

- (1) If the taxpayer pays the whole or part of the amount specified in the notice or has entered an arrangement under subsection (3) of Article 15 of this Law the taxation administration shall revoke or amend the notice under Article 16 of this Law and notify the third party in writing.
- (2) If a third party receives a notice under Article 16 of this Law they may apply, in writing, to the taxation administration for an amendment of the amount or date due under the notice.
- (3) In the case mentioned under subsection (2) of this Article the taxation administration shall review the application and notify the third party and the taxpayer of its decision in writing.
- (4) A notice issued under this Article shall be treated as a replacement of the notice under Article 16 of this Law.

#### **Article 18**

##### **Compliance with the tax recovery notice**

- (1) Payment of tax by a third party shall be treated as having been made under the authority of the taxpayer and is considered as evidence of the discharge of the liability of the third party to the taxpayer.
- (2) A third party shall inform the taxpayer of each payment made under Article 16 of this Law.
- (3) The amount paid by a third party shall be treated as payment against the taxpayer's tax liability.
- (4) A third party who fails to comply with Article 16 shall be personally liable for payment of such amount.

**Article 19**  
**Liquidators**

- (1) A liquidator shall inform the taxation administration in writing of their appointment within 14 days of the appointment.
- (2) The taxation administration shall notify the liquidator in writing within 60 days of receiving the notice under subsection (1) of this Article of any tax liabilities that are or will become payable by the taxpayer.
- (3) A liquidator shall not, without leave of the taxation administration, part with assets of the taxpayer until the liquidator has been served with a notice under subsection (2) of this Article.
- (4) The liquidator shall, for the purposes of payment of the taxpayer's tax liabilities, set aside the amount payable under subsection (2) of this Article out of the proceeds of sale of assets of the taxpayer, otherwise they shall be personally liable for the payment.
- (5) This Article does not prevent the liquidator from paying any debt that has priority over the tax liabilities in accordance with the law.
- (6) Where two or more persons are liquidators in respect of a taxpayer, as per the circumstances each one shall be jointly and severally liable for the tax obligations under this Article.

**Article 20**  
**Suspension of financial transactions**

- (1) If the taxpayer fails to pay their tax liability by the due date mentioned in the law, or does not demonstrate that they are making arrangements for payment that are satisfactory to the taxation administration, the taxation administration when necessary shall suspend their financial accounts and suspend importation of goods in whole or in part and notify them in writing.
- (2) The manner of suspension and revocation of it shall be specified in the relevant regulation (Muqarara).

**Article 21**  
**Failure to comply with rent withholding tax requirement**

- (1) If rent withholding tax is not paid in accordance with the Income Tax Law within 15 days from the due date, the following action may be taken:
  - (a) Subject to a notice in writing by the taxation administration, the right of the landlord in a rent agreement or similar

contract to receive payment for rental services shall be treated as if it has been temporarily transferred to the taxation administration as representative of the Government of Afghanistan;

- (b) If the tenant has not paid the tax due within 30 days after receiving notice from the taxation administration for the amount overdue, the right of the landlord in a rent agreement or similar contract to evict tenants for non-payment of rent shall be treated as if it has been transferred to the taxation administration as representative of the Government of Afghanistan.
- (2) Subsection (1) of this Article shall remain in place until the taxation administration receives the tax due including any additional tax.

## **Article 22**

### **Closure of business**

- (1) If a taxpayer fails to file a tax return or fails to pay their tax liability (including withholding tax) by the due date, the taxation administration shall notify the taxpayer in writing to file the tax return or pay their tax liability within 10 days of receiving the notice.
- (2) If the taxpayer fails to file their tax return or fails to pay their tax liability by the due date mentioned in the notice under subsection (1) of this Article the taxation administration may wholly or partially close their business for a period not exceeding 14 days.
- (3) In the case mentioned in subsection (2) of this Article taxation employees, with assistance from police, shall enter the taxpayer's business premises and shall affix, in a conspicuous place at the business premises, a notice with the following words "CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS".
- (4) Where the taxpayer files the tax return or pays the tax liability due within the period of closure, the taxation administration shall remove the notice referred to in subsection (3) of this Article the following working day.

## **Article 23**

### **Circumstances of departure prohibition**

- (1) The taxation administration may issue a notice for a taxpayer's departure prohibition from Afghanistan under any of the following conditions, provided that the taxation administration shall be required to obtain approval from a court for effect beyond 5 days:

- (a) if they fail to pay their tax liability within thirty days after the due date; or
  - (b) if the taxation administration makes sure and has documents and evidence that the person will permanently depart Afghanistan before discharging a tax liability.
- (2) If the taxpayer pays their tax liability or provides sufficient security to meet the tax liability, the taxation administration shall revoke the departure prohibition notice.
  - (3) Security authorities are required to assist the Ministry of Finance in implementing subsection (1) of this Article.

#### **Article 24**

##### **Restriction on transfer and sale of assets**

- (1) Where a taxpayer fails to file a tax return or fails to pay their tax liability in accordance with the tax laws, the taxation administration may request the relevant court to impose restrictions on disposal of the person's movable and immovable property.
- (2) In a case referred to under subsection (1) of this Article, if the taxpayer fails to file their tax return or fails to pay their tax liability or make arrangements under subsection (3) of Article 15 within 30 days after the issuing of the court's order, the taxation administration may request the court to order the seizure and sale of the person's property.
- (3) Where the taxpayer files the tax return or pays the tax liability or makes arrangements under subsection (3) of Article 15 of this Law before an order of the court is issued for seizure and sale of the taxpayer's property, the order imposing restrictions mentioned under subsection (1) of this Article shall be revoked upon request by the taxpayer or the taxation administration.
- (4) In a case mentioned under subsection (2) of this Article if the court issues an order for sale of the property the taxation administration shall take the following actions -
  - (a) Immediately serve on the owner or the person who had custody or control of the property before seizure a written notice explaining the reason for the seizure and identifying the property.
  - (b) Where the property seized is perishable, it shall undertake action to sell it under the provisions of law.

- (c) Where the property is not perishable it shall detain it for 21 days after the seizure and with the expiry of the detention period undertake action to sell it under the provisions of law.
  - (d) From the proceeds of sale of the property seized the following shall be deducted, first the costs of seizing, keeping and selling the property; second the taxpayer's tax liabilities and the remaining balance shall be returned to the taxpayer.
- (5) If the proceeds of sale of the property seized are not sufficient to cover the amounts mentioned in paragraph (d) of subsection (4) of this Article, the taxpayer shall be liable for the balance in accordance with the law.
  - (6) The taxation administration and a taxpayer may, as part of an arrangement under subsection (3) of Article 15, subsection (2) of Article 23 of this Law, or for any other reason effective for the enforcement of the tax laws, make an agreement on provision of security or restrictions on disposal of movable or immovable property and this agreement shall be enforceable.

## **CHAPTER 6**

### **RECORD-KEEPING AND INFORMATION COLLECTION**

#### **Article 25**

##### **Preparation and maintenance of books and records**

- (1) A taxpayer shall prepare such books and records prescribed under any tax law and the relevant Manual.
- (2) The taxpayer shall maintain the books and records under subsection (1) of this Article for 5 years after the due date for lodgement of the tax return and if requested, he/she shall provide them to the taxation administration.
- (3) A taxpayer who fails to file a tax return required under the tax laws by the due date shall maintain the books and records under subsection (1) of this Article for 5 years after submission of the tax return.
- (4) If books, records and computer-stored information are prepared in a foreign language and requested by the taxation administration, the taxpayer shall, at their own expense provide a translation by a certified translator into one of the official languages.

**Article 26**  
**Demanding information**

- (1) The taxation administration may by notice in writing require a person to furnish books, records, information or computer-stored information under the control of the person within the time specified in the notice, or attend at the time and place specified in the notice to be examined regarding his/her tax affairs or those of any other person.
- (2) The notice issued under subsection (1) of this Article shall be served to the person, their representative or other responsible person present at the premises who signs for the receipt of the notice.
- (3) If none of the persons under subsection (2) of this Article are available the taxation employee shall leave the notice at the person's last known usual place of business or residence and shall record the delivery on his/her copy of the notice. This action shall be treated as delivery of the notice.

**Article 27**  
**Entry of taxation employee to premises**

- (1) If, based on documents and evidence, the taxation administration is certain that the provisions of the tax laws have been violated it may assign in writing a taxation employee to investigate the issue.
- (2) The assigned taxation employee, if necessary, may resort to the following actions-
  - (a) free access at all times to premises, properties, records, books, computer, related devices and any other information of the taxpayer;
  - (b) take a copy of records, books and computer-stored information;
  - (c) hold the required records or books that may be necessary in determining the tax liability of the taxpayer or for the purposes of other actions under the tax laws;
- (3) If the taxation employee under subsection (2) of this Article cannot take a printed or electronic copy of the information stored on a computer or related device, they may hold and retain the computer or device for as long as it is necessary to obtain the information from it.
- (4) A taxation employee cannot take the action under subsection (2) of this Article without having written authorisation from the taxation administration.

- (5) Security authorities shall upon the request of the taxation administration assist the taxation administration with implementing the provisions under this Article.
- (6) In the cases mentioned in subsection (2) of this Article the owner or lawful occupier of the premises shall provide necessary facilities and assistance to the taxation employee.
- (7) A person whose books, records or computer have been held under subsections (2) and (3) of this Article may obtain a copy at his/her expense, during office hours.
- (8) In a case mentioned under subsection (2) of this Article the taxation employee shall at the time of seizure sign and serve to the owner a seizure document and return the documents, computer and/or the device within 14 working days.

## **CHAPTER 7**

### **TAXPAYER IDENTIFICATION NUMBERS**

#### **Article 28**

##### **Application for Taxpayer Identification Number**

- (1) Every person subject to tax under the tax laws shall file with the taxation administration an application for a Taxpayer Identification Number in the approved form.
- (2) The taxation administration shall reject an application for a Taxpayer Identification Number under any of the following conditions –
  - (a) the applicant's true identity cannot be verified; or
  - (b) a Taxpayer Identification Number has already been issued to the applicant and is still valid.
- (3) The taxation administration shall notify the applicant in writing within 14 days of the decision to issue or refuse to issue the Taxpayer Identification Number.

#### **Article 29**

##### **Cancellation of Taxpayer Identification Number**

- (1) The taxation administration shall cancel the Taxpayer Identification Number under any of the following conditions –
  - (a) the taxpayer's true identity proves to be different; or

- (b) the taxpayer has more than one Taxpayer Identification Number.
- (2) Where necessary the taxation administration may cancel a taxpayer's Taxpayer Identification Number and issue them with a new Taxpayer Identification Number.
- (3) In the cases under subsections (1) and (2) of this Article the taxation administration shall notify the Taxpayer Identification Number holder of the issue (action).

### **Article 30**

#### **Quotation of Taxpayer Identification Number**

A taxpayer shall record their Taxpayer Identification Number in any tax return, notice, correspondence and other document relating to any tax law and the Customs Law.

## **CHAPTER 8 REPRESENTATION OF A TAXPAYER**

### **Article 31**

#### **Liabilities and obligations of representatives**

- (1) A representative is responsible for performing any obligations of the taxpayer including payment of their tax liabilities to the extent the assets of the taxpayer are in the possession or under the control of the representative.
- (2) The representative shall be liable for the payment of the taxpayer's unpaid tax liability if he/she disposes of the taxpayer's following amounts or assets in their possession –
  - (a) money received or receivable in respect of which the tax liability is payable; or
  - (b) money or assets belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax liability became payable.
- (3) This Article does not relieve a taxpayer from performing any obligations under the tax laws that the representative of that taxpayer has failed to perform.
- (4) Where a taxpayer has two or more representatives, as per the circumstances each one shall be jointly and severally liable for the obligations under this Article.

## **Article 32**

### **Obligations of directors and controlling shareholders of a company**

- (1) Where a company enters into a transaction or arrangement (contract, plan, agreement or understanding), as a result of which it cannot satisfy its current or future tax liability stipulated by any tax law, all persons who were directors or controlling shareholders of the company at the time the transaction or arrangement was entered into shall as per the circumstances be jointly and severally liable for the tax liability of the company.

Controlling shareholder for the purposes of this subsection is a person who directly or indirectly holds, either severally or jointly more than 50% of the voting rights in the company, rights to dividends from the company or rights to capital of the company.

- (2) Where a director of a company does not have a share in financial or other benefit of the company, they shall not be personally liable for the tax liability of the company provided that on becoming aware of such transaction or arrangement, they formally recorded with the company their disagreement and notified the taxation administration in writing; or at the time the transaction or arrangement under subsection (1) of this Article was entered into, they were not involved in the executive management of the company and they had no knowledge of the transaction or arrangement.

## **Article 33**

### **Registration of tax accountant**

- (1) The taxation administration shall grant a business license as tax accountant to persons who meet the following conditions:
  - upon application by the person
  - relevant higher education
  - successfully passing tax accountant's exam
  - having an office and specific address
- (2) A person who has fulfilled the requirements under subsection (1) of this Article may lodge an application with the taxation administration to obtain a license. The taxation administration shall examine the application for business license and, where the applicant has fulfilled the requirements, shall issue the license against a fee determined by the Council of Ministers.
- (3) A tax accountant who has obtained a license from the taxation administration is allowed to provide accounting and advisory services to a taxpayer against consideration (a fee).

- (4) A tax accountant holding a license may visit the taxation administration on behalf of the taxpayer.
- (5) While providing accounting and advisory services the tax accountant shall adhere to the tax laws and other laws.

## **CHAPTER 9 ADDITIONAL TAXES**

### **Article 34**

#### **Additional tax for late payment**

- (1) Where a person fails to pay their tax liability in accordance with the tax laws or in accordance with a notice under Article 16 of this Law by the due date in addition to the original tax they shall be liable for additional tax of 0,10% for each day of delay.
- (2) Additional tax for late payment of withholding tax under the tax laws, or late payment of an amount specified in a notice under Article 16 of this Law, shall be paid by the person required to withhold and pay it and it shall not be recovered from the payee.
- (3) Additional tax due under this Article shall be payable in addition to other additional taxes mentioned under this chapter.

### **Article 35**

#### **Additional tax for failure to submit a tax document**

- (1) A person who without reasonable cause fails to submit to the taxation administration a tax return or any other document required to be submitted under any tax law if a natural person shall be liable to additional tax of Afn. 30 and if a legal person to Afn. 100 for each day of delay.
- (2) In the cases mentioned under subsection (1) of this Article the additional tax shall cease to be charged at the time the tax return is received or a default assessment notice for the period to which the tax return relates is issued by the taxation administration. In any other case it shall cease at the time the document is received by the taxation administration.
- (3) Where a taxpayer fails to file a tax return within the extended deadline granted under Article 7 of this Law, the additional tax under subsection (1) of this Article shall be assessed from the original due date for filing the tax return.

### **Article 36**

#### **Additional tax for failure to withhold or pay withholding tax**

- (1) Where a person fails to withhold or pay tax from payments subject to withholding tax, they shall be liable to pay additional tax equal to 10 per cent of the amount of tax deductible from the payment.
- (2) The liability for the amount under subsection (1) of this Article shall be borne by the person who failed to withhold or pay the tax.

### **Article 37**

#### **Additional tax for failure to prepare and maintain books and records**

A person who fails to comply with Article 25 of this Law, if a natural person shall be liable to additional tax of Afn.5,000 and if a legal person to Afn.20,000.

### **Article 38**

#### **Additional tax for failure to comply with a notice**

A person who without reasonable cause fails to comply with a notice issued by the taxation administration under Article 16 of this Law shall be liable to additional tax equal to 10% of the tax collectible.

### **Article 39**

#### **Additional tax for failure to provide information**

A person who without reasonable cause fails to comply with Article 26 of this Law, if a natural person shall be liable to additional tax of Afn. 100 and if a legal person to Afn. 200 for each day of delay.

### **Article 40**

#### **Additional tax for false or misleading statements**

- (1) A person who makes a false or misleading statement or omits from such statement any material particular which lessens their tax shall be liable to additional tax equal to 25 per cent of the tax shortfall.
- (2) The additional tax under subsection (1) of this Article shall not be imposed under any of the following conditions –
  - (a) the tax shortfall arose as a result of the taxpayer objecting to the application of the relevant tax law to their tax position; or
  - (b) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading.

- (3) The additional tax under subsection (1) of this Article shall not prevent the imposition of additional tax under Article 33 of this Law.
- (4) A statement under this Law shall include the following -
  - (a) documents prepared, issued or filed under any tax law;
  - (b) information furnished under any tax law;
  - (c) documents furnished under other laws;
  - (d) answers to the taxation administration's questions;
  - (e) a statement to another person with the expectation that it will be conveyed to the taxation administration.

#### **Article 41**

##### **Additional tax for tax evasion**

- (1) A person who intentionally evades tax shall, in the first instance, besides the original tax be liable to additional tax equal to double the evaded tax.
- (2) In a case mentioned under subsection (1) of this Article, for the second instance besides payment of the original tax and additional tax, their business activity may be ceased based on court order.

#### **Article 42**

##### **Additional tax for failure to apply for Taxpayer Identification Number**

A person who under the provisions of the tax laws is required to have a Taxpayer Identification Number and who, without reasonable cause, fails to apply for it if a natural person shall be liable to additional tax of Afn.5,000 and if a legal person to Afn. 20,000.

#### **Article 43**

##### **Additional tax for failure to comply with the VAT Law**

- (1) A person who is required to register under Chapter 3 of the Value Added Tax Law and who, without reasonable cause, fails to apply for registration if a natural person shall be liable to additional tax of Afn. 5,000 and if a legal person to Afn. 20,000.
- (2) A person who falsely uses a VAT registration certificate or allows another person to use it if a natural person shall be liable to additional tax of Afn. 10,000 and if a legal person to Afn. 40,000.

- (3) A person who fails to issue or who issues incorrect or false Value Added Tax documentation under Chapter 6 of the VAT Law shall be liable to additional tax equal to 25 per cent of the tax shortfall.
- (4) Where a person fails to comply with requirements under the Value Added Tax Law and no additional tax has been specified in this Chapter, if a natural person shall be liable to additional tax of Afn. 1,000 and if a legal person to Afn. 4,000.

**Article 44**  
**Additional tax calculation**

- (1) If a tax penalty is imposed based on a court order, the tax under this Chapter shall cease to apply. Article 34 of this Law is an exception.
- (2) The taxation administration shall assess the tax mentioned under this Chapter and notify the person in writing of the amount payable and the due date for payment.
- (3) If the tax payable to which an additional tax was imposed is amended, the additional tax related to the tax shall be recalculated.
- (4) If a taxpayer acted based on a manual, ruling or guide issued that will later be proved to be contrary to the provisions of the tax laws, the taxpayer shall not be subject to additional tax and penalties under this Law.

**CHAPTER 10**  
**TAX PENALTIES**

**Article 45**  
**Tax offences**

- (1) A person who without reasonable cause fails to deliver a tax return in accordance with the tax law, or by an extended due date as allowed by the taxation administration, upon conviction by an authorized court if a natural person shall be liable to a monetary penalty of Afn.5,000 and if a legal person to Afn.20,000.
- (2) A person who, without reasonable excuse, fails to withhold or pay withholding tax as required by the tax laws shall as per the circumstances be liable upon conviction by an authorized court to a monetary penalty equal to 10% of the withholding tax collectible or to imprisonment for a term not exceeding six months, or both.
- (3) A liquidator who fails to comply with Article 19 of this Law shall be liable upon conviction by an authorized court to a monetary penalty of Afn. 20,000.

- (4) A person who fails to comply with a notice under subsection (3) of Article 22 shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.5,000 and if a legal person to Afn.20,000.
- (5) A person who knowingly fails to prepare and maintain books and records in accordance with the tax laws shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.25,000 and if a legal person to Afn.100,000 or to imprisonment for a term not exceeding six months, or both.
- (6) A person who fails to provide necessary facilities or assistance to taxation employees as required by subsection (6) of Article 26 of this Law shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.10,000 and if a legal person to Afn.40,000.
- (7) A person who knowingly uses a false Taxpayer Identification Number on a tax return or document prescribed or used for the purposes of the tax laws shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.25,000 and if a legal person to Afn.100,000 or to imprisonment for a term not less than 3 months and not exceeding 6 months, or both.
- (8) A person who knowingly, without reasonable cause, fails to comply with a notice under Article 27 of this Law shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.5,000 and if a legal person to Afn.20,000.
- (9) A person who knowingly makes a false or misleading statement or omits any material particular, shall be liable upon conviction by court if a natural person to a monetary penalty of Afn.40,000 and if a legal person to Afn.160,000 or imprisonment for a term not exceeding six months, or both.
- (10) A person who breaches Article 53 of this Law upon conviction by an authorized court shall be liable to a monetary penalty of Afn.100,000 or imprisonment for a term not exceeding 1 year, or both.

#### **Article 46**

##### **Obstructions against taxation employees**

A person who wilfully obstructs a taxation employee in the performance of their duties under any tax law shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.40,000 and if a legal person to Afn.160,000 or to imprisonment for a term not exceeding six months, or both.

**Article 47**  
**Abetting**

Any person who aids, abets, assists, incites, or induces another person to commit an offence under the tax laws shall be tried by a competent court in accordance with the effective laws.

**Article 48**  
**Offences by legal persons**

- (1) Where a legal person commits an offence under the tax laws any of the persons holding the following positions at the time the offence was committed shall be treated as having committed the offence –
  - (a) a director, deputy director, principal officer, general manager or other similar officer; or
  - (b) acting or purporting to act in that capacity.
- (2) Subsection (1) of this Article shall not apply to a person under the following conditions -
  - (a) the offence was committed without that person's consent or knowledge; and
  - (b) there is evidence that the person has exercised diligence to prevent the commission of the offence.

**Article 49**  
**Compounding prosecution**

- (1) Where any person has committed an offence under this Chapter the taxation administration may compound their referral to the judicial authorities provided that it is a first offence and the offender admits to it in writing and fulfils their tax obligations. Subsections (1), (5) and (9) of Article 45 of this Law shall be an exception.
- (2) In a case mentioned under subsection (1) of this Article the taxation administration shall issue a written notice to the offender containing the following -
  - (a) the offence committed;
  - (b) the sum of money to be paid (which shall not be more than the penalty specified in this Law); and
  - (c) the due date for payment.
- (3) The notice under subsection (2) of this Article shall be served on the offender together with a copy of the written admission shall be submitted to the offender. The notice shall be final and not reviewable.

- (4) Where the taxation administration compounds the referral of the person to the judicial authorities, the offender shall not be liable for prosecution in respect of that offence.

**Article 50**  
**Time limit for prosecution**

Offenders under this Chapter shall only be prosecuted within five years from the date of commission of the offence.

**Article 51**  
**Misuse of position**

If a taxation administration employee misuses their position they shall be punished in accordance with the law.

**CHAPTER 11**  
**FORMS AND NOTICES**

**Article 52**  
**Preparing forms and notices**

- (1) The taxation administration shall prepare forms, notices and other documents prescribed by the tax laws and other legislative documents and make them available to taxpayers.
- (2) A notice or document issued or served by the taxation administration under any tax law shall not be valid without signature and/or the official stamp of the taxation administration.

**Article 53**  
**Service of notice**

- (1) The service of a notice or document to a person in accordance with the tax laws shall be treated as properly served if delivered to the person or his representative, or left at the person's usual or last known place of abode or business in Afghanistan, unless otherwise provided by the tax laws.
- (2) The validity of service of any notice under the tax laws shall not be challenged after the notice has been wholly or partially complied with by the person.

**Article 54**  
**Confidentiality of information**

- (1) Documents and information coming into possession or knowledge of a taxation employee and the authorities under subsection (2) of

this Article in connection with the performance of their duties, shall be confidential in accordance with the tax laws.

- (2) The documents and information under subsection (1) of this Article shall be made available upon request by the following authorities -
  - (a) the Tax Disputes Resolution Board or relevant Court in relation to proceedings under this Law;
  - (b) the Departments of the Government where necessary for the performance of their official duties; or
  - (c) any foreign state limited to the provisions of the relevant agreement made.

## **Article 55**

### **Establishment of the Board**

- (1) For the purposes of review of objection regarding the taxation decisions under this Law a Tax Disputes Resolution Board shall be established with the following composition –
  - (a) an economic specialist with higher education (at least Bachelor degree) and having five years of practical experience in economic affairs;
  - (b) a legal specialist with a higher education (at least Bachelor degree) and having five years of practical experience in legal affairs ;
  - (c) an accounting specialist with higher education (at least Bachelor degree) and having five years of practical experience in accounting affairs;
  - (d) a tax specialist with higher education (at least Bachelor degree in law or economics) and having five years of practical experience in tax administration or tax collection;
  - (e) a specialist with higher education (at least Bachelor degree in Law or economics) and having five years of practical experience in the private sector.
- (2) The following cannot be appointed as members of the Board –
  - (a) a person convicted by court of violating the tax laws;
  - (b) undischarged bankrupt.
- (3) Appointment of the Board members mentioned under subsection (1) of this Article shall be by proposal of the Minister of Finance and approval by the Council of Ministers.

- (4) When needed the Ministry of Finance may make changes to the composition of the Board considering subsection (3) of this Article.
- (5) The chairperson of the Tax Disputes Resolution Board shall be one of the Board members appointed by the President.
- (6) The members shall be appointed for a term of five years and it can be extended for subsequent terms if they are eligible.
- (7) The manner of holding the Tax Disputes Resolution Board meetings shall be regulated by a separate procedure (Tarzulamal).
- (8) Removal of a Board member shall be proposed by the Minister of Finance and approved by the Council of Ministers under any of the following conditions –
  - (a) is unable to perform their duties in accordance with the effective laws;
  - (b) is convicted of misuse of position by an authorized court;
  - (c) has given their resignation from their position.

#### **Article 56**

##### **Dissatisfaction with objection decision**

- (1) In a case mentioned under subsection (1) of Article 12 of this Law, a person shall file their application for review in the approved form with the Tax Disputes Resolution Board within 30 days.
- (2) If the person is unable lodge the application with the Tax Disputes Resolution Board by the due date under subsection (1) of this Article, they may apply to the Tax Disputes Resolution Board for an extension.
- (3) An applicant shall submit a copy of the application under subsection (1) of this Article to the taxation administration within 5 days of filing the application to the Tax Disputes Resolution Board.

#### **Article 57**

##### **Decision by the Tax Disputes Resolution Board**

The Tax Disputes Resolution Board shall make its decisions having regard to any tax law, other legislative documents, information and documents before it and rulings issued.

**Article 58**  
**Powers and duties of the Board**

- (1) The Tax Disputes Resolution Board in relation to taxation assessments and other taxation decisions shall have the following powers to –
- a) In relation to taxation assessments –
- confirm, reject or amend the taxation assessment;
  - make an order for payment of any amount that is assessed as being payable but has not been paid;
  - remit the matter to the taxation administration for determination of tax in accordance with the decision of the Tax Disputes Resolution Board;
  - make any further order that is necessary for the resolution of the dispute.
- b) In relation to other taxation decisions -
- affirm or amend the taxation decision;
  - set aside the taxation decision and make a new decision;
  - set aside the taxation decision and remit the matter for reconsideration by the taxation administration in accordance with any directions and recommendations of the Board.
- (2) The Tax Disputes Resolution Board shall have the following duties to -
- (a) make a written decision as soon as practicable after the hearing has been completed; and
- (b) notify the parties of the decision within 7 days of issuing the decision.
- (3) The decision of the Board shall include –
- (a) the legal reasons for the decision;
- (b) the result of the Board’s analysis on questions of fact; and
- (c) reference to the evidence upon which the decision was made.
- (4) The Tax Disputes Resolution Board shall publish and make available to the public the decisions made by the Board through the relevant website provided that the identity of the applicant or any other person concerned and trade secrets or other confidential information are not disclosed.

- (5) An authenticated copy of the Board decision shall be recognised in court proceedings as evidence.

## **CHAPTER 12**

### **TAX CLEARANCE CERTIFICATES AND REFUNDS**

#### **Article 59**

##### **Certificate**

- (1) The taxation administration shall, within 21 days of receiving a person's request, issue a tax clearance certificate provided that, at the time of the request, the person has filed their tax returns and paid their tax liabilities in accordance with the tax laws.
- (2) In the cases mentioned under subsection (1) of this Article, before issuing a tax clearance certificate to a director of the company the tax returns and tax liabilities of the company must also have been cleared by the taxation administration.
- (3) Authorities/agencies that in accordance with the law have the authority to issue business or other licences to operate an economic activity can only issue or renew a licence if the person delivers a tax clearance certificate under subsection (1) of this Article within 21 days of it being issued.

#### **Article 60**

##### **Refund**

- (1) If a taxpayer has overpaid or paid their tax liability in error, the taxation administration shall determine it in accordance with the tax laws and the relevant procedures and notify the taxpayer in writing of their refund entitlement.
- (2) In a case mentioned under subsection (1) of this Article, a taxpayer is entitled to a refund if the refund is claimed by the person in writing within five years from the date of overpayment.
- (3) If an amount has been erroneously refunded by the taxation administration, it shall be regarded as tax payable by the taxpayer from the date on which it was paid.

#### **Article 61**

##### **Offset, carry forward and payment of refund**

- (1) The refund under Article 60 of this Law shall be allocated in the following order -

- (a) offset with any outstanding tax liability or customs duty due by the taxpayer;
  - (b) offset against the tax liabilities of another person, if so agreed;
  - (c) if requested, refunded to the person;
  - (d) carried forward against future tax liabilities of the taxpayer.
- (2) The taxation administration is required to notify the taxpayer in writing about the allocation of the refund.
- (3) An amount is not refundable if it is less than Afn.1000 and it shall be carried forward and credited against future tax liabilities of the taxpayer.

## **CHAPTER 13 MISCELLANEOUS**

### **Article 62 Regulations and rulings**

- (1) The Ministry of Finance may, for better administration of this Law, propose regulations and issue manuals, rulings and guides provided they are not contrary to the provisions of the tax laws.
- (2) The taxation administration shall enforce and comply with the manuals, rulings and guides issued under subsection (1) of this Article.

### **Article 63 Transitional provisions**

- (1) Any appeal or prosecution that commenced before this Law came into force shall be resolved under the previous law.
- (2) Where the period for any application or appeal had expired before this Law came into force, a person is not entitled to benefit from a period specified in this Law.
- (3) Except in cases mentioned in subsections (1) and (2) of this Article, this Law shall apply to any taxation assessment made or any act or omission occurring before this Law came into force.

**Article 64**  
**Primacy of the Law**

- (1) In the event of any conflict between laws, contracts, agreements or other legislative documents with the provisions of this Law, the Tax Administration Law shall prevail.
- (2) Subsection (1) of this Article shall not apply to international agreements made between the Government of the Islamic Republic of Afghanistan and foreign Governments or UN Organizations.

**Article 65**  
**Enforcement date**

- (1) This Law shall come into force after being published in the Official Gazette.
- (2) After the commencement of this Law Article 3, Article 39, subsections (7) and (8) of Article 59, subsection (2) of Article 86, subsections (4), (5), (6) and (7) of Article 87, Articles 90, 91, and 92, subsections (1) and (2) of Article 93, Articles 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 107, and subsection (1) of Article 109 and Article 111 of the Income Tax Law published in the Official Gazette No 976 of 2009 and other contrary provisions shall be repealed.

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