

AFGHANISTAN
TAX ADMINISTRATION LAW

TAX ADMINISTRATION LAW

Draft Manual

Ministry of Finance

Islamic Republic of Afghanistan

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INTRODUCTORY COMMENTS

This Manual is issued under the authority granted to the Ministry of Finance by Article 62 of the Tax Administration Law XXXX. The purpose of this document is to provide additional guidance to the Afghanistan Revenue Department and others regarding the interpretation and application of the Tax Administration Law.

Reference is made to the taxation administration in the Law and throughout this document. It should be understood to mean the Revenue Department of the Ministry of Finance. That term should be read as meaning and including revenue offices in mustofiats.

On some occasions the term Ministry of Finance is used. When used in the Tax Administration Law the meaning is wider than the taxation administration. In other tax laws (the Income Tax Law and the VAT Law) the meaning will depend on the context within that law.

The word taxpayer is used throughout this document. Unless the context requires otherwise, a reference to a taxpayer should be taken to include a representative of a taxpayer as defined in Article 3.

In case of any potential conflict between the Tax Administration Law and another tax law, the Tax Administration Law shall be interpreted in a way that accommodates the other law.

In case of any potential conflict between this Manual and the Tax Administration Law, the Law shall prevail.

CHAPTER 1 - GENERAL PROVISIONS

ARTICLE 1 – AUTHORITY OF THIS LAW

Article 1 **Authority of this Law**

This Law has been enacted pursuant to Article 42 of the Constitution of Afghanistan in order to provide for the administration of tax.

- 1.1 The Tax Administration Law has been enacted under the constitutional power found in Article 42 of the Constitution of the Islamic Republic of Afghanistan and given to the Parliament of the Islamic Republic of Afghanistan. Article 42 of the Constitution of Afghanistan (1382) provides that:
- Every Afghan is obligated to pay taxes and duties to the Government in accordance with the provisions of law;
 - No taxes and duties are enforced without the provisions of law;
 - The rate of taxes and duties and the method of payment are Determined by law on the basis of observing social justice;
 - This provision is also applied to foreign individuals and agencies;
 - Taxes collected shall be delivered to the State account.

ARTICLE 2 – OBJECTIVES

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.
- 2.1 Article 2 explains the general objectives of the Tax Administration Law. The Articles after Article 2 specify the details of how these objectives will be achieved.
- 2.2 Note that the taxation administration is mentioned and this can be understood as providing principal responsibility for tax administration to the Revenue Department within the Ministry of Finance.

ARTICLE 3 – DEFINITION OF TERMS

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 which 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 Jadi (Hijre Shamsi) and continuing till the last day of Qaws (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, 33, 60 and 61 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;
- 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; and
- 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.

“taxpayer”

- 3.1 A taxpayer is a person who has tax obligations to fulfil under any of the tax laws. Such obligations include having an obligation to obtain a TIN, file a form or withhold an amount from a payment to another person. A taxpayer is therefore not limited to a person who has to pay tax.
- 3.2 Note that the VAT Law also contains a definition of “taxpayer”. The definition in the VAT is applicable for VAT purposes only. Whenever the word taxpayer is used in the VAT Law it takes its meaning from the definition in the VAT Law.
- 3.3 The definition of taxpayer in the Tax Administration Law applies whenever that word is used in that Law.

“tax laws”

- 3.4 Historically the primary tax law of Afghanistan has been income tax law. It has been revised a number of times, most recently enacted as the Income Tax Law 2009.
- 3.5 From 2016 a second significant body of tax law commenced operation – the Value Added Tax Law. The tax laws in operation at the time of commencement of the Tax Administration Law are therefore the relevant tax laws (as amended) covered by this definition at that time:
- the Income Tax Law 2009;
 - the Value Added Tax Law; and
 - the Tax Administration Law.
- 3.6 Other tax laws may be enacted in the future. If so, this Tax Administration Law will automatically apply to those tax laws.

- 3.7 Customs laws are specifically excluded from being tax laws under this definition. The administration of customs law and the procedures of the Customs Department are separately provided by the relevant customs law.
- 3.8 The Customs Department is referred to by some provisions of tax law. The Tax Administration Law only applies to the Customs Department to the limited extent provided by those specific provisions. The main tax law provision affecting Customs is Article 26 of the VAT Law which gives the Customs Department authority to collect VAT imposed by that law. That Article also authorises the Customs Department to use their enforcement powers as provided by Customs law. The Customs Department will confine its actions to those necessary for the administration and enforcement of VAT on importation. Taxpayers' rights and obligations related to the importation will also be determined according to the Customs laws.
- 3.9 Any VAT issues arising after goods are entered to Afghanistan will fall for consideration by the taxation administration according to tax laws.
- 3.10 Also see Article 20 for another instance where the Customs Department is specifically required to carry out a provision in the tax law.

“tax period”

- 3.11 A tax period is a period of time for which a taxpayer must account for their tax obligations. The accounting for their obligations is generally done by filing a tax return. The period covered by the tax return is the tax period which is specified in the relevant tax provisions.
- 3.12 Generally for income tax purposes this will be 12 months for annual tax returns, except in the case of a transitional year where a taxpayer is changing their tax year (see Appendix A for the discussion of tax year and requests for a different tax year).
- 3.13 For Business Receipts Tax purposes the tax period in the Income Tax Law is quarterly (3 months).
- 3.14 The VAT Law has a specific definition of “Value Added Tax period”. For Value Added Tax purposes the tax period is quarterly (3 months) or monthly according to Article 2 of the VAT Law. The actual period to be used by taxpayers is specified in the VAT regulations (Muqarara). At the commencement of the VAT Law the period specified is three months for all registered taxpayers. The regulations may vary this in the future according to the amount of total taxable supplies or using other criteria.

“tax return”

- 3.15 A tax return is a form approved by the taxation administration that is used for the purposes of assessment, determination and payment of tax liabilities.

3.16 There are two requirements to be met before a form meets the definition of tax return:

1. It must be a form approved by the taxation administration; and
2. It must be used for the purposes of assessment, determination or payment of tax liabilities.

Example 1

Certain taxpayers are required by Article 89 of the Income Tax Law to file a balance sheet with their income tax return. The taxation administration does not approve or specify the format of balance sheets. This is a matter to be determined by general accounting standards and principles. Even though it may meet the second requirement mentioned above (used for the purposes of assessment, determination or payment of tax liabilities, it does not meet the first requirement so therefore a balance sheet is not a tax return. It is also not part of the tax return, even though it must be filed at the same time as the tax return.

Example 2

The taxation administration may in the future approve a form for taxpayers to authorise another person to be their representative. If such a form is approved, it will not be a tax return. It meets the first requirement mentioned above, but does not meet the second requirement because the purpose of the form is not for assessment, determination or payment of tax liabilities.

3.17 Examples of forms that will be tax returns if approved as forms are listed below. Items may be added or subtracted from this list depending on whether forms are currently approved for the purpose or new forms are approved by the taxation administration in the future.

- Annual income tax returns (for all entities);
- Business receipts tax returns;
- The annual report general partnerships are required to file under Article 34 of the Income Tax Law;
- The monthly withholding tax report required under subsection (4) of Article 46 of the Income Tax Law and the monthly withholding tax report required under Article 60 of the same Law;
- The annual withholding tax statements and report required to be filed by employers by Article 61 of the Income Tax Law;
- The annual salary and tax statements required to be filed by employees by Article 62 of the Income Tax Law
- Value Added Tax returns under the VAT Law.

3.18 A tax return may be in paper form or electronic form (hard copy or soft copy).

“additional tax”

- 3.19 Additional tax refers to any amount imposed administratively by the taxation administration under any of the tax laws for a failure to comply with a tax obligation. Any amount imposed under Articles 34 to 43 of the Tax Administration Law meets the definition of additional tax.
- 3.20 Penalties imposed upon conviction by a court are not additional tax. Any of the amounts imposed by a court under Articles 45 to 48 of the Tax Administration Law are therefore excluded from being additional tax.
- 3.21 As penalties imposed by a court are not additional tax, the collection of those amounts are not collected or enforced by the taxation administration. Collection and enforcement of a court monetary penalty is a matter for the court imposing the monetary penalty.

“tax year”

- 3.22 Formerly, the tax year was the solar (Hejiri Shamsi) year which started on the first day of Hamal (21 March) and ended on the last day of Hoot (20 March) of that year (former Article 3(1) of the Income Tax Law). Effective 22 November, 2011 Article 2(7) of the Public Finance and Expenditure Law was amended to read as follows:

“The fiscal year means the period started from 1st of Jadi through end of Qaws of the next solar year. Where any provisions of the other laws contradicts this provision, this provision prevails”

Effective from the time of that amendment, the tax year for income tax purposes was altered to the period ending 20 December.

- 3.23 The Ministry of Finance accepted, for transitional purposes, tax returns for the 12 months ending 20 March 2012, with the next filing of tax returns being for the 9 months ending 20 December 2012. Subsequently all income tax returns are for the full 12 months ending 20 December, with the first such returns being for the tax year ending 20 December 2013.
- 3.24 The tax year is also important for VAT purposes. Persons registered for VAT must file VAT returns for a VAT period. The VAT period may be monthly or quarterly. What constitutes a month or quarter for VAT purposes is defined in the VAT Law by reference to a tax year. The term tax year is not defined in the VAT Law – it relies on the meaning of that term in this Tax Administration Law.
- 3.25 The first month and the first quarter for VAT Law purposes is aligned with the start of the tax year, with all subsequent months and quarters naturally following from that first defined period.
- 3.26 The definition of tax year in Article 3(1) allows for the use of a different period by a taxpayer, provided that their request is approved by the taxation administration. Further explanation on this process is at Appendix A.

“taxation decision”

- 3.27 The definition of taxation decision is necessary to identify which decisions made by the taxation administration are subject to objection under Article 11. Following objection, there are further possible steps for dispute to the Tax Disputes Resolution Board and from there to court. Decisions that are not included in the definition of taxation decision are therefore not disputable in an objection or by appeal to the Board or a court.
- 3.28 All taxation assessments are taxation decisions and are therefore subject to possible objection by taxpayers. Any determination, calculation, interpretation of law or any other decision leading up to the making of a taxation assessment is a matter that can be the subject of the objection. Any amount included in the taxation assessment is eligible for objection – including additional tax imposed.

Example 1

The taxation administration carries out an audit of the Mansour Wedding Hall Company. After completing the audit an amended income tax assessment is issued for the year 1397 with an adjustment to the taxable income mainly because the auditor disagreed with the claim for depreciation. The claim was reduced partly because there was no evidence of the cost of some assets and partly because the auditor believed the wrong depreciation rate was used for other assets.

The decision to disallow depreciation for lack of evidence and the decision to change the depreciation rate for some assets are both subjects that the taxpayer may dispute by objection as these decisions were directly related to the making of the taxation assessment.

- 3.29 In addition to taxation assessments, some other decisions made by the taxation administration are specifically defined as being taxation decisions and therefore can also be disputed by objection. These are:
- A decision on an application for an extension of time to file a tax return (under Article 7(6));
 - A decision on an application for extension of time to file an objection (under Article 11(3));
 - A decision on an application for extension of time to pay tax or to pay tax by instalments (under Article 15(3));
 - A decision to bring forward the due date for payment of tax (under Article 15(6));
 - A decision to issue a notice requiring a third party to pay an amount in connection with a taxpayer’s unpaid tax (under Article 16(1));
 - A decision in response to a third party’s application for review of an Article 16 notice (under Article 17(3));
 - Any decisions represented by the amounts mentioned in a notice issued to a liquidator under Article 19(2);
 - A decision concerning leave, or refusal to grant leave, for a liquidator to part with any asset they hold as liquidator under Article 19(3);

- A decision to suspend financial transactions under Article 20;
 - A decision to issue a notice taking over a landlord's right to receive rent under Article 21;
 - A decision under Article 22 to issue an order for temporary closure of a business, including any decision not to rescind such an order or reverse action taken under such an order;
 - A decision to issue a departure prohibition notice under Article 23;
 - A decision to refuse an application for a Taxpayer Identification Number (under Article 28);
 - A decision to cancel a Taxpayer Identification Number (under Article 29 under Article 29);
 - A decision to refuse to issue a tax clearance certificate under Article 59 (including a failure to issue the certificate within the required time); and
 - A determination of the amount of a refund under Article 60 (including determining that there is no refund entitlement).
- 3.30 Only decisions that are "taxation decisions" can be disputed. Decisions that are not "taxation decisions" are final and cannot be disputed in any way under the Tax Administration Law.

"liquidator"

- 3.31 A person who has responsibility for winding up a company is a liquidator. A person who has the responsibility for taking possession of a person's assets on behalf of creditors of the person and selling or dealing with those assets to repay debts is also a liquidator for the purposes of the Tax Administration Law. (Such a person is sometimes called a receiver).
- 3.32 A liquidator acting on behalf of creditors under this definition may have taken responsibility for some assets (for example, if these assets were pledged as security for a loan) or they may take responsibility for all assets of the person (in the case of bankruptcy).
- 3.33 The meaning of liquidator also covers a person who has taken responsibility for administering, dividing or transferring the assets of a deceased person.
- 3.34 A liquidator as defined in this law may be a person appointed by a court, or creditors, or as specified by law. A liquidator may also be a person who has assumed these responsibilities consistent with the relevant law.
- 3.35 Subject to relevant legal requirements, there may be more than one liquidator for a taxpayer at the same time.

"third party"

- 3.36 A third party is a person who has any of the following connections to a taxpayer:

1. Owes money to the taxpayer;
2. May owe money to the taxpayer in the future;
3. Holds money for or on account of the taxpayer;
4. May hold money for or on account of the taxpayer in the future;
5. Holds money on account of another person for payment to the taxpayer; or
6. Has authority to pay money to the taxpayer.

3.37 The second and fourth conditions refer to the possibility of the third party having a monetary obligation to the taxpayer in the future. It is not necessary for this to be certain – all that is required is that there be a possibility that the person might have the future obligation.

Example 1

An employer of a taxpayer will be a third party in relation to the taxpayer, even if they currently do not owe any salary or wages to the taxpayer. As the employer, there is clearly a possibility that they will owe salary or wages to their employee in the future.

Example 2

A taxpayer has a bank account with New Kabul Bank. At the time that the taxation administration discovers that the taxpayer holds this account, there is no money in the account. Even so, the Bank is a third party to the taxpayer under the fourth condition mentioned above because it is possible that funds may be deposited in the account in the future.

Example 3

Nezaam is a carpet manufacturer. He sends 20 carpets to his cousin Bashir in Kabul for display and sale in Bashir's shop. They have an arrangement where Bashir will collect the proceeds of any sales of Nezaam's carpets, keep 20% of the money and pay the remainder to Nezaam when he next visits Kabul. Bashir is therefore a third party under the third condition when he holds any money for Bashir. He would be a third party under the fourth condition if he holds Nezaam's carpets for sale but has not yet sold them.

3.38 A third party may be a Ministry or agency of the government, including the Ministry of Finance.

“representative ”

3.39 A representative of a taxpayer is responsible for performing various duties and obligations of a taxpayer under the tax laws. The level of responsibility and liability depends on how they become a representative. See Article 31 for more explanation.

- 3.40 A taxpayer has the right to choose a representative to advocate their interests. The representative may be one of the persons listed in the definition of representative, or it can be any other person they choose. See Article 5(1)(d).
- 3.41 Whenever the taxation administration is required to communicate with a taxpayer or provide a written document to a taxpayer, communication or delivery to a representative of a taxpayer is treated as being done with the taxpayer.
- 3.42 There are various potential categories of representative depending on the characteristics of the taxpayer as explained below.

Appointed by the taxpayer

- 3.43 A taxpayer may authorise another person to act as their representative for tax purposes by lodging a written notification with the taxation administration. The written notice should properly identify the representative. The taxpayer may choose to specify a start and end date for the authority or choose not to specify a date. If no dates are specified, the authority is taken to commence from the time of notification and operates until the taxpayer cancels it.
- 3.44 So long as no fee is being charged for providing tax advice or services, any person can be a representative of a taxpayer. However, if a fee is to be charged for the services the representative must be a licensed tax accountant (see Article 33).
- 3.45 The taxpayer may choose to authorise the representative for all tax purposes, or may limit the representative's authority to specified tax obligations.

Example 1

Farhad owns a large business which is registered for VAT. He files a notice with the taxation administration authorising his tax accountant, Hedayat, to represent him for all VAT matters only. Hedayat is therefore a representative of Farhad for VAT but is not authorised for any income tax affairs.

Example 2

Najib owns a small retail shop. He plans a three month holiday in Germany to visit his son and family from Qaws to Hoot. Before leaving Afghanistan he notifies the taxation administration in writing that his cousin Yasir is authorised to handle all of his tax affairs until 30th of Hoot. Yasir is therefore Najib's properly authorised representative from the time that the notice is filed up until the 30th of Hoot.

Authorised by virtue of position held

- 3.46 The definition of representative also includes specified persons who by virtue of their appointment or position are automatically representatives of a taxpayer. These are:

1. In the case of a company, the Chief Executive Officer. This position is sometimes known as the managing director, it is the person who holds the most senior position in managing the operations of the company. Companies and corporations are defined in Article 31 of the Income Tax Law and the same meaning applies for the purposes of Article 3 of the Tax Administration Law. A company or corporation is an entity whereby the shareholders liability is limited to the share capital.
2. In the case of a partnership, any of the partners. The meaning of partnership is defined in Article 31 of the Income Tax Law and by reason of subsection (2) of Article 3 of the Tax Administration Law, will have the same meaning. Partner is also defined in Article 31 of the Income Tax Law and has the same meaning in this Law. A partner in a partnership will be a representative if they are a partner with unlimited liability for debts of the partnership.
3. In the case of a person in liquidation, the liquidator. In the context of the expanded definition of liquidator in Article 3, a person in liquidation has the same wide meaning including all situations in that definition. The taxation administration must be notified of the liquidator's appointment – see Article 19.
4. In the case of a Government Office (including a foreign government) or political subdivision such as a provincial or municipal authority, any person who has responsibility for receiving or paying funds for that organisation.

Non-resident taxpayers

- 3.47 A person managing the affairs of a non-resident in Afghanistan is a representative of the non-resident for tax purposes. If a non-resident accepts that such a person in Afghanistan is their representative for tax purposes, they can avoid any uncertainty by authorising that person in accordance with the first item listed in the definition of representative instead of the fifth item listed.
- 3.48 The fifth item of the definition of representative is more commonly considered when the taxpayer has not specifically authorised a person to be their representative and the taxation administration is attempting to identify a representative. The non-resident or the local person may be denying or hiding the relationship.
- 3.49 Non-residents owners of businesses operating in Afghanistan will generally have engaged or employed a resident person to manage their affairs. If this situation has been advised to any other government agencies, even if it has not been advised to the taxation administration, this can be taken as strong evidence that the person is a representative of the taxpayer including for tax affairs even if the person disputes this status.

- 3.50 The taxation administration may also identify a representative of a non-resident person by enquiring, observing and compiling evidence of who is acting for the non-resident on a daily basis. If the business is trading in goods in Afghanistan, or has employees in Afghanistan, or operates with buildings or other capital assets in Afghanistan it will almost certainly have a person with responsibility over these assets, employees or activities. Such things are not left unattended.
- 3.51 A person can still be taken as managing a non-resident's affairs even if that person may take instructions from the non-resident by telephone, email or in person.

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ARTICLE 4 – IMPLEMENTING AUTHORITY

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.

- 4.1 The Ministry of Finance is the principal authority for administering the tax laws including the Tax Administration Law. Specific employees within the Ministry are assigned to these tasks, collectively referred to in this Law as the taxation administration. The Tashkeel and the Delegations Manual identify those persons and positions that are delegated to perform each function under the laws.
- 4.2 The taxation administration is known as the Afghanistan Revenue Department within the Ministry of Finance. The Department is headed by a Director General.
- 4.3 The term taxation administration is used many times throughout the Tax Administration Law. Whenever it is used in relation to an action or decision to be taken, such action or decision will be duly done by the taxation administration if it is done by a properly authorised taxation officer acting lawfully.
- 4.4 Taxation officer means an employee of the taxation administration with responsibility for administering the tax laws. A person can only be a taxation officer while they are a current employee of the taxation administration. Not all employees of the taxation administration have responsibility for administering the tax laws. For example employees whose duties are limited to cleaning have no responsibility in administering the tax laws.
- 4.5 An employee of the taxation administration with responsibility for administering tax laws is a person who:
 - Is employed in a tax related position on the Ministry of Finance's Tashkeel; and
 - Has tax related duties and responsibilities as part of their job description.
- 4.6 A taxation officer cannot personally contract out or delegate their responsibility as a taxation officer.

CHAPTER 2 - RIGHTS AND OBLIGATIONS OF TAXPAYERS

ARTICLE 5 – TAXPAYER’S RIGHTS

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.

No charge or fees to receive written material and service from the taxation administration

- 5.1 Taxpayers have the right to receive any publications relevant to their tax affairs including guides, tax returns and other forms free of charge from the taxation administration. There are no charges or fees applicable for any written material provided by the taxation administration.

- 5.2 Taxpayers have the right to receive information and assistance concerning their taxation affairs from taxation officers for no charge or fee. A taxation officer who is unable to answer a specific question has the responsibility to seek the required information or refer the taxpayer to another taxation officer who is able to assist.
- 5.3 A tax officer who demands payment for publications or a fee for their service (including a gift) is in breach of the Anti-Bribery and Corruption Law. In addition, they may be in breach of Article 51 of the Tax Administration Law (Misuse of position). Taxpayers have the right to report such actions to a superior of the taxation officer concerned.

The right to receive written replies to questions

- 5.4 A taxpayer has the right to receive in writing a reply to any question put in writing to the taxation administration that concerns his/her tax situation. This right extends to a representative of taxpayer asking questions on behalf of the taxpayer. This right concerns informal questions about the taxpayer's tax affairs. Rights in relation to formal applications and private ruling requests are provided in the specific provisions of tax law dealing with those items. These always require written responses and some specify time limits for the response.
- 5.5 Depending on the circumstances, the reply may include providing a copy of a printed general guide or instructions, or a public ruling, provided that there is sufficient direction to the content of that material which answers the taxpayer's question. If this does not apply, the reply in writing would need to be in the form of a specifically written letter answering the question.
- 5.6 The law does not impose a time limit on replying to informal questions. However, the taxation administration should strive to provide answers as quickly as possible. If the question concerns something that is necessary for the taxpayer to meet their tax obligations, an answer should be provided within a time period that allows the taxpayer to comply with their obligations.
- 5.7 The taxation administration may, in the interests of providing a better service to taxpayers, first communicate the reply by telephone or in person, provided that the same reply follows in writing. This ability to communicate replies verbally to a taxpayer with a following written reply applies to both formal and informal questions, applications and requests.
- 5.8 A taxpayer can waive their right to receive a reply in writing. This could occur if, for example, they receive an answer to their question by telephone or in person and at that time they inform the taxation administration that an answer in writing is no longer necessary. In the absence of such a clear waiver, the taxation administration must provide a reply in writing.
- 5.9 An electronic reply by facsimile or email is considered to be a reply in writing for the purposes of this Law if the facsimile number or email address has been provided by the taxpayer.

Example

Maqsood is preparing his income tax return at the beginning of Jawza. He finds that he has some business equipment to depreciate but he does not know what rate should be used to calculate his deduction. He writes a letter with a question on this subject explaining the circumstances and delivers it to the taxation administration on 12th Jawza.

The taxation administration must provide an answer to Maqsood in writing. As the answer is necessary for him to prepare his income tax return, the taxation administration telephones him on the 25th Jawza to inform him of the answer and follows this with a written reply soon after.

Access information about their taxes

- 5.10 Taxpayers are entitled to access information about the assessment and collection of their taxes and any other information about them that is held by the taxation administration. This means the right to receive copies of relevant documents including any tax return or other form filed by them and any assessment notice. This applies even if they have previously received a copy – a taxpayer is entitled to receive a new copy.
- 5.11 The taxation administration is not required to provide access to information about a taxpayer if it would breach the confidentiality of another taxpayer. This restriction will not apply if both taxpayers agree to the release of the information.

Advocate their interests

- 5.12 A taxpayer has the right to advocate their interests personally or through a representative of their choice. This right to advocate their interests is in addition to the formal rights to dispute decisions under Chapter 4. It also includes the right to be heard before any formal dispute commences. The taxation administration must give the taxpayer (or an approved representative) an opportunity to present their facts and arguments before any tax decision is made.
- 5.13 A taxpayer is free to choose any other person as their representative. However, if the representative charges a fee for assisting the taxpayer they must be a licensed tax accountant. See the explanation for Article 34.
- 5.14 For confidentiality reasons the taxation administration will require the approval of the taxpayer before it can discuss the taxpayer's tax affairs with the representative. The approval must be in writing if the taxpayer is not present. The written approval should be retained by the taxation administration.
- 5.15 If the taxpayer is accompanied by another person, they may verbally give approval for that person to speak on their behalf while they are present.

- 5.16 A taxpayer may choose to authorise a person to represent them for part of their tax affairs only. For example, they may specify a person to be their representative for value added tax affairs but not income tax. A taxpayer can nominate more than one representative. They can specify a fixed time that the representative is authorised to speak on their behalf. If no time limit is mentioned, the authority is assumed to continue until revoked by the taxpayer.
- 5.17 A representative of a taxpayer for the purposes of advocating on their behalf as allowed under Article 5(1)(d) may also be a representative person as defined in Article 3. The powers of the representative to act on behalf of the taxpayer depend on whether they are one of the mentioned persons in the definition in Article 3. In the case of a person mentioned in items (a), (e) and (f), the taxpayer may specify or restrict the authority of the representative. The taxpayer's instructions on this authority must be in writing and recorded by the taxation administration.

Receive a tax credit or refund of tax overpaid

- 5.18 Taxpayers are entitled to have refunds determined in accordance with Article 60 and are also entitled to have a refundable amount dealt with in accordance with Article 61. Refundable amounts arising under the Value Added Tax Law must be processed within 45 days of the taxpayer filing an application. In some circumstances a refundable amount may arise under the Income Tax Law. While not subject to a processing deadline under that Law, the taxation administration should seek to process the claim in a similar time period to VAT refund claims.

Receive an explanation of documents compiled

- 5.19 Taxpayers are entitled to receive an explanation of any decision made by the taxation administration that directly affects their taxation affairs including all reasons for the decision.

Be treated well and professionally

- 5.20 Taxation employees have an obligation to treat taxpayers well and professionally and taxpayers have the right to expect this level of service and behaviour. Taxpayers must be treated with courtesy and respect by all employees of the Revenue Department. Article 4 of the Civil Servants Code of Conduct sets the minimum standard of behaviour expected of civil servants when serving the public:
1. Decent behavior and appropriate treatment of people without consideration of tribal, ethnic, gender, religious, sectarian differences, political beliefs, physical appearance, and/or marital status.
 2. Special care to meet the needs of children, amputees, disabled, women and the elderly.

3. Provide necessary information to the clients concerning procedures of civil services to assist in gaining easier access to services.
 4. Adopt necessary measures to solve problems of the public, where necessary.
- 5.21 Taxation officers should aim to exceed these minimum expectations in order to play their part in presenting the Revenue Department as a modern, outward looking organisation that serves the interests of the Government, the public and the nation.
- 5.22 Taxpayers requesting assistance should be attended to promptly. If a tax officer is unable to assist (for example, due to not having the necessary information) then every effort should be made to seek out the appropriate person or Directorate who can resolve the problem as quickly as possible.
- 5.23 Taxpayers are entitled to be treated as honest unless there is clear evidence to the contrary. Taxpayers who have made mistakes are still entitled to be treated with respect and courtesy.

Confidentiality of information

- 5.24 Taxpayers are entitled to expect that any information they provide to the taxation administration is kept confidential. The same applies to any information received by the taxation administration from other sources and information concerning the taxpayer that is determined within the taxation administration.
- 5.25 The meaning of confidentiality and the obligations imposed on taxation employees can be found in the explanation of Article 54.

ARTICLE 6 – TAXPAYER’S OBLIGATIONS

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 comply with all other provisions of the tax laws.

- 6.1 Article 6 provides a list of the basic obligations of taxpayers. The list includes obligations clearly imposed in more detail by other provisions in the tax laws. Some obligations are not specifically stated elsewhere in the Tax Administration Law but can be implied or are indirectly imposed by a collection of tax law provisions. Article 6 is therefore a useful statement of taxpayer obligations.

Apply for a Taxpayer Identification Number when required

- 6.2 The obligation to apply and procedures for applications are set out in detail in Article 28 of the Tax Administration Law.
- 6.3 To obtain a taxpayer identification number, the taxpayer should request a Tax Identification Number application form from the Ministry of Finance or at a Mustofiat office which has a TIN office co-located on the premises. The Ministry of Finance’s Tax Information Page at www.mof.gov.af/tax has application forms that can be downloaded, completed and submitted to the Ministry of Finance.

Report to the Ministry of Finance any changes in information as initially advised in their TIN application

- 6.4 This obligation is not specifically provided elsewhere in tax laws, so Article 6(b) is the sole source of legal authority for this taxpayer obligation.

- 6.5 Taxpayers are required to advise the Ministry of Finance of any significant changes in information initially provided when they obtained a TIN. For example, a change of name, address, or the nature of the business. Taxpayers who have nominated a representative must inform the taxation administration when there is a change of representative.

File a full and complete tax return on time

- 6.6 The requirement to file income tax returns is found in the Income Tax Law (including all other forms meeting the wide definition of tax return in Article 3 of the Tax Administration Law). See for example Article 87 (1) of the Income Tax Law. The requirement to file VAT returns is found in the VAT Law – Article 23.
- 6.7 Due dates for filing of tax returns are also provided in the relevant Income Tax Law or VAT Law. See for example Article 88(1), (3) and (5) of the Income Tax Law. The due date for VAT taxpayers (taxable persons) to file VAT returns is provided by Article 23(1) of the VAT Law returns – within 30 days of the end of the VAT period.
- 6.8 All such returns must be filed with the taxation administration, which is the Revenue Department of the Ministry of Finance for the purposes of income tax and VAT.
- 6.9 A tax return is filed at the time it is received by an officer of the taxation administration in their official capacity.

Submit documents and information

- 6.10 Article 26 of the Tax Administration Law imposes the obligation to provide documents and information when requested by the taxation administration. The request must be in writing. It must also be for the purposes related to a tax law.
- 6.11 Article 27 of the Tax Administration Law also gives the taxation administration the power to seize and retain books, records or documents when carrying out an access visit to premises. There is an implied obligation upon the taxpayer to permit the taking of these records by the Ministry.

Keep proper business books and records sufficient for taxation purposes

- 6.12 Article 25 of the Tax Administration Law imposes the obligation on taxpayers to keep accounts, documents and records as prescribed. Details of the prescribed records are explained in the commentary to that Article in this document.
- 6.13 In addition, taxpayers who are taxable persons under the VAT Law also have obligations in relation to invoices, credit and debit notes as specified and imposed by Chapter 6 of that Law.

Correctly calculate taxes

- 6.14 This obligation is an implied obligation underlying a range of obligations imposed by the tax laws. The income tax and value added tax systems largely rely on self-assessment where taxpayers record, calculate and pay the correct liabilities as they arise. These obligations are reinforced by a range of additional taxes and penalties for non-compliance.
- 6.15 For example, Article 58 of the Income Tax Law requires various employers to withhold specified amounts from payments to their employees. There is an implied yet clear obligation to calculate these amounts correctly, backed by the imposition of additional tax for non-compliance as imposed by Article 36 of the Tax Administration Law and potential for prosecution as an offence under Article 45(2) of the same law.

Pay taxes as and when required

- 6.16 The requirement to pay and the due date for payment of a tax is provided under the tax law imposing the tax. For income tax Article 88(2), (4), (5) (6), (7) and (9) of the Income Tax Law imposes obligations to pay various income tax liabilities and these provisions also provide the due date for payment.
- 6.17 The obligation to pay tax withheld from salary or wages is imposed by subsection (2) of Article 46 of the Income Tax Law and Article 60 of the same law. Those Articles also impose the due date for payment – 10 days from the end of the month in which the tax was withheld.
- 6.18 The obligation to pay tax withheld on other types of income under the Income Tax Law (interest, dividends, royalties etc. as listed in Article 46(1)) is imposed by Article 46(4), which also provides the due date as 10 days from the end of the month in which the tax was withheld.
- 6.19 In the case of VAT, the due date is imposed by Articles 22 and 23 of the VAT Law – 30 days from the end of the VAT period.
- 6.20 The mention in the Tax Administration Law of the obligation to pay taxes therefore does not create any new obligations; it just reiterates the obligation to comply with such requirements specified in other tax laws.

Not obstruct taxation officers

- 6.21 This is an overarching statement of an obligation that is collectively imposed by a number of tax law provisions.
- 6.22 Article 46 of the Tax Administration Law makes it an offence to wilfully obstruct a taxation officer in the performance of their duty.
- 6.23 Depending on the behaviour or action, it may be necessary to first consider whether additional tax applies under another provision. For example:
- Article 38 of the Tax Administration Law, failure to comply with garnishment;

- Article 39 of the Tax Administration Law, failure to provide information.

6.24 If the obstruction is passive, the better provision to consider for prosecution may be Article 45(6) of the Tax Administration Law, the offence for failure to provide assistance.

Be available to the taxation administration when requested

6.25 Article 26(1) of the Tax Administration Law imposes the obligation on any person to attend at a time and place designated by the taxation administration.

Comply with all other provisions of tax laws

6.26 This is an overarching statement of an obligation that is collectively imposed by a number of tax law provisions.

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CHAPTER 3 – TAX RETURN AND ASSESSMENT

Value Added Tax, annual income tax, business receipts tax and withholding taxes under the income tax law operate under a system of self-assessment. Self-assessment means that taxpayers determine the tax payable and pay their tax. Taxpayers are expected to comply with all of their tax obligations voluntarily. In most cases the tax return or form filed by a taxpayer is accepted by the taxation administration without question. It is not possible or efficient for the taxation administration to review every detail in every tax return or form. For this reason audit and verification activities are focussed only on those taxpayers, tax returns or forms that are identified as being at the highest risk. This is in accordance with standard practices used by tax administrations internationally.

ARTICLE 7 – DELIVERY OF TAX RETURN

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, 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 sub-section (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.

Failure to file

- 7.1 Where a taxpayer has failed to file a tax return by the due date, the taxation administration may issue a notice requesting filing of the tax return within 30 days of issuing the notice.
- 7.2 The issuing of such a notice does not defer or suspend any additional tax for failure to file the tax return or a failure to pay any related tax on time.
- 7.3 The issuing of the notice also does not defer or affect the ability to prosecute a taxpayer for failure to deliver a tax return under Article 45(1). However, as a general rule if the taxation administration has decided to issue a notice under this Article it will not refer a taxpayer for prosecution until after a taxpayer has failed to comply with the notice.
- 7.4 The thirty days mentioned in the Article is measured from the time that the notice is delivered to the taxpayer or their representative. This time may be extended if the taxpayer applies for an extension under Article 7 and the application is approved.
- 7.5 The notice must specify the tax return required to be filed including the tax period to which it relates. The notice should refer to the enforcement action that may be taken if the taxpayer does not comply with the notice.
- 7.6 The Tax Administration Law does not require the taxation administration to immediately issue the notice mentioned by this Article to all taxpayers who fails to file a tax return on time. Whether a notice is issued and how long the taxation administration may wait is determined according to procedures (Tarzulamal). These procedures take into consideration the fact that it is not possible to issue notices to all taxpayers on the first day after the tax return is late. The staff and resources for preparing and issuing notices are assigned according to priorities provided in procedures (Tarzulamal).
- 7.7 Generally the first time a taxpayer is late in lodging a tax return without justification or explanation, a notice will be issued under this Article. A taxpayer who is repeatedly late in lodging tax returns may be referred for prosecution without further notice.
- 7.8 There are no additional tax or monetary penalty provisions directly related to non-compliance with a notice to file a tax return. Any additional tax or monetary penalty to be considered by the taxation administration refers back to the failure to file the tax return when it was originally due, not the date requested in a notice issued under this Article. See Article 35 for the additional tax and Article 45(1) for the monetary penalty.

Deficient tax return

- 7.9 The taxation administration may also issue a notice to a taxpayer when a tax return is deficient. A tax return is deficient if there are errors or omissions in the tax return which prevent the taxation administration from determining the tax to be assessed.

The taxation administration conducts checks and audits based on risk management strategies. It is not possible to fully audit every tax return because staff and resources are always limited. Staff and resources are allocated to the cases or circumstances identified in compliance plans as being the highest priority. If during following the risk based compliance strategy deficiencies are detected when a tax return is filed, the taxation administration may issue the notice mentioned in Article 7(3).

- 7.10 If an extension of time to file a tax return has been granted to a taxpayer under Article 7, no notice shall issue until that extension of time has expired.
- 7.11 The notice issued may request the taxpayer to:
1. file a new and corrected tax return;
 2. provide further information to explain details in the tax return, or
 3. both of the above.
- 7.12 The deadline for complying with the notice is thirty days. The thirty days is measured from the time that the notice is delivered to the taxpayer or their representative. This time may be extended if the taxpayer applies for an extension under Article 7 and the application is approved.
- 7.13 The notice must specify the tax return required to be filed and/or the information to be provided, including the tax period to which it relates. The notice should refer to the enforcement action that may be taken if the taxpayer does not comply with the notice.
- 7.14 There are no additional tax or offence provisions directly imposed for non-compliance with a notice related to a deficient tax return. However, there is a possibility of general provisions applying depending on the circumstances. Provisions to consider are:
- If the deficient tax return originally filed or the tax return subsequently filed after request by notice has important information that was false, incomplete or missing, it may be considered a false or misleading statement under Article 40 and subject to the additional tax mentioned in that Article.
 - If a taxpayer fails to deliver the corrected tax return requested in the notice, it may be prosecuted as an offence under subsection (1) of Article 45 – failure to deliver a tax return.
- 7.15 Under subsection (3) of Article 7 the taxation administration may request information, but cannot request documents (except the actual tax return and any documents that are by law required to be filed with the tax return, such as a balance sheet). If other documents are required from a taxpayer, a notice under Article 28 is the proper course of action. As for all formal notices under the tax laws, a notice should state the specific Article and tax law which is providing the authority for the notice.

- 7.16 If only information is required, the taxation administration may choose between Article 7(3) and Article 26 as the authority for the notice. Generally Article 26 is to be preferred because it is more flexible in time, can be used to require personal attendance of the taxpayer and has a specific offence provision for non-compliance (Article 45(8)).
- 7.17 Article 23(2) of the VAT is a similar provision to Article 7(3) in the Tax Administration Law. If both provisions apply, the taxation administration may choose which provision to use and state in the notice.

Application for extension

- 7.18 A taxpayer may apply for an extension of time to file a tax return. They may also apply for an extension of time to comply with a notice issued under Article 7(2) – an extension beyond the standard time of thirty days provided in that subsection.
- 7.19 The taxpayer should have reasonable grounds for requesting the extension. Those grounds should be fully stated in the application. The law does not require evidence to be provided with the application; however taxpayers may do so if they believe it will strengthen their application.
- 7.20 The taxpayer should state the period of the extension requested by their application.
- 7.21 It is not possible to fully list all of the grounds for which an extension of time would be reasonable. Following are some examples of circumstances where an extension may be justified:
- The taxpayer, or their business, is seriously affected by a natural disaster such as fire, flood or earthquake;
 - The taxpayer, or their business, is seriously affected by civil unrest or conflict;
 - The taxpayer suffers a serious illness or injury;
 - A close family member of the taxpayer passes away or suffers an illness or injury and the taxpayer has important family responsibilities or obligations to fulfil;
 - A taxpayer's records are unavailable due to the actions of another government authority or court;
 - Any of the above events affecting the taxpayer's representative or an adviser responsible for assisting the taxpayer or fulfilling the taxpayer's obligations on their behalf; or
 - The local taxation administration office at which the taxpayer files their tax return is closed due to natural disaster, conflict or civil unrest.

Extension decision

- 7.22 The taxation administration must review the application and allow or disallow it. The extension requested may be granted in full, a shorter extension may be allowed, or no extension allowed.
- 7.23 The length of time allowed as an extension must fit the circumstances. In some cases only a short extension will be justified, in other cases a longer extension may be necessary.
- 7.24 An approved extension will defer the start date for the late filing additional tax under Article 35 (see subsection (3)) and defer the due date for considering an offence under Article 45(1), because the grant of an extension has the effect of deferring the due date for the tax return for that taxpayer. However, an extension of time to file a tax return does not extend the time for payment of tax. Late payment additional tax under Article 34 will still apply if tax is not paid by the due date, even when an extension of time to file is granted. A taxpayer who wishes to have an extension of time to pay would make a separate application under Article 15.
- 7.25 An extension of time to file a tax return cannot be allowed if it defers the due date beyond three months from the original due date of the tax return.
- 7.26 There is nothing in Article 7 that requires the application to be filed by the due date for the tax return. A taxpayer may file a request for an extension of time after the due date. However, an explanation of the delay in lodging the application should be provided.
- 7.27 The taxation administration will not consider an application for an extension of time that is filed more than three months from the due date of the original tax return. An extension at that time is not possible, as the maximum deferral period has passed.

Example 1

A VAT quarterly taxpayer must file their Qaws quarter tax return by 30th of Jadi. The taxpayer always prepares the tax returns himself and he does not get assistance from any adviser or accountant.

The taxpayer suffers a heart attack during Qaws and is hospitalised. He then travels to Pakistan for surgery and his doctors advise that he will require at least 2 months to recover before engaging in any work or business activity. When he is partially recovered he is able to ask a family member to assist him to apply for an extension to file the VAT return. The application is filed with the taxation administration on the 15th Dalvae fully explaining all of the circumstances.

The application was filed after the due date; however the taxpayer has reasons for the delay. He also has justifiable grounds for seeking an extension of time to file the VAT tax return. An extension of time would be justified in this case. However the maximum time that the taxation

administration can allow for an extension is three months from the due date, which will defer the due date to 30th Hamal at the latest.

Example 2

The facts are the same as the previous example, except that the taxpayer usually employs an accountant to prepare his tax return and his only involvement is to briefly review and sign the tax return each quarter.

In this case a shorter extension would be justified compared to the extension allowed in the previous example. The taxpayer has been unexpectedly ill and has reasons for delay in lodging the application for extension. He also has reasons for an extension of time to file the VAT return. However most of the work is still done by his accountant, so only a shorter extension would be necessary to allow for the taxpayer's review and signature of the return.

Dispute of the taxation administration's decision on extension of time

- 7.28 A decision by the taxation administration to refuse an application for an extension is a taxation decision as defined in Article 3 and may be objected against under Article 11. The taxation administration's decision (or non-decision) on the objection may then become a reviewable decision for which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

No change to due date for payment

- 7.29 An extension of time to file a tax return has no effect on the time to pay the tax. A taxpayer is still expected to pay their tax on time even though they may be permitted to file their tax return later.

Example

A VAT registered taxpayer is normally required to file their Qaws VAT return within 30 days of the end of the VAT period – 30th of Jadi. They must also pay their tax for the Qaws VAT period within 30 days of the end of the VAT period – 30th Jadi. If the taxpayer obtains approval for an extension of 15 days to file the VAT return by 15th of Dalwae, their tax is still due on 30th Jadi. Additional tax under Article 34 will apply for tax unpaid from 30th Jadi.

- 7.30 A taxpayer may apply for an extension of time to file a tax return under Article 7 and an extension of time to pay under Article 15 at the same time. Each application and the decision on each application depends on the circumstances of the case. A taxpayer may be approved for one request only, or both, as considered justified.
- 7.31 An extension of time to file a tax return will defer the date for calculating late filing additional tax under Article 35. This is made clear by subsection (3) of Article 35.

ARTICLE 8 – TAX RETURN DULY MADE AND DEFAULT ASSESSMENT

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.

Tax return duly made

- 8.1 A tax return filed by a taxpayer or their representative is treated as authorised by the taxpayer unless the taxpayer can prove it was not authorised. This includes a tax return filed by a licensed tax accountant. A tax return showing the taxpayer's personal signature would only be proved unauthorised if the taxpayer shows that the signature is false.
- 8.2 A tax return filed by a person described in paragraph (a) of the definition of representative in Article 3 would only be proved unauthorised if the signature is false or the taxpayer can produce evidence that they notified the taxation administration that the representative's authority was cancelled before the tax return was filed.

Example 1

Najib owns a small retail shop. He plans a three month holiday in Germany to visit his son and family from Qaws to Hoot 1396. Before leaving Afghanistan he notifies the taxation administration in writing that his cousin Yasir is authorised to handle all of his tax affairs until 30th of Hoot 1396. Yasir prepares a tax return in Najib's name, signs it himself and files it on 20th Jawza 1396.

The tax return filed by Yasir is not authorised by Najib at the time it was filed.

- 8.3 A tax return filed by a person who is a representative as defined in Article 3 would only be proved unauthorised if the signature is false or the person did not hold the position mentioned in the definition at the time of filing the tax return.

Example 2

Bashir is appointed as the Chief Executive Officer (Managing Director) of 4G Telecommunications Company commencing 25th Saratan 1396. Any tax returns duly signed from that day onward are properly authorised tax returns for the company. As long as he remains in that position he is authorised to file tax returns for the company and the company will be unable to deny responsibility for such tax returns.

- 8.4 A tax return filed by a person described in paragraph (f) of the definition of representative will be treated as authorised unless the non-resident taxpayer can show that the signature on the tax return is false. Alternatively, the taxpayer would need to prove that the person is not managing their affairs.
- 8.5 Income tax and value added tax operate under a self-assessment system. An income tax return, which is duly authorised and filed, is therefore an assessment of tax prepared by the taxpayer himself or herself. The same is also the case for a duly authorised and filed value added tax return.
- 8.6 The date of assessment for a self-assessed tax return is the date that the tax return is filed with the taxation administration.

Failure to file tax return

- 8.7 If a taxpayer fails to file a tax return, the taxation administration may act to determine the tax liability for the tax period and issue a notice of assessment. This is sometimes called a “default” assessment, because it is issued when the taxpayer has defaulted in filing their return.
- 8.8 The taxation administration will generally not issue a default assessment until after the due date for the tax return. (However, see the exception for jeopardy assessments discussed below).
- 8.9 When preparing a default assessment, the taxation administration must base the assessment on information relevant to determining the correct tax. Previous tax returns or assessments for the taxpayer may be useful as a guide. If there is insufficient information, it may be necessary to carry out an audit of the taxpayer or make enquiries of third parties.
- 8.10 The taxation administration would normally take other enforcement action first to obtain filing of the tax return by the taxpayer. A notice may be sent under Article 7(2) as a first step. This will be the normal practice. A default assessment may then follow if the taxpayer does not comply.

- 8.11 In some cases the taxation administration may issue a default assessment without first issuing a notice under Article 7 – if the taxpayer has repeatedly failed to file tax returns in the past or has a history of not complying with notices. See also jeopardy assessments discussed below.
- 8.12 For VAT purposes, see also Article 26(1)(a) of the VAT Law, which permits the Ministry of Finance to issue a VAT assessment if a person fails to file a required VAT return.

Deficient tax return

- 8.13 The taxation administration may also issue an assessment after a tax return has been filed, with an assessment determining a different tax liability to that which was calculated by the taxpayer. It may take this action if the tax return was deficient.
- 8.14 Both the VAT and income tax operate on a system of self-assessment. The tax return filed by the taxpayer is their assessment of their tax obligation for the period identified in the return. Article 87(3) of the Income Tax Law makes this clear for income tax returns. The VAT Law does not directly say so; however it is implied by Article 26 of that Law because the Ministry of Finance is not required to issue an assessment if the tax return is considered to be correct.
- 8.15 In most cases the tax return is accepted without question by the taxation administration and processed as required. The taxation administration is not required to issue an assessment notice when a VAT return or income tax return is filed, however it will usually do so to provide an official record of the tax and any additional taxes applicable.
- 8.16 Acceptance of a tax return without initial question by the taxation administration does not prevent it from asking questions or conducting an audit at a later time (subject to time limits in the tax laws, discussed below).
- 8.17 A tax return may be considered deficient at the time it is filed, or at a later time. A tax return is deficient if it has a mistake, has missing information which is necessary to determine the tax, or contains incorrect information which causes an incorrect tax liability.
- 8.18 The deficiency may be discovered through action taken by the taxation administration – for example, through carrying out an audit. Alternatively it may be brought to the attention of the taxation administration by the taxpayer, their representative or another person – by requesting an amendment to their tax return.

Example 1

Jamal owns a wedding hall. He files an income tax return for the 1396 fiscal year showing total income of Afn. 3,125,000. Six months later the taxation administration carries out an audit of his business and discovers that Jamal's real income was actually Afn. 5,282,000. Jamal's tax return was therefore

deficient and the taxation administration will recalculate the income tax liability and issue an assessment notice showing the correct tax liability.

Example 2

Fayaz owns a wedding hall. He files an income tax return for the 1396 fiscal year showing total income of Afn. 5,125,000. One month after filing his tax return he discovers another box of records that he mistakenly missed when preparing his tax return. He discovers that he missed Afn. 180,000 from his calculations of income. His tax return is therefore deficient and he voluntarily informs the taxation administration of this error. The taxation administration will recalculate the income tax liability using this new information and issue an assessment notice showing the correct tax liability.

- 8.19 For VAT purposes, see also Article 26(1)(b) of the VAT Law which permits the Ministry of Finance to issue a VAT assessment if it finds that a VAT return filed by a taxpayer is not correct.
- 8.20 Under Article 7(3), if the taxation administration believes a tax return is deficient it may choose to issue a notice to the taxpayer giving thirty days to file a complete return or provide further information (for example, further information which was missing from the tax return). The taxation administration is not required to issue this notice before issuing an amended assessment.

Amendment of assessment

- 8.21 Whenever new information is received by the taxation administration, which changes the tax liability, it must issue a new amended assessment notice. There is no limit to the number of times an assessment can be amended, subject only to the time limits mentioned below.
- 8.22 New information may come to the taxation administration from its own investigations, from the taxpayer or any other person. New information also includes any decision made as a result of an objection under Article 11, or a review of an objection decision by the Tax Disputes Resolution Board, or by a court. In some cases the new information may be the addition or accrual of additional taxes, even if the primary tax amount has not changed.
- 8.23 New information can also mean a new understanding of facts that were already in the possession of the taxation administration. For example, the taxation administration may review a tax return a year after it was and discover that a mistake in calculation was made.
- 8.24 Article 26(4) of the VAT Law also permits an amended assessment if new information arises.

Standard time limit for assessment

- 8.25 Article 8(3) imposes a time limit for issuing an assessment. The time limit is five years measured from the time that the tax return related to the tax period of assessment was due.

Example

An income tax return for the year 1395 is due for filing by the end of Jawza, 1396. The taxation administration may issue an assessment (including an amended assessment) covering the 1395 tax year at any time until the end of Jawza, 1401.

- 8.26 A tax law may provide a longer time limit than the standard five years for specific situations. These situations are explained below.

Longer time limits for assessment

- 8.27 The five year time limit is the standard time limit for tax returns provided by the Tax Administration Law but a longer period may be provided by any tax law. In fact the Tax Administration Law itself provides a longer period in specified circumstances. The longer time limit applies where a taxpayer fails to file a tax return or filed an incorrect tax return with the intent of evading tax. If a taxpayer has filed an incorrect tax return with the intent of evading tax there is no time limit for assessment (including amending an assessment).
- 8.28 In order for the taxation administration to use this extended time period, it must be able to show, based on the facts of the case that the taxpayer intended to evade tax. The mere existence of an incorrect tax return without other facts is insufficient to provide the unlimited time limit.

Example 1

Ahmad Shah is a business man who files an income tax return with total income of Afn. 4,200,000. During an audit by the taxation administration Ahmad Shah admits that this amount was not based on any records kept by his business. His sales records actually show that his business makes more than Afn.1,000,000 each month, sometimes much more.

In this case it is justifiable for the taxation administration to decide that Ahmad Shah's tax return was intentionally incorrect.

Example 2

Saboor is a business man who files an income tax return with total income of Afn. 3,500,000. During an audit by the taxation administration it is discovered that Saboor based this amount on his daily sales records, but when adding up the sales for all of the days of trading during the tax year he mistakenly missed counting 1 day. All of his other figures in the tax return appear to be correct.

In this case, based on the facts it appears that the error was an honest mistake. The taxation administration is unable to show that Saboor intended to evade tax. Therefore only the standard time limit of five years applies.

Example 3

A telecommunications company is audited by the taxation administration. The company had generally complied with its tax obligations except for some deductions which the auditor decided had been incorrectly claimed. The issues with the deductions were complex and related to interpretation of the law. The interpretation of the law was difficult and was a subject that the taxation administration did not cover in guides, public rulings or in the relevant Manual at the time the taxpayer filed their tax return.

In this case there is no clear evidence that the taxpayer intended to evade tax with their actions. The five year time limit applies to the tax year in which the deductions were claimed.

- 8.29 If the taxation administration issues an assessment after the standard time limit has expired, a taxpayer may dispute the assessment through the taxation dispute processes mentioned in Chapter 4. The taxpayer is entitled to dispute whether there was an intention to evade tax when filing the original incorrect tax return.

Time limits for VAT returns

- 8.30 The VAT Law provides specific exceptions to the time limits mentioned in Article 8 of the Tax Administration Law. If an exception applies under the VAT Law, it overrides the Tax Administration Law. This intention is clearly expressed in Article 8(3) of the Tax Administration Law.
- 8.31 Article 26 of the VAT Law deals with VAT assessments. That provision does not provide any special time limit for assessments so the standard five-year limit under the Tax Administration Law applies. This covers the first assessment.
- 8.32 An amended assessment (an assessment after the first assessment) does have a special time limit, which is provided by Article 26(4) of the VAT Law. This time limit is ten years, which is measured from the time that the assessment notice is received by the taxpayer.
- 8.33 The ten year time limit for amendment of a VAT assessment is modified by the special circumstance in Article 8(4) of the Tax Administration Law which concerns situations where the taxpayer filed a return with an intention to evade tax. No time limit for amendment applies to such a return time as explained above.
- 8.34 A summary of the time limits for income tax and value added tax assessments is shown in the table below.

Tax return type	Assessment	Time limit	Law provision	Time measured from:
Income tax (annual and quarterly)	First assessment, no intent to evade	Five years	Tax Administration Law Article 8(3)	Due date of tax return
	Second and later assessments, no intent to evade	Five years	Tax Administration Law Article 8(3)	Due date of tax return
	Any assessment, intent to evade	Unlimited time	Tax Administration Law Article 8(4)	No time limit, so time is not measured
VAT	First assessment, no intent to evade	Five years	Tax Administration Law Article 8(3)	Due date of tax return
	Second and later assessments, no intent to evade	Ten years	VAT Law Article 26(4)	Date that the taxpayer received the first assessment
	Any assessment, intent to evade	Unlimited time	Tax Administration Law Article 8(4)	No time limit, so time is not measured

Time limits extended by dispute procedures

- 8.35 The standard five year amendment time limit and the ten year amendment time limit for VAT returns are extended by tax law as necessary if the law gives the taxpayer the right to dispute the tax return or assessment. The extension continues if the taxpayer exercises their right to dispute the tax return or assessment for as long as there is a taxation dispute in progress.
- 8.36 For these purposes a taxation dispute includes an amendment request under Article 89(1) of the Income Tax Law.
- 8.37 The amendment period extension due to a taxation dispute only extends the amendment period for the subject matter of the taxation dispute. It does not extend the power to issue an amendment to the tax return or assessment for something that was not part of the taxation dispute.

Example

Zulfiqar filed his income tax return for the tax year ending Qaws 1395 on the due date – 31 Jawza 1396. The standard time limit of five years for amendment would therefore allow amendment until 31 Jawza 1401.

On 20 Jawza 1401 Zulfiqar files an amendment request for the 1395 tax return. While checking his records he discovered that he missed a claim for deduction for some expenses, so he has requested an amendment to include these extra expenses in the determination of his tax for that tax period.

Since he has filed this amendment request before the end of the standard amendment period, it is a valid amendment request. As a valid amendment request filed within the standard five year amendment period, the amendment period is extended past the five year limit for as long it takes the taxation administration to process the amendment request. This includes any further period that the taxation dispute may continue if the taxpayer lawfully pursues their rights to objection under Article 11, referral to the Tax Disputes Resolution Board or referral of an appeal to a court under Article 12(2).

The extension for the above reasons only extends the power to amend Zulfiqar’s tax return for the additional deductions mentioned in his amendment request. It does not extend the amendment time for any other subjects, such as other deductions not mentioned, or changes to the income amounts in the tax return.

Jeopardy assessments

- 8.38 In normal circumstances the taxation administration will not issue an assessment notice until after the tax return has been filed or, if the taxpayer fails to file by the due date, not until after the due date for filing. Jeopardy assessments are an exception to this normal practice.
- 8.39 If the taxation administration has reason to believe that a taxpayer will attempt to avoid tax by leaving Afghanistan, ceasing business or transferring their property or for any other reason, it may issue an assessment notice. It may do this before the relevant tax return is due. It may do so even before the tax period has ended.
- 8.40 An assessment notice would not normally be issued for a tax period before that tax period has ended. For example, an assessment for the tax year ending 30th Qaws 1395 would not normally issue until after the 30th Qaws 1395. Furthermore, an assessment would not normally relate to a period that is less than a full tax period. The only general power to alter a tax year is found in the definition of “tax year” in Article 3, which requires a request from the taxpayer before a different period can be used.
- 8.41 However, the words used in Article 8(5) convey an intention that if it applies, a jeopardy assessment may assess a period that has not yet ended. The words

also convey an intention that the taxation administration can choose to assess a period that is not a normal tax period.

- 8.42 In the case of a jeopardy assessment for income tax, Article 88(2) of the Income Tax Law provides that the due date for such tax is as specified in the assessment notice. Therefore the taxation administration can choose the due date in an income tax jeopardy assessment as any date after the date of issue of the notice.
- 8.43 In the case of a jeopardy assessment for VAT, in order for the due date to be consistent with Articles 23 and 24 of the VAT Law, the taxation administration would specify a date that is 30 days after the end of the VAT period assessed.
- 8.44 In the case of a jeopardy assessment issued because of a belief that the taxpayer is about to leave Afghanistan, Article 8(5) can operate in combination with Article 15(6) to allow the taxation administration to specify an earlier due date for the tax on the assessment notice. In all other cases the due date will be according to the rules mentioned above.
- 8.45 A jeopardy assessment issued because of a belief that the taxpayer is about to leave Afghanistan may be used in combination with Article 23 – departure prohibition orders.
- 8.46 A jeopardy assessment should be based on information known to the taxation administration and relevant to determining the correct tax. Previous tax returns or assessments for the taxpayer may be useful as a guide. It is not necessary for the jeopardy assessment to be exactly accurate in determining the tax liability, but the taxation administration should make it as accurate as possible based on information available. If the taxpayer disagrees, they have the right to file a tax return or request an amendment with additional information to correct the assessment later.
- 8.47 The issuing of the jeopardy assessment opens the way for further enforcement action under other provisions, such as under Chapter 5 of the Tax Administration Law.

Example

While carrying out an audit on Rohullah's business, the taxation administration learns that he has been selling his assets, transferring the money to Dubai and is preparing to transfer his business to his cousin. If he completes these actions Rohullah will have no funds or assets left in Afghanistan to pay his current and possible future tax liabilities. The taxation administration may issue jeopardy assessments to Rohullah for any past or current tax periods.

ARTICLE 9 – DETERMINING THE TAX WHEN THERE ARE TRANSACTIONS BETWEEN CONNECTED PERSONS

Article 9

Determining the 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.

- 9.1 Article 9 gives the taxation administration the power to overrule the value of amounts stated for a transaction between connected persons. This power arises when the price or amount stated for the transaction is different (higher or lower) than the amount that would be expected between unconnected persons.
- 9.2 The amount that would be expected between unconnected persons is sometimes called the market price. In a market that has many buyers and sellers, the price of goods or services traded in that market will reflect a balance in bargaining between the buyers and sellers.

Example

Omar is selling some earthmoving equipment to his cousin Hamid, who lives in Pakistan. Omar knows he will be subject to tax under the Income Tax Law. Omar and Hamid agree to lower the price so that Omar will have less income tax to pay (and also Hamid will save some customs duty on importing the equipment to Pakistan). The stated price is half what the equipment is really worth. They secretly agree that Hamid will provide some assistance to Omar later in some future business dealings as compensation for the lower price on the earthmoving equipment.

When Omar files his tax return he includes the lower false amount. The taxation administration may step in using its power under Article 9 to substitute the higher real market price in calculating Omar's tax. (In this example Hamid is not an Afghanistan taxpayer, but if he was, the tax administration would also substitute the higher price in any calculations for Afghanistan tax relevant to Hamid.)

- 9.3 Article 9 is an anti-avoidance provision. It will only be used by the taxation administration if the false amounts used by the connected persons cause an avoidance of tax (lower tax). All tax effects of all parties to the transaction must be considered and only when there is a net reduction of tax between the parties will it be necessary to intervene.

Example 2

Omar also provides some construction services to another cousin, Yousef. They are both resident taxpayers in Afghanistan. Payment for the service is

income for Omar and a business expense for Yousef. The market value of the service is Afn.500,000 but they agree to state a lower price of Afn. 200,000, because Omar's top tax rate for the year is 20% and Yousef's smaller business income means that he usually only has a top tax rate of 10%. Omar will save $300,000 \times 20\% = \text{Afn. } 60,000$ in tax, while the lower deduction for Yousef will only cost him $300,000 \times 10\% = \text{Afn.}30,000$ in tax.

By falsely lowering the stated price, Omar and Yousef have caused less tax to be paid in total. Article 9 allows the taxation administration to substitute the real market price (value) of Afn.500,000 for the transaction and determine the tax for both parties using that amount.

- 9.4 The explanation and examples above are based on simple facts. Article 9 may apply to more complex arrangements including transfer pricing for cross border transactions. A more detailed explanation is shown at Appendix B.

ARTICLE 10 – AVOIDANCE OF TAX

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.

- 10.1 Article 10 provides the taxation administration further power to overcome anti-avoidance when a taxpayer enters into a transaction or arrangement and the result of the transaction or arrangement is to reduce the taxpayer's income tax liability. The power is only available if there was a reduction in tax and that was the intention of the taxpayer in entering the transaction or arrangement.
- 10.2 The provision may apply to a single transaction or agreement or it may apply to a series of more than one transactions or agreements which taken together have caused a reduction of the person's tax.

Example 1

Mujahid operates two shops, each with quarterly revenue from sales of Afn.500,000 which in total is Afn.1,000,000. This total amount is in excess of the minimum threshold for business receipts tax, which is Afn.750,000 so Mujahid is subject to business receipts tax. The quarterly profit from each shop is Afn.40,000. Mujahid makes a plan to avoid the business receipts tax which is made up of the following steps:

1. Mujahid sells one of his shops to Hamid. The sale agreement includes a provision that allows him to buy back the shop at any time for the same price.
2. Separately Mujahid makes a loan agreement for the purchase price of the shop. The loan is for the full price, as Hamid has not paid any part of the purchase price. The quarterly interest for the loan is calculated to be half of the profit of the shop, Afn.20,000.
3. Separately Mujahid makes another agreement to manage the shop for Hamid. The agreement is for Mujahid to fully manage the shop for a fee. The quarterly fee is calculated to be half of the profit of the shop, Afn.20,000.

In this example, Mujahid has split his business in two to bring down his total sales below the business receipts tax minimum. His sales from the shop he retained is Afn.500,000 and his revenue from managing the shop that he sold to Hamid is Afn.20,000 (interest on the loan is exempted by Article 65 of the Income Tax Law). As his total revenue is Afn.520,000 per quarter he appears not to be subject to business receipts tax. The plan

he carried out still leaves him operating two shops and receiving the profits from both so he has the same business profit but has reduced tax.

However, the taxation administration may apply Article 10 to the series of three agreements – the sale of the shop (with the right to buy it back), the loan agreement and the shop management agreement. When considered together, each of these agreements were entered into to reduce his tax.

- 10.3 It is necessary for the taxation administration to demonstrate that the taxpayer's tax liability was reduced by the transaction or arrangement. This requires a comparison between the taxpayer's actual tax outcomes against what would have been the position if the transaction or arrangement had not taken place. If the comparison shows a reduction in tax then this may be called the "tax benefit".
- 10.4 It is not sufficient for the taxation administration to establish only that the taxpayer's tax liability was reduced. It must also be established that the taxpayer had the intention of causing a reduction in tax by entering into the transaction or arrangement.

Example 2

Company A is an Afghan corporation. Company A is engaged in the business of providing telecommunications services to customers throughout Afghanistan. During the tax year ending Qaws 1394 Company A generates a loss of Afn. 50,000,000. During the year next tax year, Company A uses the Afn. 50,000,000 loss from the previous year to reduce its taxable profit and its tax liability. Article 10 does not apply in this situation. While Company A engaged in transactions during the tax year ending Qaws 1394 which had the effect of reducing Company A's tax liability in the next year, however the primary purpose of Company A's transactions during the tax year ending Qaws 1394 was to carry on the business of providing telecommunications services to customers. In the absence of anything artificial or non-commercial about the transactions, there is no reason to form a view that the primary purpose was to achieve a tax benefit.

- 10.5 The anti-avoidance provision does not apply to transactions or arrangements that are normal commercial practice, even if some tax benefit is obtained compared to alternative arrangements. Considering Example 1 above, the series of agreements made by Mujahid are not normal commercial practice when considered together.

Example 3

Azziz is an individual who needs to use land and a building for his business in Herat. Azziz knows that if he purchases the land and the building, he will be able to claim depreciation deductions for the building. Azziz also understands that he will not be able to claim depreciation deductions for the land. Azziz knows that if he chooses to rent the land and the building, he will be able to claim a deduction for the entire rental payment. Thus, Azziz

decides that he will rent the land and the building. Article 10 does not apply in this case. Azziz's primary purpose in renting the building was to do his business in Herat. A decision on whether to buy or rent a building is a common commercial decision for which the tax effects are only one consideration. The fact that renting the land and building creates more of a tax benefit than purchasing the land and the building is not sufficient reason to apply Article 10.

- 10.6 Before Article 10 can be applied, the taxation administration must be able to show that the taxpayer's intention to reduce taxes was the primary reason that the taxpayer chose to enter into the transaction or arrangement. The taxpayer's intention is determined by looking at the facts surrounding the transaction, and not the taxpayer's personal testimony.

Example 4

Wahid owns all of the shares of Company A and Company B. Company A and Company B are both Afghan corporations. Company A is not registered under the Private Investment Law of Afghanistan and therefore Company A is not able to carry forward its tax losses indefinitely under Article 47 of the Income Tax Law. Company A believes that, in the tax year ending Qaws 1395, one of its tax losses will expire. To prevent the loss from expiring unused, Company A sells an asset to Company B on the last day of Qaws 1395. Company A recognizes a gain on the sale. Company A uses its tax loss to reduce the amount of gain it recognized during 1395. On the first day of Jadi, 1395, Company B sells the same asset back to Company A. Company A was able to use its tax loss. Company A was also able to increase the depreciation basis of the asset to fair market value without paying any tax. Company A can now claim larger depreciation deductions with respect to the asset, and lower its tax liability. The sole reason for this transaction is to reduce Company A's tax liability. There is no other commercial explanation for the transactions except that they were done to obtain tax benefits. It is therefore appropriate for the taxation administration to apply Article 10 in this situation.

Example 5

Wahid owns all of the stock of Company A. Company A is an Afghan corporation. Company A is in the business of manufacturing and selling plates, jugs and cups. Company A employs 20 of Wahid's cousins. All of these cousins are less than 15 years old.

Wahid pays these cousins Afn. 5,000 per month for services that he claims they perform. None of the amounts paid are subject to wage withholding because the amounts paid to each cousin is below the minimum withholding amount. Company A claims a deduction for the Afn. 5,000 that is paid to each cousin. The taxation administration investigates Company A. Wahid tells the taxation administration that he employs his cousins because they are good workers. On further investigation the taxation administration discovers that many of these cousins are too young to work and some

actually live in a different province. Wahid is unable to prove that any of the cousins actually perform services for Company A. It is appropriate for the taxation administration to apply Article 10 and disregard the payments to the cousins.

Tax avoidance is different to tax evasion

- 10.7 The situations covered by Articles 9 and 10 are tax avoidance. This is different to tax evasion. Tax avoidance concerns actions or transactions that are legal, or would be legal except for the anti-avoidance rules. Tax evasion (as described and penalised by Article 41) concerns actions that are illegal. Examples of evasion are hiding income, claiming false expenses or claiming false credits.
- 10.8 Therefore, when considering additional tax for tax imposed by the application of Articles 9 or 10, Article 41 does not apply. However, additional tax for the avoidance actions may be considered under Article 34 and in some cases Article 40.

CHAPTER 4 – TAXATION DISPUTES

ARTICLE 11 – OBJECTION

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 with reasonable grounds is unable 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.

- 11.1 If a decision is a taxation decision a taxpayer may file an objection if they are dissatisfied with the decision. The objection must be filed within 45 days of the date that the taxpayer received notice of the decision. See the discussion for Article 3 for an explanation of the meaning of taxation decision.
- 11.2 The 45 days is measured from the time that the taxpayer actually received the written notification of the decision that they are dissatisfied with. It is not measured from the time that the taxation administration made the decision.
- 11.3 A taxpayer can only dispute a taxation decision concerning his or her own tax affairs. A person who is a representative of a taxpayer (as defined in Article 3) may make any filing for a taxation dispute on behalf of a taxpayer. This includes a liquidator as mentioned in Article 19.

Form and grounds for objection

- 11.4 Filing of an objection must be in the approved form, which is available from taxation administration offices. The objection must state the grounds of objection. Some space is provided on the objection form to state the grounds, however if the explanation of the grounds is long, it is permissible to attach to the form a written statement of the grounds of objection. The objection must be filed with the taxation office that issued the decision.
- 11.5 Taxpayers should take care in describing their grounds of objection, because they cannot introduce new grounds at a later stage of the dispute process (see Article 14(3)). The grounds mentioned in their objection are the only grounds that can be argued during the objection process, or in any later referral for review to the Tax Disputes Resolution Board or appeal to a court.
- 11.6 If the subject of the dispute falls within the definition of taxation decision then anything that is a necessary step towards making the decision can be included in the grounds for objection. For example, a taxation assessment of income tax may have many components leading up to the determination of the tax payable. There may be many decisions on various types of income, deductions, losses, credits for withholding tax, calculation of depreciation and so on. Each of these preliminary decisions may be considered in an objection if it contributes to the calculation of the final tax in the taxation assessment.
- 11.7 Taxpayers can revise their argument for an objection ground at a later time, but cannot open up a new ground. The following examples show the importance of clearly explaining the grounds of objection.

Example 1

A taxpayer applies for an extension of time to pay their tax under Article 15(2). The extension request is refused by the taxation administration. The taxpayer files an objection against this decision by the taxation administration within the required time. Such a decision is part of the definition of taxation decision so is accepted as a valid objection. The taxpayer states as his grounds for the objection that he does not have the cash available currently and will need more time to collect payment from some of his customers so that he will have enough cash to pay his tax and meet all other necessary expenses.

The taxation administration reviews his application and supporting financial records and decides to disallow the objection. After receiving the written notice of the decision the taxpayer decides to refer the decision to the Tax Disputes Resolution Board. He sends a letter to the Board in support of his case that explains that he needs the extension of time because his son has been in hospital recovering from a serious operation and so he has been distracted from his business.

The new grounds for extension concerning his son's health cannot be accepted or considered by the Tax Disputes Resolution Board because it was not part of his original grounds filed with the objection.

Example 2

Considering the same objection facts as for Example 1, the taxpayer prepares some new cash flow forecasts for his business and submits these to the Tax Disputes Resolution Board to support his claim for review of the objection decision. This new information is still directly related to his original grounds for objection – that more time is necessary to collect amounts owed by his customers. It is simply a revision or refinement of the same argument. The Board should accept this information as part of its consideration of his case.

Extension of time

- 11.8 If a taxpayer is unable to file an objection within the 45 days allowed by Article 11(1), they may apply for an extension under Article 11(2). The provision refers to being unable to file in the required time, which means that the taxpayer must be able to provide a reason in their application which explains why they will be unable to file their objection on time.
- 11.9 The application for an extension must be filed within the same period allowed for the objection. As an objection is normally due within 45 days of the disputed taxation decision, any application for an extension must be filed within 45 days of the extension.

Example

Maqsood receives a VAT assessment notice on 10th Dalwa. He believes the tax in the assessment notice is incorrect and wishes to dispute the assessment. Under Article 11(1) he would normally have 45 days to file an objection, so the deadline for filing it would be 25th Hoot.

Maqsood has a car accident on 20th Hoot and is admitted to hospital for a week to recover. He realizes this will cause a delay in filing his objection so he arranges for his son to prepare an application for an extension which is brought to the hospital for his signature. Maqsood's son must file the application by 25th Hoot.

(Note that under the definition of representative in Article 3, Maqsood's son could file the application himself, provided that he is authorised by Maqsood to act on his behalf).

Extension decision

- 11.10 The taxation administration must consider the application for an extension and notify the applicant of its decision in writing.
- 11.11 As for any decision made by the taxation administration that must be delivered to a taxpayer, it may be communicated to the taxpayer by telephone or in person first, with the written notice following. Considering that the standard extension of time is limited to a maximum of 15 days, the taxation

administration should attempt to advise the taxpayer verbally of the extension decision as soon as possible. The written decision should also be delivered, or the taxpayer advised that it is available for collection, as soon as possible.

- 11.12 The period of the extension is measured from the original due date for filing the objection.

Example 1

Maqsood's deadline for filing an objection is 25th Hoot. He applies for an extension to file the objection. The taxation administration quickly reviews the application and grants an extension of 15 days. He must now file the objection by 11th Hamal in order for it to be valid.

- 11.13 A taxpayer may best protect their interests by continuing to prepare their objection before receiving a decision on the extension. This will allow the taxpayer to file
- 11.14 The taxation administration may grant an extension for a period longer than 15 days in exceptional circumstances. The questions of what are exceptional circumstances and how long an extension should be granted depend on the facts of the case.
- 11.15 If a taxpayer applies for an extension of time within the required time period but the taxation administration does not reply until after the standard 15 day maximum has expired, this is considered exceptional circumstances.

Example 2

Maqsood's deadline for filing an objection is 25th Hoot. He applies for an extension to file the objection. Maqsood provided good reasons for an extension to be approved. However due to some unexpected leave by the taxation officer responsible for deciding on the application it was not possible to provide a reply to Maqsood until 15th Hamal. This is an exceptional circumstance for the purpose of Article 11(4) and therefore a longer extension is justified. The taxation administration may grant an extension longer than 15 days. The length of time to be granted should consider the appropriate time needed by Maqsood from 15th Hamal.

Dispute of the taxation administration's decision on extension of time

- 11.16 A decision by the taxation administration to refuse an application for an extension of time to object is itself a taxation decision as defined in Article 3 and may be objected to under Article 11. The Ministry's decision (or non-decision) on that objection may then become a reviewable decision for which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

Example

Turkmen Carpet Company receives an income tax assessment. The company wishes to dispute the assessment, but due to various problems with records it realises just before the objection deadline that it needs more time to file an objection (“Objection 1”). It files an application for an extension of time of 10 days for filing an objection (under Article 11(2)). The taxation administration reviews the application and decides to refuse an extension (under Article 11(3)). This can be called “Decision 1”.

The company then chooses to file, within 45 days, an objection against the decision to reject the extension request (“Objection 2”). The taxation administration disallows the objection (under Article 11(5)). This can be called “Decision 2”.

The company then applies to the Tax Disputes Resolution Board for review of the taxation administration’s Decision 2. The Board decides to overrule the decision of the taxation administration (Decision 2) and grant an extension to the company to file its original objection (Objection 1). The company may now file the objection concerning its income tax assessment (Objection 1), which the taxation administration must review.

Since any decision on Objection 1 is a decision made for the first time on that dispute, if the company is dissatisfied with the decision it may refer it to review by the Tax Disputes Resolution Board.

Deciding the objection

- 11.17 The taxation administration has 60 days to review and make a decision on the objection. The 60 days is measured from the time that the objection was filed by the taxpayer up to the time that the objection decision is signed by the appropriate taxation officer.
- 11.18 If the objection is about a taxation decision made by taxation officers, the objection will be reviewed and decided by different taxation officers.
- 11.19 When an objection decision is made, the taxation administration has 30 days to inform the taxpayer in writing by delivering a notice of the decision. The 30 days is measured from the day that the objection decision is signed by the appropriate taxation officer, up to the date of delivery of the written notice to the taxpayer.

Deemed disallowance of objection

- 11.20 If a taxpayer has not received written notice of a decision about their objection within 90 days of the objection being filed, they have the right to appeal to the Tax Disputes Resolution Board. At the same time they must notify the taxation administration that they have filed the appeal.
- 11.21 The taxpayer must deliver a notice to the taxation administration fully stating this action before this can take effect. The notice must identify the taxpayer and the objection case which is being appealed. If a taxpayer fails to notify the taxation administration of their appeal to the Tax Disputes Resolution

Board, it will not be in compliance with Article 11(6) and the Board may reject the appeal as invalid.

- 11.22 No time limit is directly imposed by Article 11(6) on the filing of the notice by the taxpayer. This means that if the taxation administration does not inform the taxpayer of its decision on an objection within 90 days of the filing of the objection, it allows the taxpayer to take a longer time to file their appeal under Article 11(6). The time taken is at the choice of the taxpayer subject only to the amendment time limit under Article 8(3) (5 years) or longer under other tax law provisions.

Example

Alamzeb receives an assessment notice for his income tax return for the tax year ending 30 Qaws 1395. He disagrees with the tax liability determined in the assessment and files an objection on 15 Mizan 1396. The taxation administration has a deadline to make a decision within 60 days (by 15 Jadi 1396), but due to administrative problems it fails to make a decision on the objection.

If the taxation administration had made a decision and properly informed him under Article 11 he would be subject to the time limit of 30 days under Article 12(1). However, since the taxation administration has not complied with Article 11 Alamzeb may file an appeal to the Tax Disputes Resolution Board with no time limit under Article 11 or 12.

Alamzeb therefore has the right from 90 days from the time he filed his objection (after 15 Jadi 1396) to file the appeal. He can do this at any time up to the end of the amendment period for the tax return. Under Article 8(3), this is five years from the due date of the tax return. Since the due date of the tax return was 31 Jawza 1396, Alamzeb can file the appeal under Article 11(6) up until 31 Jawza 1401.

ARTICLE 12 – DISSATISFACTION WITH THE OBJECTION DECISION

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.

12.1 Objection decisions are decided by the taxation administration. If a taxpayer is dissatisfied with the decision made by the taxation administration they may escalate it for independent review by another authority. That authority is the Tax Disputes Resolution Board. The Board is part of the Ministry of Finance but separate and independent from the taxation administration.

12.2 The establishment and procedures of the Tax Disputes Resolution Board is provided in Chapter 11, which is explained later in this document.

12.3 If a taxpayer is unable to file an application for review with the Tax Disputes Resolution Board because a properly constituted Board does not exist (due to a failure to appoint members or the expiry of terms of appointed members) then the taxpayer may file an appeal directly to a court of competent jurisdiction. (Regulations)

Appeal to court

12.4 Decisions made by the Tax Disputes Resolution Board are subject to further appeal to a court. By law this is the only way that disputes over taxation decisions can proceed to court – it must be through the process of objection first, followed by review by the Tax Disputes Resolution Board, then appeal to the court.

12.5 Either party to the dispute decided by the Tax Disputes Resolution Board may appeal to a court – the taxpayer or the taxation administration. If both parties are dissatisfied with the decision, both parties may appeal the parts of the decision to which they disagree.

12.6 The appeal must be filed with the court within 30 days of the Board issuing its decision. Under Article 58(2) the Tax Disputes Resolution Board must serve a copy of its written decision on each of the parties to the dispute within 7 days

of making its decision. The 30 days for appeal to the court is measured from the time of service by the Board of its decision.

- 12.7 If the parties are served notice of the decision on different days, they will have different expiry times if they wish to appeal.
- 12.8 All other rules and procedures for filing an appeal to a court are not provided in tax laws. Normal court practices and rules would be followed.

Example

Khatera is in dispute with the tax administration concerning a taxation decision and the case is heard by the Tax Disputes Resolution Board. The Board makes its decision on 5th Asad and delivers its decision to the tax administration on 7th Asad. The Board takes a little longer to serve its decision on Khatera – it is served on 9th Asad.

As each party has 30 days to file an appeal to the court, the taxation administration must file any appeal by 6th Sonbola. Khatera's deadline for filing any appeal is 8th Sonbola.

Implementation of decision

- 12.9 The taxation administration is required to implement a decision of the Tax Disputes Resolution Board when the decision becomes final. Since Article 12(2) allows 30 days for either party to the dispute to appeal to a court, the Board's decision can only be final when that 30 day period has expired and no appeal is filed by either party. As provided by Article 12(2), a decision is only final when both parties have not filed an appeal.

Example 1

Considering the same facts as explained in the example for the discussion of Article 12(2) above, the decision cannot be final until 9th Sonbola, if the taxation administration does not file an appeal by the 6th Sonbola and the taxpayer does not file an appeal by the 8th Sonbola.

- 12.10 The taxation administration must not implement a decision of the Board until after it becomes final, if the decision is not fully favourable to the taxpayer. This means that if the decision, or some part of the decision, concerns a matter which the taxpayer may still dispute by appeal to the court, the taxation administration should wait until it is certain that no appeal is filed.
- 12.11 The taxation administration may choose to implement a decision of the Board before it becomes final if the decision was fully favourable to the taxpayer and the taxation administration has decided to accept the decision without appeal to a court.
- 12.12 A decision of a court is final when there is no further right of appeal to an appellate court. No time limit is imposed for implementation; however the taxation administration should implement the decision without delay.

Implementation is expected within 30 days, unless there are exceptional circumstances requiring more time.

- 12.13 Article 12(3) does not specify what must happen for a decision made on an objection under Article 12(1) where the taxpayer does not apply to the Tax Disputes Resolution Board. It should be taken as obvious that the taxation administration must implement its own decision.

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ARTICLE 13 – VALIDITY OF DOCUMENTS

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.

Deficiency or mistake

- 13.1 A document issued under the tax laws is not rendered invalid by a deficiency or mistake. This provision covers assessment notices, notices or documents recording a taxation decision and any other notice of a decision under the tax laws. It covers documents issued by the taxation administration or by the Tax Disputes Resolution Board.
- 13.2 The taxation administration, the taxpayer, the Tax Disputes Resolution Board and a court must accept such a document as a valid document to the extent that it contains enough detail to be effective and acted upon.
- 13.3 Article 13 does not save a document if the deficiency or mistake is so great that it becomes impossible to understand or carry out its effect. In these cases the deficiency or mistake would be so great that it is not possible to consider the document as representing what it should have been.

Example 1

An income tax assessment notice is issued by the taxation administration with the TIN, the name of the taxpayer, an address, the tax payable, the date of issue and other usual information contained in such a notice. However, due to a mistake by the taxation officer preparing the notice it shows the incorrect due date for payment.

This assessment notice is still valid. The taxpayer cannot dispute its validity. The taxation administration can enforce the effect of the assessment notice, however it may consider issuing a letter correcting the due date.

Example 2

An income tax assessment notice is issued by the taxation administration with the TIN, the name of the taxpayer, an address, the tax payable, the date of issue and other usual information contained in such a notice. However, due to a mistake by a taxation officer in calculating the tax payable, it shows

Afn.2,300 as payable instead of the correct figure of Afn.2,800 that should have been stated.

This assessment notice is still valid. The taxpayer cannot dispute its validity. The taxation administration can enforce the effect of the assessment notice by taking appropriate actions to collect the tax payable as stated of Afn.2,300. However, it should issue a corrected notice as soon as the error is discovered and it may enforce the additional Afn.500 from that time.

Example 3

An income tax assessment notice is issued by the taxation administration with a TIN, the name of the taxpayer, an address, the date of issue and other usual information contained in such a notice. However, due to a printing problem which was not noticed by the taxation officer delivering the notice, it did not specify any tax payable or contain any other tax calculations.

A document showing no tax payable and no tax calculations does not record the essential information that records a taxation decision. The document issued by the taxation administration in this case is not a valid income tax assessment notice.

Example 4

The taxation administration issues a notice to a taxpayer under Article 22, warning that the taxpayer's business will be temporarily closed if he fails to file his 1395 tax return within 7 days. In fact the taxpayer has already filed that tax return, the taxation officer that prepared the notice intended to specify payment of an amount of tax which is past the due date for payment.

Article 13 does not save this document from being invalid. The mistake is so great that it is not possible to give effect to it. The taxation administration cannot proceed to temporarily close the business for non-payment of the tax because the taxpayer has not been given notice of that intention.

Example 5

Imran contracts with Sial to perform some construction services. Sial owes an amount of tax which is overdue, so the taxation administration issues a notice to Imran under Article 16, requiring him to withhold 20% of payments payable to Sial and pay it to the taxation administration. The notice mistakenly refers to Imran paying Sial salary or wages, but in fact Sial works as a contractor and not an employee.

The notice is still valid because the mistake does not affect Imran's ability to comply with the intention of the notice. The incorrect description of the payments to Sial does not affect the action required of Imran, which is to withhold 20% of amounts payable to Sial.

Must be lawful

- 13.4 In order for Article 13 to protect the validity of a document from a deficiency or mistake, it must be a lawful document. A document is lawful if the tax laws provide for such a document and it has been created and issued in accordance with the law. This includes being authorised by the appropriate person within the taxation administration.

Example

Raouf works in the Customer Service section of LTO. He meets a taxpayer who has come in to the office to complain about an assessment notice that issued after he was audited. Raouf thinks the complaint is justified, so he goes to a computer and prepares an amended assessment notice with adjustments that resolve the taxpayer's dispute.

The assessment notice issued by Raouf is not valid because it was not lawful. Raouf has not directed the taxpayer's dispute to the correct area of the taxation administration for consideration and he is not personally authorised to issue such assessment notices.

Must properly identify the recipient

- 13.5 The taxation administration must properly identify the recipient of the document. There are two parts to this question – the details recorded on the document and who the document is delivered to.
- 13.6 Most documents issued to taxpayers by the taxation administration will have the identity details of TIN, a name and address. The document will also be delivered to a person, so there are four important facts to consider in deciding whether a document has been issued to a properly identified person.
- 13.7 A document will be considered as valid if at least two of the identity details are correct, provided that it is physically handed to the correct person or a representative of that person or is delivered to a current residential or business address of the taxpayer.

Example 1

A taxpayer applies for an extension of time under Article 11(2) to file an objection. The taxation administration decides to reject the application and gives written notice to the taxpayer when they attend the taxation administration office. The notice has the correct name and address of the taxpayer but some missing numbers from the TIN. The notice is still valid because it has two out of the required three identity details and was served on the actual taxpayer.

Example 2

Same facts as for Example 1, except this time it has the correct TIN and correct name, but the wrong address. The notice is still valid because it has two out of the required three identity details and was served on the actual taxpayer.

Example 3

Same facts as example 1, except this time it has the correct TIN and address, but mistakenly records the trading name of the taxpayer's business instead of their personal name. The notice is delivered to the taxpayer's residential address. The notice is still valid because considering all of the facts the taxpayer has been properly served with the notice and there is enough identification on the notice that they should understand that it is intended for them.

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ARTICLE 14 – BURDEN OF PROOF AND OTHER ISSUES

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.

Burden of proof – facts

- 14.1 If a taxpayer disputes a taxation decision by objection under Article 11, by referral to the Tax Disputes Resolution Board, or by appeal to a court, it is their responsibility to prove any facts that are disputed by the taxation administration. The burden of proof over facts is on the taxpayer at all levels of dispute. The burden of proof is on the taxpayer for all stages of a dispute including a referral by them to the Tax Disputes Resolution Board.
- 14.2 Article 14 does not impose a burden on the taxpayer to prove all facts related to the taxation decision. They only have a responsibility to provide proof on facts relevant to changing the disputed decision.

Example

The taxation administration conducted an audit on a taxpayer and issued an amended assessment notice which reduced a deduction for trading stock. The auditor made the adjustment because there was a lack of evidence of the amount and cost of trading stock purchases during the tax year. No other adjustments were made.

If the taxpayer wishes to object against this decision, it bears the responsibility to prove that the adjustment is incorrect. This would usually require producing documentary evidence of the purchases. In this case no adjustment was made concerning income, so no evidence related to the income of the taxpayer would be necessary.

Burden of proof – legal interpretation

- 14.3 If the dispute is over legal interpretation, the taxpayer has the responsibility to present its argument in an objection and again in any referral to the Tax Disputes Resolution Board. If the dispute proceeds to a court, each party bears the responsibility for presenting its argument on any part of the decision of the Board that they dispute.

Disputed tax is still payable

- 14.4 A taxpayer cannot avoid paying their tax simply by filing an objection. The amount of tax continues to be due and payable under the tax laws including by the time required under the relevant tax law. Additional tax will continue to accrue as imposed by law.
- 14.5 Although the tax remains due and payable, the taxation administration may allow a delay in enforcement action until the dispute is resolved. Policies and guidelines for this are set by the taxation administration. As a general guide, if the taxpayer pays half of the tax subject to dispute and there is a genuine possibility that the taxpayer may fully or partly succeed in their dispute, enforcement action will be delayed for collection of the balance outstanding.
- 14.6 In deciding whether to delay enforcement action for tax in dispute, the taxation administration may also consider other factors including:
- (a) the compliance history of the taxpayer
 - (b) the amount of tax involved;
 - (c) whether the taxpayer is able to provide adequate security for the payment of the amount involved;
 - (d) whether payment of the amount involved would result in financial hardship to the taxpayer;
 - (e) whether fraud is involved in the origin of the dispute; and
 - (f) whether the taxpayer has failed to furnish information requested under the tax laws for the purposes of making the tax decision in dispute.
- 14.7 Whether there is a genuine possibility of full or partial success by the taxpayer in their dispute is a question that the taxation administration must consider objectively and impartially. In deciding that the taxpayer has a possibility of success, it does not mean that the taxation administration expects to fail.

Example 1

A taxpayer is audited and the result is an amended assessment that adjusts deductions for depreciation. The adjustments were made because the taxpayer had no evidence of the original cost of the assets. The taxpayer files an objection providing some evidence that it has managed to obtain from suppliers. The taxpayer also claims in the objection that further evidence will follow when it is retrieved from storage.

In this case it appears possible that the taxpayer may have some success in their objection. It is not certain, but it is possible. The final outcome is unknown, however it would be justified in this case for the taxation administration to insist on payment of half of the tax in dispute and delay enforcement action on the balance.

Example 2

The taxation administration conducts a VAT audit on transactions between a taxpayer and related parties (associates). The auditor decides that the value of some transactions was incorrect and makes adjustments based on his judgement of the market values.

The taxpayer files an objection disputing the values. The objection includes some arguments about the valuation and some evidence from other unrelated businesses about the values of similar transactions.

In this case there appears to be genuine doubt about the correct market values for the transactions. Further investigations will be necessary, so it would be justified to collect half of the tax payable and defer enforcement action on the balance.

Example 3

A taxpayer has constructed three large houses and sold the houses for a profit. The taxation administration discovers that this profit was not included in the taxpayer's tax return and issues an amended assessment which includes tax on that profit. The taxpayer files an objection claiming that such profits should not be assessable for income tax. The objection provides no legal arguments to support its claim.

In this case, considering Article 20 of the Income Tax Law, the taxpayer's objection is unlikely to be successful. The taxation administration should continue to enforce full payment of the tax due.

Grounds for disputing an objection decision

- 14.8 Taxpayers must carefully consider the arguments submitted in their objection documents (see Article 11). If a taxpayer is dissatisfied with the decision made by the taxation administration concerning their objection, they can only raise those same grounds in their referral to the Tax Disputes Resolution Board. The same applies to any appeal to a court.
- 14.9 A taxpayer can restate their argument to the Board or a court, but the revised argument must be based on the original grounds stated in their objection. The taxpayer can also introduce new evidence to the Board or a court, (subject to the rules of the court) as long as it is related to the grounds mentioned in their objection.

Example

Following an audit, the taxation administration disallows some expenses claimed by a taxpayer because it believes the expenses were for capital equipment. The taxpayer files an objection claiming that items were consumable goods and materials.

Later, after the taxation administration disallows the objection, the taxpayer files an application for review with the Tax Disputes Resolution Board accepting that the expenses were purchases of equipment but claiming that the deduction was for the loss of the equipment in a fire.

The Board may reject this argument as a new ground not previously mentioned in the objection.

- 14.10 The Tax Disputes Resolution Board or a court may give permission to a taxpayer to raise new grounds.

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CHAPTER 5 – RECOVERY OF TAX

ARTICLE 15 – PAYMENT 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.

Applying for an extension of time to pay tax

- 15.1 A taxpayer may apply for an extension of time to pay their tax. The application may refer to an extension of time for the full amount or it may seek agreement to pay by instalments. A taxpayer may apply for an extension of time to file a tax return under Article 7 and an extension of time to pay under Article 15 at the same time.
- 15.2 An application for an extension of time must explain the reasons why the taxpayer is unable to pay the tax due. The taxation administration may provide forms appropriate for this purpose and may request supporting documents related to information in the application.
- 15.3 The taxpayer should state the period of the extension requested by their application.

- 15.4 It is not possible to fully list all of the grounds for which an extension of time would be reasonable. Following are some examples of circumstances where an extension may be justified:
- The taxpayer, or their business, is seriously affected by a natural disaster such as fire, flood or earthquake;
 - The taxpayer, or their business, is seriously affected by civil unrest or conflict;
 - The taxpayer's business profitability is affected because they have suffered a serious illness or injury;
 - A close family member of the taxpayer passes away or suffers an illness or injury and the taxpayer has important family responsibilities or obligations to fulfil over the time when the tax was due; or
 - The places available for the taxpayer to pay their tax are closed due to natural disaster, conflict or civil unrest.
- 15.5 If the taxpayer is applying for an extension of time due to financial difficulties the application should include a cash flow statement from the taxpayer for the period over which they request an extension or payment by instalments. This means providing an estimated projection of their income including a schedule of the dates when this income is expected. The same process should also be followed in providing a schedule of business and private expenses expected by the taxpayer. In addition the application should include a statement of the taxpayer's assets and liabilities. This includes balances of cash held, bank account balances and movable and immovable property. A taxpayer commits an offence under Article 45(9) if they make a false statement in their application.
- 15.6 The application should state the extension of time considered necessary by the taxpayer. If it is a request to pay by instalments, the taxpayer should detail the amounts and times of the proposed instalments.
- 15.7 The application must be filed by the due date of the tax for which an extension is sought in order to be a formal application under Article 15. By filing the application on time, a taxpayer has the right to dispute the decision made by the taxation administration on the application. A decision under Article 15(3) is included in the definition of taxation decision under Article 3 and so may be disputed under the procedures in Chapter 4.
- 15.8 The taxation administration must consider the application and make a decision to accept the application or reject the application. If rejecting the application, the taxation administration may allow a shorter extension period or an instalment arrangement which is different to that proposed by the taxpayer.
- 15.9 The taxation administration should make a decision on the application. No time limit is imposed by law in making a decision but it should be done within a reasonable period of time. In most cases a decision should be made within 14 days, unless the application is incomplete or further information is required. The decision must be provided to the taxpayer in writing.

Late applications

- 15.10 A taxpayer may still file an application after the due date for the tax but it will be treated as an informal application. Such an application will not be an application in compliance with Article 15(2), so the decision made by the taxation administration on that application will not be a decision under Article 15(3). This means that it is not a decision that can be disputed by the taxpayer.
- 15.11 Even though the decision by the taxation administration concerning a late application is not subject to dispute by the taxpayer, the taxation administration shall give it careful consideration based on the information provided by the taxpayer and make its decision fairly and in accordance with policies.
- 15.12 It is beneficial to the efficient administration of the tax laws to allow late applications and, where the circumstances are reasonable, defer enforcement action to allow an extended period of time to pay. This allows the taxation administration to concentrate enforcement on those taxpayers who make no attempt to co-operate.
- 15.13 There are other enforcement actions provided under the Tax Administration Law which encourage taxpayers to enter an arrangement under Article 15 or the enforcement action stops if an arrangement under Article 15 is agreed by the taxpayer. In particular, an agreement to pay overdue tax by instalments. See for example Articles 17(1), 20(2) and 22(4).
- 15.14 Since those enforcement actions generally cannot commence until after tax is due, it is clear that there is an intention that taxpayers and the taxation administration can agree on payment by instalments under Article 15. However it will not be subject to dispute by the taxpayer.

Late payment additional tax

- 15.15 Approval of an extension of time has the effect of deferring recovery action. It does not preclude the accrual of late payment additional tax. Article 34 may continue to impose late payment additional tax from the due date for payment of the tax through the period that the application is considered and for any further period of extension allowed by the taxation administration.
- 15.16 While an extension of time to pay under Article 15 does not preclude the imposition of additional tax under Article 34, it does not require it to be paid in every case. In very exceptional cases the taxation administration can make a decision not to impose the late payment additional tax when extensions have been granted under Article 15. Very exceptional circumstances would include where a taxpayer's business is affected by a natural disaster or a national emergency. In such a case an extension of time to pay tax may be granted under Article 15 and the later due date for tax after the extension of time is the date when the additional tax under Article 34 will start to be imposed.

Dispute of the taxation administration's decision on extension of time

15.17 A decision by the taxation administration to refuse an application for an extension of time to pay tax which was filed by the due date is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision for which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

Earlier due date

15.18 Article 15(6) gives the taxation administration the power to bring forward the due date for payment of tax if it has evidence that the taxpayer may leave Afghanistan before the due date. In order for a due date to be specified for a tax liability, there must first be a tax liability in existence or created.

15.19 In the case of a tax liability that is not yet documented in a filed tax return or an issued assessment notice, to carry out Article 15(6) the taxation administration will first need to prepare an assessment notice specifying the tax payable. This would be done under Article 8(5).

15.20 The power under Article 15(6) can be used with or without the agreement of the taxpayer.

Example

On 20th Dalwa 1395, the taxation administration receives information that Sourat is intending to leave Afghanistan with his family. Sourat has a business which is registered for VAT. He has no current tax debts, however he has not yet filed his tax return for the tax year 30 Qaws 1395 or his VAT return for the quarter ending the same date.

Under Article 8(5) the taxation administration may immediately prepare assessment notices for both income tax and VAT. If the taxation administration issues assessment notices for each tax on 20th Dalwa 1395 it can select any due date from 20th Dalwa 1395.

Dispute of the taxation administration's decision on earlier due date

15.21 A decision by the taxation administration to bring forward the due date for tax in the belief that a taxpayer may leave Afghanistan is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision for which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

Enforcement of small amounts and uneconomical amounts

15.22 All tax liabilities are payable according to the tax laws. However the taxation administration has the power to give higher or lower priority for enforcement action to collect overdue tax. Generally larger amounts are given higher priority. The time overdue is a consideration – older debts may be given higher priority. Furthermore, it is good administrative practise to consider the costs of

collection compared to the amount of tax liability. The Ministry of Finance including the taxation administration is under an obligation to use its resources as efficiently as possible. Efficiency requires that these limited resources should be used to maximise tax revenues over a long period.

- 15.23 The regulations support these principles by providing two rules for suspending or delaying enforcement action to collect overdue tax. The first rule is that the taxation administration may suspend or delay enforcement action against a taxpayer where their total tax liability is less than Afn.1,000.
- 15.24 The second rule is that the taxation administration may delay (suspend) enforcement action where the cost of collection considering all estimated costs for the government is expected to be more than the amount of the total tax liability. Relevant costs may include the salary costs of the taxation employees who would need to spend time on the enforcement action, plus any administrative costs.
- 15.25 The delay or suspension of enforcement action to collect tax does not in any way effect the liability for that tax. The taxpayer is still expected to pay the amount and it remains payable on the account maintained by the taxation administration. If relevant, additional tax for late payment will continue to accrue.

Identifying the tax paid

- 15.26 Taxpayers are required by law to pay their tax liabilities. Two things are required to fulfil this obligation. Firstly they must pay money to the Government. Secondly they must specify the tax liability that is being paid. The regulations support this requirement.
- 15.27 If a taxpayer makes a payment without specifying the tax liability being paid, the payment is recorded in a suspense account for the credit of the taxpayer. This credit is recorded for the benefit of the taxpayer until such time as they specify its allocation to a tax liability.
- 15.28 Additional tax for late payment of a tax liability will accrue until the time that payment can be allocated to the tax liability.

ARTICLE 16 – COLLECTION OF A TAXPAYER’S UNPAID TAX FROM THIRD PARTIES

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.

Collection of tax from third parties

- 16.1 The taxation administration may take action to collect unpaid tax from third parties. A third party is a person defined in Article 3 and is generally a person who holds or will hold money for the taxpayer or owes or will owe money to the taxpayer.

Example

An employer of a taxpayer is a third party because they will from time to time owe money (salary or wages) to the taxpayer.

- 16.2 The power to collect payment of tax under Article 16 will generally only be used where the taxation administration has already taken other action to collect the tax from the taxpayer. As a minimum, the taxation administration should have delivered a reminder in writing to the taxpayer informing them of the amount due.
- 16.3 In order to collect an unpaid tax liability from a third party, the taxation administration must issue a written notice to the third party. This is called a “recovery notice”. The recovery notice given to the third party must identify the taxpayer for whom the notice is related and the payment or amount from which

the third party is to deduct the amount payable to the taxation administration. The recovery notice must also specify the amount to be deducted or paid by the third party and the date for payment to the taxation administration.

- 16.4 A copy of the recovery notice must also be given to the taxpayer. No time limit is specified in the law; however it should be as close as possible to the time that the notice is given to the third party.

Date for payment

- 16.5 The date specified may be a specific date, or it may be a time described with reference to the happening of an event. Following is an example of each:

- The payment is due by 20th Sonbola, 1395; or
- The payment is due within 7 days of the next salary payment.

- 16.6 The date for payment by the third party to the taxation administration cannot be before the date that the third party has the obligation to make payment to the taxpayer. For example, an employer who is served with a notice as a third party requiring them to make a payment from an amount of salary payable to the employee cannot be required to make a payment until the day that the salary payment becomes payable.

- 16.7 When determining the due date for payment the taxation administration should allow a reasonable number of days for the third party to make the payment, considering any administrative requirements. For example, an employer required to make a payment as a third party from a salary amount payable to an employee should be allowed at least seven days after paying the salary as a period in which to pay the deducted amount to the taxation administration.

- 16.8 In the case of a third party holding money which is available to the taxpayer at call (for example, a bank holding funds in an account for the taxpayer) the obligation between the bank and the taxpayer is considered current and ongoing. In such circumstances the third party has an obligation to pay or provide the funds at any time the taxpayer makes a request. The notice to the third party may therefore specify payment at any time including immediately on receipt of the notice.

Amount of payment

- 16.9 The third party cannot be required to pay to the taxation administration more than the amount of their obligation to the taxpayer.

Example

A taxpayer has an account with the Wardak Bank with a balance of Afn. 10,000. If the taxation administration issues a notice to the Bank under Article 18, the maximum enforceable amount that the Bank may be required to pay is Afn.10,000.

- 16.10 If the notice issued by the taxation administration specifies an amount greater than the third party's obligation to the taxpayer, the notice is not invalid (see Article 14). The notice is valid, but only enforceable up to the amount of the third party's obligation to the taxpayer.
- 16.11 The amount to be paid to the taxation administration may be stated in different ways depending on the circumstances. Following are some examples:
- Pay Afn. 10,000 from the bank account held by the taxpayer;
 - Deduct 20% of the salary payment each pay period;
 - Pay the proceeds of sale of the asset, up to Afn.10,000.
- 16.12 The amount deductible from salary and wages is subject to special limitation. The maximum amount that an employer is obligated to pay under Article 16 is 20% of the salary or wage payable to the employee. This limit applies and is calculated for each salary or wage payment payable for the regular pay period. The amount takes into account the gross amount of the payment including all allowances, top ups, bonuses or overtime. The 20% maximum under Article 16 applies to the gross amount before any withholding tax or other deductions.
- 16.13 It is preferable that notices to employers under Article 16 specify the amount to be paid as a percentage of each salary or wage payment, up to a maximum amount. For example:
- 16.14 "You are required to pay to the taxation administration 15% of each gross salary payment, until the total of such payment reaches Afn.10,000."
- 16.15 When deciding the amount to be obtained from a third party under Article 16, in the case of a taxpayer who is a natural person, the taxation administration shall consider whether it will cause hardship to the taxpayer or their dependents. Hardship would be caused if the amount to be withheld under Article 16 will cause the taxpayer to be unable to provided food and basic necessities for themselves and their dependent family. If the amount or percentage to be deducted from salary or wages will cause hardship, it should be reduced to an appropriate level.

Dispute of the taxation administration's decision to recover from another person

- 16.16 A decision by the taxation administration to recover tax from another person under this Article is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision from which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.
- 16.17 The relevant taxation decision in this case may be the decision to recover from a person, or the decision on the amount to recover from that person, or both.
- 16.18 The person with standing to dispute the taxation decision under this Article is the taxpayer with the original liability.

16.19 The taxation administration has discretion on when the power in Article 16 is used. Generally it will not use this power to collect small amounts – if the amount of unpaid tax is more than Afn.1,000 (Regulations).

Draft

ARTICLE 17 – CHANGE OF TAX RECOVERY NOTICE TO A THIRD PARTY

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.

Revocation or amendment of notice

- 17.1 If the tax liability related to the recovery notice is paid, or the taxation administration agrees to an arrangement under Article 15(3) giving an extension of time to pay or payment by instalments, the recovery notice must be revoked. A written notice of the revocation must be provided to the third party.
- 17.2 Payments made by the third party in accordance with the recovery notice are treated as payments under the authority of the taxpayer under Article 18(1). However, the taxation administration is not required to revoke or amend a recovery notice each time such a payment is made. Each payment is simply consistent with the original notice.
- 17.3 Nothing in Article 17(1) prevents the taxation administration from voluntarily revoking or amending a recovery notice for any other reason. For example, it may amend or vary the notice if it finds that complying with the original notice would cause hardship to the taxpayer or their dependents.
- 17.4 No time limit for issuing the revocation notice is mentioned in the law; however the taxation administration should comply as soon as possible. The law also does not require a copy to be provided to the taxpayer; however it is good practice for the taxation administration to do so.

Application for variation

- 17.5 A third party in receipt of a current recovery notice may apply for variation of the amount or date for payment of any amount mentioned in the notice. The

taxation administration must make a decision on the application and provide a written notice of the decision to both the third party and the taxpayer.

- 17.6 The notice of the decision concerning variation is treated as a replacement of the original recovery notice, to the extent it varies the original notice. The notice of the decision incorporates any information in the original recovery notice to the extent that there is no change.
- 17.7 The taxpayer cannot personally make such an application directly to the taxation administration. If a taxpayer wishes to have a recovery notice varied, it may request the third party to do so on their behalf. A taxpayer may prepare an application and file it with the signed approval of the third party, and this will be treated as a formal application by the third party.
- 17.8 A taxpayer may make an informal application for variation of the recovery notice without the knowledge or approval of the third party. The taxation administration may consider such an application and act upon it. However such an application is not an application under Article 17(2) and the decision made by taxation administration on the application is not a decision covered by Article 17(3).

Dispute of the taxation administration's decision on variation of recovery notice

- 17.9 A decision by the taxation administration under Article 17(3) concerning an application for variation of the Article 16 notice is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision from which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.
- 17.10 The person with standing to dispute the taxation decision under this Article is the taxpayer, notwithstanding that it was another person (the payer) who applies to the Ministry under Article 17(2).
- 17.11 The taxpayer's objection right only applies to a decision on a formal application under Article 17(2). A taxpayer does not have the right to dispute a decision on an informal application.

ARTICLE 18 – COMPLIANCE WITH THE TAX RECOVERY NOTICE

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.

Payment by third party

- 18.1 A payment by a third party in accordance with a recovery notice has two effects. Firstly, the amount received by the taxation administration is taken as payment towards the taxpayer's tax liability. Secondly the payment is, for all legal purposes, taken to discharge the third party's obligations to the taxpayer to the extent of the amount paid.

Example 1

Azim is an employee of Ghazni Bank and earns a salary of Afn.30,000 per month. He owes tax of Afn.10,000 which is overdue. He has not been making payments towards the debt, so the taxation administration issues a recovery notice under Article 16 requiring his employer to deduct Afn.5,000 from each monthly salary payment and pay it to the taxation administration within 14 days of making the salary payment to Azim.

Each payment by the Bank to the taxation administration is treated as a payment of Azim's tax liability. As between Azim and his employer, the payment satisfies the Bank's obligation to pay him salary to the extent of that amount and it will only pay him the balance of his salary after deduction of the Afn.5,000 (and after deducting tax and any other amounts as usual).

Example 2

Azim also has a bank account with Ghazni Bank with a balance of Afn.50,000. The taxation administration sends a recovery notice under Article 16 to the Bank requiring it to pay Afn.20,000 to the taxation administration from that account. When the Bank makes the payment, it is applied to Azim's tax liability. The balance of Afn.30,000 is now the full

obligation of the bank to Azim in respect of his account. The Afn.20,000 is treated as if Azim himself had made the withdrawal.

Third party to inform taxpayer

- 18.2 It is the responsibility of the third party to inform the taxpayer each time a payment is made to the taxation administration under a recovery notice. The tax laws do not impose any sanction on the third party if they fail to comply with this requirement. It is a matter for the third party and the taxpayer to resolve between them according to their relationship and mutual obligations.
- 18.3 The taxation administration may also inform the taxpayer of each payment, or advise the new balance of the tax liability, but it is not required to do so unless specifically requested by the taxpayer. If a taxpayer does request such information it has a right to receive it under Article 5.
- 18.4 As a minimum, the taxation administration should advise the taxpayer when the tax liability has been fully paid.

Failure to comply with recovery notice

- 18.5 A third party who fails to comply with a recovery notice becomes personally liable for the amount for which they have failed to pay. The liability is one which may be pursued by the Ministry of Finance in court as a debt owing to the State.
- 18.6 The taxpayer also remains liable for their unpaid tax liability. The taxation administration may enforce payment from either the taxpayer or the third party. It may take enforcement action against both at the same time.
- 18.7 If payment is received from the third party, it satisfies the liability of the third party and the taxpayer to the extent of the amount paid. If payment is received from the taxpayer, it satisfies the tax liability of the taxpayer to the extent of the payment but only satisfies the third party's obligation to the extent that the balance of the tax liability falls below the third party's obligation to make payment.

Example 1

Yousef has a bank account with Ghazni Bank with a balance of Afn.60,000. He owes tax of Afn.80,000 which is overdue for payment. The taxation administration sends a recovery notice under Article 16 to the Bank requiring it to pay to the taxation administration the balance of any funds in the account up to Afn.80,000. The Bank does not comply with the notice and allows Yousef to withdraw all of his funds. The withdrawal occurs after the bank received the notice.

Yousef's tax liability of Afn.80,000 remains payable and may be enforced by the taxation administration against him, (including any additional taxes accrued). The taxation administration may also enforce payment from the Ghazni Bank for Afn.60,000 which is the amount of the Bank's failure to

comply. It may take action against one party, or both parties at the same time as it chooses.

Example 2

Continuing with Yousef's circumstances in the previous example, he makes a payment of Afn.10,000. His tax liability is therefore reduced from Afn.80,000 to Afn.70,000. However, the Bank remains liable for Afn.60,000 as the balance of the tax liability has not yet fallen below the Bank's liability under the recovery notice.

Later, Yousef makes a further payment of Afn.20,000. His tax liability is therefore reduced from Afn.70,000 to Afn.50,000. The Bank's liability is now reduced to Afn.50,000 because it cannot be required to pay more than the current tax liability of the taxpayer. (It can be noted that the result of the second payment is also supported by Article 17(1) which would require amendment of the original recovery notice).

Payments made in error

- 18.8 If a third party makes a payment in error (a payment which is not covered by the recovery notice) the taxation administration shall refund the amount to the third party. The taxation administration has no legal basis to receive or return the amount in such a case.
- 18.9 If the third party makes a payment in accordance with the recovery notice and the taxation administration finds after receiving the payment that it exceeds the taxpayer's remaining tax liability, the taxpayer is in credit and it shall be dealt with by the taxation administration in accordance with Articles 61 and 62.

Example

Azim's employer has been making deductions from his salary of Afn. 5,000 each month for several months. In Mizan, it pays Afn.5,000 as required. After receiving the payment the taxation administration checks its records and finds that due to previous payments by the third party and the taxpayer himself, only Afn.1,000 remained payable. The taxpayer is therefore in credit by Afn.4,000.

- 18.10 The taxation administration should inform the taxpayer of this fact and deal with the overpaid amount in accordance with Articles 61 and 62. If further payments are still required by the original recovery notice, it shall also inform the third party under Article 17(1) that the recovery notice is revoked.

ARTICLE 19 – LIQUIDATORS

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.

Liquidators to notify of their appointment

- 19.1 A liquidator for the purposes of the Taxation Administration Law is given a wide definition in Article 3. Any person fitting within that definition of liquidator must notify the taxation administration within 14 days of their appointment as liquidator. Failure to do so is an offence under Article 45(3). Appointment for the purposes of this Article covers appointment by others (a court, creditors, family of a deceased person) or self-appointment where a person assumes responsibility as liquidator.
- 19.2 The notice to the taxation administration must be in writing, properly identifying the name and address of the taxpayer to whom their status as liquidator relates and also identifying themselves. The taxpayer identification number of the taxpayer should be quoted (if known) and also the liquidator's own number. If the liquidator making the notification shares any responsibility with other persons as liquidators, they shall describe the sharing arrangement and name the other liquidator(s).

19.3 If a liquidator is appointed as a replacement of another liquidator, the notification should state the date of replacement and identify the person replaced.

19.4 A liquidator is treated by the taxation administration as continuing in that role until written notice is received of their replacement or otherwise ceasing as liquidator.

Taxation administration to advise of any tax liability

19.5 The taxation administration must, within two months of being notified of the appointment of a new liquidator, inform the liquidator in writing of the current and expected future tax liabilities of the relevant taxpayer.

19.6 Current and future liabilities includes those which are known to the taxation administration at the time of preparing the notice to the liquidator, as well as expected or possible future tax liabilities still to be determined. Where the amounts of tax liabilities are known, they shall be specified in the notice. Where a tax liability is expected or depends on future events and the amount of the tax liability is not yet known by the taxation administration, a description of that tax liability should be provided in the notice.

19.7 The notice should specify the date on which the taxation administration is making the statement of the taxpayer's liabilities.

Example

A liquidator is appointed on 20th Sawr 1395 to wind up a company. The liquidator files written notice of their appointment on 29th Sawr 1395 to the taxation administration. The company has an outstanding tax debt from the 1393 tax year of Afn.20,000 and has filed a tax return for 1394 without payment and which has not yet been processed by the taxation administration. In addition, a future tax return will be required for the part of the 1395 which the company operated and any tax liabilities that may arise from the liquidation (for example, the sale or transfer of assets of the company).

The taxation administration is required to notify the liquidator in writing of current and future tax liabilities by 29th Saratan 1395. The notice should specify the amount of the following taxation liabilities:

- The tax liability amount currently owing from the 1393 tax year;
- The amount of any further additional taxes accrued on the 1393 tax year debt, as calculated to a date specified in the notice;
- The amount of the tax liability determined from the 1394 tax return filed;
- The amount of any further additional taxes accrued on the 1394 tax year liability, as calculated to a date specified in the notice.

In addition the notice should bring to the attention of the liquidator that the following tax liabilities that have not yet been determined or may arise depending on future events:

- Additional taxes accruing on tax remaining unpaid;
- Possible tax liabilities for the 1395 tax year from any trading or transactions in that year including through the process of liquidation.

Restriction over assets

- 19.8 A liquidator must not, without the approval of the taxation administration, sell, transfer or otherwise dispose of an asset of the taxpayer between the time of their appointment and the time that the taxation administration provides the written notice of the tax liabilities of the taxpayer under Article 19(2).
- 19.9 The taxation administration allows liquidators in control of a business to keep the business open and selling trading stock. Provided that trading stock is sold for normal market prices and the proceeds are retained as assets of the liquidation, liquidators do not need to seek specific approval from the taxation administration.
- 19.10 The taxation administration also gives general approval to liquidators in control of a business to pay for expenses necessary for the preservation of assets of the taxpayer. Liquidators do not need to seek specific approval from the taxation administration for these types of expenses. For example, paying insurance premiums covering the assets, paying for fuel for a generator providing electricity to refrigerate perishable goods, or to pay for security guards at the business premises. No other expenditure is authorised unless written approval is obtained from the taxation administration or the notice under Article 19(2) is received.
- 19.11 A liquidator may request specific approval for parting with an asset outside of the general approvals noted above. Article 19(3) clearly contemplates the possibility that approval may be given by the taxation administration for a liquidator to part with assets. The procedure for application by a liquidator to receive such approval is not specified in the law. A written request from the liquidator specifying the asset and explaining the reason for parting with the asset will be a minimum requirement for such a request.
- 19.12 The procedure for consideration of the application by the taxation administration is also not specified in the law. However, approval of the request should be expected if parting with the asset does not disadvantage the interests of the taxation administration in collecting taxes payable. For example, the sale of property for a fair market price may be approved, provided the payment received is set aside or used for the payment of the outstanding tax.
- 19.13 A liquidator's ability to part with an asset is subject to any other obligations under the law, in addition to their obligations under the tax law. For example, approval for a liquidator to part with an asset may be granted by the taxation

administration, but the liquidator may still be restricted from doing so by their obligations to creditors and other interested parties in the liquidation.

- 19.14 If the taxation administration fails to provide the notice under Article 19(2) within the time required (two months), the liquidator may proceed with selling, transferring or otherwise disposing of assets without the permission of the taxation administration.

Liquidator to set aside amounts for tax liabilities

- 19.15 The liquidator is required to set aside from the proceeds of sale of assets enough funds to ensure payment of the tax liabilities notified by the taxation administration. Sale of assets includes any transfer of ownership of assets.
- 19.16 Setting aside an amount means retaining money from the liquidation and holding it for the purpose of paying the tax liabilities. It is a matter of choice for the liquidator as to how they set it aside. They may hold it as cash or in a bank account. Subject to legal requirements and priorities of creditors or other persons with claims on the liquidation process, the liquidator will pay the tax liabilities from the retained funds when permitted.
- 19.17 Article 19 does not impose any obligations on the liquidator as to which assets are sold or transferred or from which assets sold the money for tax liabilities must be set aside. These are decisions that the liquidator may make when managing the liquidation process.

Example 1

A liquidator is managing the allocation of assets of a person who has died. The deceased taxpayer has been advised by written notice from the taxation administration that there is a total outstanding tax liability of Afn.120,000 and no other debts. The only assets left by the taxpayer are three vehicles each worth Afn.150,000. There are two sons of the taxpayer who are entitled to a share in the remaining assets.

The liquidator can transfer one vehicle to each son from any of the three vehicles it chooses. It may, before or after transferring the vehicles to the sons, sell the remaining vehicle to obtain funds for the tax liabilities.

Liability of liquidators

- 19.18 Article 19 imposes liability on liquidators if they disperse assets and fail to set aside funds from those assets. If the failure to set aside funds causes a shortfall in funds for payment of the tax liabilities they will be personally liable for the shortfall. The taxation administration may pursue the debt in court. The taxpayer can also be prosecuted under Article 45(3) for their failure to comply.

Example 2

Considering the same facts as the previous example, the liquidator transfers ownership of two vehicles to the sons. The third vehicle is then involved in

an accident and therefore sold for a reduced price of Afn.50,000. This is used to pay the tax liability but a shortfall of Afn.70,000 remains unpaid. The liquidator is personally liable for the unpaid amount.

- 19.19 It can be seen that while a liquidator can choose which assets to sell for funds to pay the tax liability, they risk personal liability if they make the wrong decisions, even if the circumstances are unexpected.
- 19.20 If there is more than one liquidator, each liquidator is jointly and severally liable for all obligations under Article 19. A liquidator is obligated to notify the taxation administration of their appointment under Article 19(1) and the appointment of any other liquidator known to them.
- 19.21 Multiple liquidators are jointly and severally liable for any amount of liability imposed by Article 19. For example, if two liquidators are appointed over the same liquidation and one of those transfer assets which later causes a shortfall in funds to pay the outstanding tax liability, the taxation administration may take action to enforce payment against one or both liquidators at the same time. Any payment from one liquidator reduces the joint liability for both.
- 19.22 Provided that a liquidator complies with Article 19(4), they will not be personally liable for a taxpayer's tax liabilities in excess of the amount set aside from the proceeds of sale of the assets of the taxpayer.

Example 3

Sadiq is appointed liquidator for a company and notifies the taxation administration as required. The taxation administration serves him with a notice informing him that the company owes Afn. 300,000 in total taxes.

Sadiq sells all of the assets of the company and receives Afn.400,000 in proceeds. He sets aside Afn.300,000 and pays this to the taxation administration. The remaining balance of Afn.100,000 is disbursed to creditors and shareholders on finalisation of the liquidation.

Six months after the liquidation is finalised the taxation administration determines that the liquidated company should have paid an additional Afn.50,000 in tax. Sadiq has no liability for this amount because he fully complied with his obligations as liquidator.

Dispute of the taxation administration's notice to a liquidator

- 19.23 The decision represented by the notice to a liquidator of the amount of tax payable issued by the taxation administration under Article 19(2) is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision from which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

Dispute of the taxation administration's refusal of permission

19.24 A decision by the taxation administration to refuse permission for a liquidator to dispose of an asset under Article 19(3) is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision from which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

Draft

ARTICLE 20 – SUSPENSION OF FINANCIAL TRANSACTIONS

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).

Suspension of financial transactions

- 20.1 The taxation administration may require financial institutions to suspend transactions on accounts held by a person. The same action may also be taken for an account held by a second person if it is held by second person for the benefit of the first person.
- 20.2 An account is for the benefit of a person if:
 - That person has authority to transact on the account as they choose;
 - There is a history of that person giving instructions to the account holder concerning the and the account holder generally follows those instructions;
 - There is a history of that person receiving money from the account, not being genuine payment for goods, services or employment.
- 20.3 Suspending an account is an exceptional action for the taxation administration to take. The taxation administration should have a reason for suspending transactions on an account. There must be an existing tax liability for the taxpayer which the taxpayer has failed to pay and that they have not made arrangements with the taxation administration to pay, for example by making an agreement to pay by instalments, providing security for the payment, or obtaining approval for an extension of time to pay under Article 15. The power in Article 20 is only considered if the amount of unpaid tax liability exceeds Afn.100,000. (Regulations)
- 20.4 In addition to having an existing, there must be evidence that the taxpayer does not intend to pay the tax or payment of the tax is otherwise at risk.
- 20.5 The action provided by Article 20 is suspension, not closure. It is not an enforcement action on its own, it is a temporary action taken to protect revenue while allowing time for some other enforcement action to be taken. When that other enforcement action is taken, the suspension will be lifted.

20.6 An account suspension may be done to allow time for any of the following enforcement actions:

- The finalisation of a case in court for enforcement of a debt;
- Issuing a notice or notices to third parties under Article 16 (which may include a notice to the financial institution or person holding the suspended account);
- Appointment of a liquidator;
- Issuance of a departure prohibition order;
- Obtaining a restriction on transfer or sale of assets under Article 24.

20.7 When any of these listed actions are in place and the revenue is considered sufficiently protected, the suspension must be revoked by the taxation administration. The suspension must also be lifted if the tax liabilities are paid or, in the case of future tax liabilities, an arrangement has been made under Article 15.

20.8 The taxation administration has the authority to decide when the power in Article 20 is used. It depends on considering the circumstances and the risks for the tax liability. Some of the circumstances to consider are the amount of the debt, the compliance history of the taxpayer and their level of cooperation with the taxation administration.

Suspension of importation

20.9 Article 20 of the Tax Administration Law also allows the taxation administration to issue an order suspending the importation of goods by a taxpayer.

20.10 The taxation administration issues the order under this Article to the Director General of Customs with effect for all points of entry to Afghanistan. A copy provided to the taxpayer. The Customs Department has the obligation and responsibility for enforcing the order.

20.11 This enforcement action can only be used if there is tax overdue for more than 30 days and it is not yet covered by an arrangement under Article 15. The power in Article 20 is only considered if the amount of unpaid tax liability exceeds Afn.100,000. (Regulations)

20.12 If a suspension order is issued, it will remain in place until the taxpayer clears all of their outstanding liability or enters an arrangement under Article 15, at which time the suspension order must be revoked. Necessary compliance with a court decision can also be a reason for revocation.

20.13 If a suspension of importation order is issued because a of a tax liability and other tax liabilities are added while the suspension is in effect, the suspension order is not revoked until all outstanding tax liabilities are paid or covered by an arrangement under Article 15.

Example

Rauf is an electronics importer. He has a tax debt of Afn. 100,000 which is more than one month overdue and he has made no application under Article 15. On 5 Mizan the taxation administration issues a suspension of importation order to Customs preventing Rauf from importing goods.

On 30 Mizan a further income tax liability of Afn.50,000 is added to his debt due to the issue of an assessment notice.

On 5th Aqrab he pays Afn.100,000 to the taxation administration. Even though this is payment of the tax liability that existed when the suspension order was issued, the order is not required to be revoked until he takes action for the remaining debt of Afn.50,000.

20.14 The taxation administration has discretion over when the power is used. As a matter of policy it will generally only be considered if the total amount of tax overdue for more than thirty days is more than Afn.10,000.

ARTICLE 21 – FAILURE TO COMPLY WITH RENT WITHHOLDING TAX REQUIREMENT

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.

- 21.1 Article 59 of the Income Tax Law imposes withholding obligations on certain tenants of buildings used for business purposes. If applicable, the tenant must withhold a prescribed amount from the rent on a monthly basis and pay it to the taxation administration.
- 21.2 Tenants must pay the tax withheld to the taxation administration within 15 days of paying their rent to the landlord. If the rent withholding tax is not paid by the due date, the Tax Administration Law provides certain enforcement powers to the taxation administration. The following events may occur:
- 21.3 The taxation administration may, at its discretion, provide a notice in writing to the tenant that the landlord's right to receive payment has been transferred to the taxation administration, as representative for the Government of Afghanistan.
- 21.4 From the time the notice is served until the tax in arrears is brought up to date any payments of rent by the tenant must be paid to the taxation administration. Article 21 overrides the terms of the lease contract between the landlord and the tenant and the tenant will not be in breach of the contract if it is required to pay the taxation administration instead of the landlord.
- 21.5 A payment of withholding tax by the tenant to the taxation administration under Article 59 of the Income Tax Law is an amount withheld from the gross rent payable and is treated for all legal purposes as a payment of that part of the gross rent payable under the lease contract. A payment of rent required by Article 21 of the Taxation Administration Law is also treated as a payment of the gross rent payable under the lease contract.

- 21.6 If a tenant makes a payment to the taxation administration in excess of the current rent withholding tax payable, the taxation administration holds that excess as agent of the landlord and shall pay it to the landlord.

Example

A tenant has a lease over a commercial building. The monthly rent payable to the landlord is Afn.50,000. Under Article 59 of the Income Tax Law the tenant is required to withhold 10% of this amount (Afn.5,000) and pay it to the taxation administration. Rent is due each month on the first day of the month and the tenant has been paying the full Afn.50,000 each month to the landlord in non-compliance with the law.

On 12 JADI 1396 the taxation administration discovers that the tenant has not paid the rent withholding for the previous 3 months. A notice is served by the taxation administration under Article 21 of the Tax Administration Law on the 15 JADI 1396. Therefore under Article 21 the taxation administration has the right to receive rent from the tenant instead of the landlord.

On 1 Dalwa the next monthly rent is due to be paid. The tenant is required to make its rental payment to the taxation administration. The tenant must pay the withholding tax for that month (Afn.5,000) plus the arrears owing for previous months (3 x Afn.5,000) plus late payment additional tax determined as payable. The tenant must not pay any rental amount to the landlord until these amounts are received by the taxation administration.

If the tenant does make these payments to the taxation administration in compliance with the notice then the notice is treated as cancelled.

- 21.7 The tenant has 30 days from the date that it receives the notice to pay over the appropriate amount of tax. If the tenant fails to pay over the correct amount of tax, the landlord's right to evict tenants for non-payment of tax shall be transferred to the taxation administration as representative of the Government of Afghanistan.

ARTICLE 22 – CLOSURE OF BUSINESS

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 may 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 shall 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.

- 22.1 This Article can apply to taxpayers operating a business. If such taxpayers fail to comply with their obligation to file a tax return or pay tax (including withholding tax) they may have their business temporarily closed.

Non-compliance

- 22.2 This Article is considered if a taxpayer has failed to file a tax return by the due date for filing, or failed to pay tax by the due date for payment. Tax for these purposes includes withholding tax that the person may be required to withhold from income and pay to the taxation administration.
- 22.3 Closing a taxpayer's business is a serious action, which may inflict damage on the person's business. In the case of a taxpayer who is failing to pay their tax, a closure may affect the person's ability to pay the tax and therefore be counterproductive to obtaining payment. For these reasons a decision to close a business should only be taken in the most serious cases of non-compliance. Other enforcement actions under the tax laws are preferred if these are available.
- 22.4 In the case of a failure to file a tax return the taxation administration would first take action under Article 7(2), unless there are exceptional circumstances. An example of exceptional circumstances would be where a taxpayer has a repeated history of failing to file tax or ignoring notices. The taxation administration may then consider taking action under Article 8(2) if there is sufficient information available to estimate the tax liability.

- 22.5 In the case of a failure to pay tax by the due date, the taxation administration would usually issue a reminder letter before taking action under Article 22. The taxation administration would also consider using Articles 16, or 20 if available, before using Article 22.
- 22.6 As a general rule, the taxation administration will not close a business for non-payment of tax where the amount of unpaid tax is less than Afn.100,000.

Example 1

A taxpayer is a large construction company. A return has been submitted by the taxpayer but without any payment. The tax and additional tax due is a total of Afn. 25,000,000. At two previous meetings the taxpayer said the money is coming soon from outside of Afghanistan. Thirty days after the due date no money has been submitted to the bank. The taxation administration should consider commencing action under Article 22.

Example 2

A business has been selling electric generators for six months. It has twenty-six employees and has withheld tax from them but has neglected to pay any tax to the Ministry of Finance. The company president said that the money is needed for business expenses. "We just can't afford to pay this large withholding amount and stay in business." There is no cooperation to submit any of the money withheld. The taxation administration should consider commencing action under Article 22.

Issue of notice

- 22.7 If the taxation administration decides that enforcement action under Article 22 is appropriate after considering the enforcement actions mentioned above, subsection (1) of Article 22 requires a warning notice to be issued to the taxpayer. The notice must warn the taxpayer that they have 10 days to file the relevant tax return or pay the relevant tax liability and if they fail to comply within that time the taxation administration may wholly or partially close their business for a period of up to 14 days. The 10 day period for compliance with the notice measured from the day the taxpayer (or their representative) receives the notice.
- 22.8 A closure period of 14 days is the standard period. A shorter period may be considered if there are special circumstances. An example of special circumstances is where the business sells perishable foods – the purpose of the closure of the business is to put pressure on the owners to comply with their tax obligations, not to inflict excessive damage on the financial viability of the business.
- 22.9 The notice must state in full detail the obligation that the taxpayer has failed to comply with. The notice must also state that the business will be temporarily

closed by the taxation administration if the taxpayer fails to correct their non-compliance within 10 days of receiving the notice.

- 22.10 The notice must be delivered to the taxpayer or their representative and a signed dated receipt obtained from the person receiving the notice. If the person refuses to sign or date a document recording the delivery of the notice, the taxation officer carrying out the delivery must prepare a signed and dated document recording the details of their delivery.

Closure

- 22.11 If the taxpayer fails to remedy the non-compliance specified in the notice mentioned in Article 22(1) within the ten days required, the taxation administration may then take steps to close the business. It is not necessary that this action be taken immediately, however it would normally occur within 7-10 days of the end of the time mentioned in the notice. This time period may be used to ensure appropriate approval within the taxation administration and arrange assistance from other authorities.
- 22.12 After issuing the notice mentioned in Article 22(1), it is not necessary for the taxation administration to give any further warning of when action will be taken if the taxpayer fails to comply.

Police assistance

- 22.13 As provided by subsection (3) of Article 22, the taxation administration may request police to attend the carrying out of the closure of a business. Police assistance should always be requested. The taxation officers assigned to carry out the business closure will discuss the time and day with the relevant police authorities and agree upon a convenient time. The police authorities are responsible for determining the appropriate number and type of police necessary to carry out their assistance.
- 22.14 Taxation officers have general responsibility for leading the business closure. The role of the police is to keep the peace. If the taxpayer is refusing or resisting the lawful actions of the taxation officers, the police may step in and take whatever action they deem necessary.

Enforcing closure

- 22.15 Article 22(3) provides that when the taxation officers visit the business premises to carry out the closure, they must put up a sign or notice in a conspicuous place. The notice is to inform the public that the business has been temporarily closed for not complying with tax obligations.
- 22.16 Article 22 does not specify any other details of enforcing the closure. These will be decided based on the circumstances of the business and in consultation with the police assisting the closure. If police resources are available, they may remain in attendance for the full period of closure, or they may conduct regular visits to check in on the business to ensure it remains closed for the required

period. The taxation administration may supply locks or other equipment to be installed on the premises to ensure the business remains closed.

- 22.17 Any person who fails to comply with the notice or order under this Article commits an offence. See Article 45(4). A person who fails to co-operate with taxation officers carrying out the closure, for example by refusing access or physically attempting to prevent the taxation officers from closing the business, may also be prosecuted under Article 46 for obstruction of taxation officers.

Lifting closure

- 22.18 When the period of temporary closure is completed, taxation officers must revisit the business premises and remove the notice of closure and any other material (such as locks) installed by taxation officers due to the closure. It is not necessary for police to attend for this action, however their assistance may be requested by the Ministry of Finance under Article 4.

- 22.19 The closure is completed when the period of closure originally notified has expired, or when the non-compliance which caused the closure has been corrected (the required tax return has been filed or the tax due has been paid). If the taxpayer files the required tax return or pays the tax debt the taxation administration must end the closure as soon as possible. In many cases this would be the same day that the return is filed or the tax is paid. Otherwise it should be no longer than by the next working day.

- 22.20 If a business is closed for non-payment of a tax liability, the taxation administration may end the closure if an agreement for provision of security is made with the taxpayer under subsection (6) of Article 24.

Multiple closures

- 22.21 Article 22 may be used more than once if a taxpayer continues not to comply with their tax obligations. The taxation administration must repeat the full process required in Article 22 for each closure. A notice must be issued to the taxpayer under Article 22(1) giving another 7 days to comply. This notice can only issue after the previous closure has ended.

Example

Qadir operates a small supermarket. He fails to file his 1396 income tax return by the due date (the end of Jawza). Since this is the first time he has failed to file his tax return on time, as a first step the taxation administration delivers a notice to him under Article 7 on 15th Saratan. That notice gives him 30 days to file the tax return.

On the 16th Asad Qadir has still not filed his tax return, so the taxation administration decides to move to the next step. A notice is issued to him under Article 22(1) which is delivered to him on the 18th Asad. The taxation officer hands the notice to Qadir and requests him to sign a document acknowledging receipt, which Qadir signs.

Qadir still has not filed his tax return by the 25th of Asad. On the 26th of Asad the taxation administration issues an order to close the supermarket for 14 days. The responsible taxation officer arranges with the local police to visit Qadir's supermarket together the next day at 9am. Taxation officers and police arrive at 9am on the 27th of Asad and carry out the business closure by putting a notice on the main entrance door as described in Article 22(3). A police patrol checks the premises twice daily to ensure that the business remains closed.

Qadir does not file his tax return. On the morning of the 12th Sonbola the taxation officers return to the supermarket and remove the notice from the door. Qadir may now re-open his supermarket. However at the same time the taxation officers deliver a new notice under Article 22(1) which gives Qadir another 7 days to file his tax return. The notice advises him that failure to file within that time will cause another temporary closure of the business.

If Qadir has still not filed the tax return by the 19th of Sonbola, the taxation officers may proceed with a second closure in accordance with Article 22. This process may continue multiple times until Qadir files the tax return.

Dispute of the taxation administration's decision to close a business

22.22 A decision by the taxation administration under this Article is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) on the objection may then become a reviewable decision for which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

22.23 The relevant taxation decision for objection may be:

- the decision under Article 22(1) to notify the taxpayer of an intention to close part or all of the business; or
- the decision to wholly or partially close the business under Article 22(2).

ARTICLE 23 – CIRCUMSTANCES OF DEPARTURE PROHIBITION

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.

23.1 This Article provides for departure prohibition notice, which may be issued by the taxation administration in either of two circumstances:

1. The taxpayer has a tax liability which is more than thirty days overdue; or
2. The taxation administration has evidence that the taxpayer is intending to permanently leave Afghanistan without paying a current or future tax liability.

Tax liability unpaid for more than thirty days

23.2 The first situation is simply a question of whether a tax liability exists and whether it remains unpaid for more than thirty days after the due date. It does not include potential tax liabilities related to tax periods where no tax return has been filed and no assessment has been issued. If a taxpayer has not filed a required tax return, the taxation administration would need to issue a default assessment establishing a tax liability before this first case can be considered for a departure prohibition notice.

Example

Sayed filed a VAT return for the Hoot quarter with a VAT liability which under the VAT Law was due 30 days after the end of the VAT period – 30th of Hamal. He does not pay the tax by the due date and by the end of Sawr has still not paid the tax. Therefore at any time from 1st Jawza the taxation administration may consider issuing a departure prohibition notice for Sayed.

- 23.3 As a matter of Ministry of Finance procedure (Tarzulamal), the taxation administration will not issue a departure prohibition notice for a taxpayer with an unpaid tax liability unless the amount of unpaid tax exceeds Afn.500,000. (Regulations)
- 23.4 When considering the use of the power under paragraph (a) of subsection (1) of Article 23, the taxation administration will only use it after reminding the taxpayer of the amount owing. The taxation administration should first issue a written reminder to the taxpayer advising them that the tax amount is overdue for payment. The reminder letter should inform the taxpayer that unless the amount payable is paid immediately, further enforcement action under the tax laws will be considered.

Example

Liaqat has a tax liability unpaid more than 30 days after the due date. No enforcement action has yet been taken by the taxation administration. Liaqat owns some houses and vehicles in Kabul and also has a shop with valuable stock on hand. A departure prohibition notice should not be issued by the taxation administration until after it has issued a reminder letter to Liaqat. Given the assets and security available to Liaqat, the taxation administration should consider all enforcement actions available.

Taxpayer leaving Afghanistan without paying

- 23.5 The second situation may concern a current tax liability or a future tax liability. In this situation it is not necessary for a current liability to be overdue by thirty days. It does not need to be overdue or even due at all. A future tax liability can be considered, even one that has not been established through filing a tax return or by issuing an assessment notice.
- 23.6 The question of whether a future tax liability will exist is answered by examining the taxpayer's activities. If they are carrying on a business or doing anything that earns income or is engaged in transactions that can be predicted to cause a tax liability for them, it will be justified to determine that there will be a future tax liability.
- 23.7 However, for a departure prohibition notice to be considered in these circumstances it is necessary to consider a further question – is there any evidence that the taxpayer intends to permanently depart Afghanistan without paying their current or future tax liability?
- 23.8 The evidence does not need to absolutely prove that the taxpayer intends to leave without paying their tax. The existence of some evidence showing that the taxpayer may leave without paying is enough to allow a departure prohibition notice.

Example

Ghazi runs a taxi business with a fleet of seven taxis. His tax returns and tax payments are up to date. However the taxation administration discovers that Ghazi has done the following things in the last two months:

- He applied for passports for himself, his wife and children;
- He withdraw all of the balance in his bank accounts as cash and closed the accounts;
- He has been selling his taxi vehicles for cash, US dollars preferred.

Although it is not certain, there is some evidence that Ghazi is converting his Afghan assets to cash and may be preparing to leave Afghanistan with his family. The taxation administration may issue a departure prohibition notice on Ghazi.

- 23.9 A departure prohibition notice should not be used to prevent temporary departures from Afghanistan, which are a normal part of operating the taxpayer's business, unless there is evidence that the taxpayer does not actually intend to return to Afghanistan.

Example

Nizam operates an import business. He has a tax liability that has remained unpaid for more than 30 days. He books a return flight to Dubai, which he says is to meet suppliers and negotiate new purchases. He has a record of doing these trips three times per year. There is no evidence that Nizam is doing anything in preparation for permanently leaving Afghanistan. His business and family affairs are all continuing to operate as normal and he retains significant assets in Afghanistan.

In this case a departure prohibition notice should not be issued. The travel intended by Nizam is a normal part of his business and there is no evidence of any danger to the collection of the tax.

Issue of departure prohibition notice

- 23.10 A departure prohibition notice must be authorised by an appropriately authorised senior tax officer. The documentation supporting the departure prohibition notice must specify the reasons for the departure prohibition notice including the amount of tax liability. The departure prohibition notice is issued by the taxation administration to the Ministry of Immigration and also any police authority with responsibility for border security.
- 23.11 A copy of the departure prohibition notice must be given to the taxpayer and it must be accompanied by details of the tax liability that has caused the departure prohibition notice.

Revocation of a departure prohibition notice

- 23.12 The taxation administration is required to revoke a departure prohibition notice if the tax liability is paid. It must also be revoked if sufficient security is provided.

Security may be provided compulsorily under Article 24(1) or by voluntary agreement under Article 24(6).

23.13 Revocation may also be done if it becomes necessary due to a decision of a court.

23.14 A departure prohibition issued by the taxation administration is valid for up to five days without court approval. The taxation administration must obtain confirmation from a court within five days for the departure prohibition to continue to be valid beyond five days. If no such confirmation is obtained, the departure prohibition issued by the taxation administration expires.

Draft

ARTICLE 24 – RESTRICTION ON TRANSFER AND SALE OF ASSETS

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.

Restrictions on property

- 24.1 The taxation administration may request a court order to restrict taxpayers from making property transactions if they have failed to file tax returns or failed to pay tax due. This includes a failure to pay withholding tax. The restriction may be requested for any movable or immovable property.
- 24.2 In the case of failure to file a tax return, including a form relating to withholding tax, the relevant liability will not yet have been established. The taxation administration may seek an order under this Article for failure to file a tax return as a protective measure for an expected tax liability. An expected tax liability refers to the expected tax liability for the tax return that is overdue. This judgement may be based on the previous pattern of tax returns or any other information available to the taxation administration.
- 24.3 There are two types of court order provided in this Article. The first is where a taxpayer is restricted from dealing with the property mentioned in the court order. This may be done to protect the revenue from dissipation of assets by the taxpayer, or it may be done as a step towards enforcing payment.
- 24.4 The request for a court order should specify the filing, withholding or payment obligations to which the taxpayer has not complied. Where the amount of tax is not precisely known (for example, because the taxpayer has not filed a return), an estimate of the unpaid tax should be prepared for the information of the court. The estimate may be based on the previous pattern of tax returns or any other information available to the taxation administration.
- 24.5 The request for a court order should also describe the assets for which a restriction is sought. The selected assets should have a value that is sufficient to cover the tax liability, unless the taxpayer does not have enough identifiable assets, in which case the request should refer to all available assets.
- 24.6 In identifying assets for restriction, the taxation administration should give preference to assets that will not impede the continued operation of the taxpayer's business if they are restricted. For example, a restriction over the disposal of motor vehicles or buildings is preferable to a restriction over the trading stock of a trader. A taxpayer can continue to use a motor vehicle or building in their business, however a restriction on trading stock would cause the trader to cease trading. Such a restriction may decrease the ability of the taxpayer to meet their tax liability, which is not in the interests of the Ministry of Finance.
- 24.7 Whether a restriction on property should be sought is a decision for the taxation administration that will depend on the circumstances of the case. Relevant circumstances may include an estimate of the potential liability, the type of assets available to the taxpayer and the payment history of the taxpayer. As a general rule, a restriction on property will not be sought from a court if the

amount of unpaid tax (or the estimated amount of tax related to a non-filed tax return) is less than Afn.200,000.

- 24.8 If the taxation administration files a case with a court and the taxpayer satisfies their obligations before the court issues an order, the case will be withdrawn.

Sale of property

- 24.9 The second type of court order follows the first court order if the taxpayer continues their failure to comply. It can only be requested from the court after 30 days from grant of the first court order. This second stage is to request from the court an order to sell the taxpayer's property that was restricted under the first court order.
- 24.10 The court may issue an order to the taxation administration to sell the taxpayer's property through public auction where the tax obligations have not been met.
- 24.11 The restricted property and tax mentioned in the first order provides the basis for the second order. It is not permissible to seek the sale of different property or raise new tax liabilities that were not described in the first court order.
- 24.12 If the first court order related to a taxpayer's failure to file a tax return and the taxpayer has still not filed the tax return, the taxation administration should issue a default assessment under Article 8(2) before requesting the second court order. This is necessary to establish the amount of the tax liability to be satisfied by the sale of property.
- 24.13 If the taxpayer satisfies their obligations before the court issues the second order, it will not be implemented.
- 24.14 Contravention of a court order may be punished by the court according to the rules and procedures of the court.

Example 1

Alem has failed to file his income tax return for the tax year 1395 by the due date. As this is the first time he has failed to file a tax return, the taxation administration delivers a notice to him under Article 7. Thirty days after receiving that notice, he has still not filed the tax return.

Based on his previous tax returns, the taxation administration believes there will be a tax liability when the tax return is filed. Therefore the taxation administration may request, under Article 24(1), a court to issue an order restricting specified property owned by Alem.

Example 2

Rafi has an income tax liability which is past the due date for payment. The taxation administration has communicated with him about paying the tax but he refuses to co-operate.

Rafi operates a restaurant from a building that he owns and he also has a motor vehicle. The taxation administration may apply to the court for a court order restricting him from disposing his property. The taxation administration can apply for a restriction over any of Rafi's assets, but it chooses the motor vehicle because the value of the vehicle matches the tax liability and the restriction will not disrupt Rafi's business.

If Alem does not pay his tax liability within 30 days of the issue of the court order, the taxation administration may then return to the court and request another court order to allow sale of the motor vehicle.

Voluntary agreements

- 24.15 Article 24(1) provides a process for the taxation administration to initiate restrictions over a taxpayer's property. The agreement of the taxpayer is unnecessary. Article 24(6) provides an alternative process where the taxpayer voluntarily agrees to submit their property to restrictions. Such arrangements do not require a court to be involved.
- 24.16 Taxpayers may decide to enter a voluntary agreement as part of negotiations over other tax rights and obligations. A restriction over property can assist in persuading the taxation administration to approve concessions to the taxpayer under the tax laws. For example, a taxpayer may accept a restriction over property in order to obtain an extension of time to pay their tax under Article 15, or to obtain approval to pay their tax by instalments under that same Article.
- 24.17 Other reasons for voluntarily agreeing to a restriction over property include:
- As part of gaining approval for an extension of time to file a tax return under Article 7;
 - To allow the revocation of a departure prohibition order under Article 23(2);
 - To cancel a business closure under Article 22 or to satisfy the taxation administration that it is not necessary to proceed with a business closure.
- 24.18 The form and content of the voluntary agreement are subject to negotiation between the taxation administration and the taxpayer. The agreement may contain other terms and conditions according to the needs of the taxpayer and the taxation administration. As the voluntary agreement is a substitute for the formal process under Article 24(1), the voluntary agreement may contain a provision that the taxation administration will have the power to seize and sell the restricted property if the taxpayer does not comply with specified conditions.

Example

Babrak has an import business. He has a large tax liability which remains unpaid for more than 30 days after the due date. The taxation administration has exercised its power under Article 23 and issued a departure prohibition order preventing Babrak from leaving Afghanistan.

Babrak would like to visit his son who is living in Canada. He is not able to pay all of his tax liability immediately, so in order to have the departure prohibition order revoked he offers to provide security to the taxation administration to secure his tax debt. He offers to agree to a restriction over some land that he owns in Kandahar. One of the conditions in the agreement he signs is that if he fails to return to Afghanistan within 60 days of departure, he accepts that the taxation administration may sell the property and use the funds to pay his tax liabilities.

- 24.19 This agreement will be a voluntary agreement under Article 24(6) and is an enforceable agreement under the laws of Afghanistan.
- 24.20 Upon entering the agreement, the taxation administration will revoke the departure prohibition order as allowed by Article 23(2).

Seizure of goods

- 24.21 Property may be seized by the taxation administration if the court order mentioned in subsection (2) of Article 24 is obtained. Property may also be seized in accordance with the terms of an agreement made under subsection (6) of Article 24.
- 24.22 Article 24 of the Tax Administration Law provides the procedures to be followed by the taxation administration when seizing a taxpayer's property. The taxation administration must ensure that the targeted property is actually absolutely owned by the taxpayer. It must not seize property owned or partly owned by a person who is not the taxpayer with the debt.
- 24.23 A taxpayer's property may be seized while it is in the custody or control of another person.

Example

A taxpayer with a tax liability past the due date owns a large truck. The taxation administration identifies the truck by the registration number and discovers that it is located in Jalalabad. It may be stopped and seized even if it is driven by another person and the taxpayer is not present.

Seizure steps

- 24.24 The steps to be followed by the taxation administration in carrying out a seizure of property are:
1. Immediately during the seizure (or as soon as possible after seizure) serve written notice to the owner of property or the person who appears

to have custody or control of the property at the time of seizure. The written notice must explain the reason for the seizure and fully identify the property seized.

2. Sell the property. The sale would generally be conducted by public auction. In the case of perishable property the sale should be carried out quickly, within a time period that does not put the goods at risk of perishing or losing substantial value. In the case of non-perishable goods, they must be detained for at least 21 days and then sold after that period has expired.
3. Apply the proceeds firstly to the cost of seizing, keeping and selling the property. Secondly, use the proceeds to meet the taxpayer's liabilities that were the reason for the seizure. Thirdly, if there is any amount remaining after the first two items, it shall be paid to the taxpayer.

Costs of sale

- 24.25 Relevant costs of seizing, keeping and selling the property are expenses paid to third parties. It does not include the salaries or internal expenses of the taxation administration. Examples of costs that may be recovered from sale of the goods include transport costs (for example, hiring a truck), storage costs (for example, leasing a warehouse) and auction costs.

Police assistance

- 24.26 The taxation administration may request police to attend during any seizure of property. Any person who resists the seizure or otherwise obstructs taxation officers when carrying out the seizure may be prosecuted under Article 46.

CHAPTER 6 – RECORD-KEEPING AND INFORMATION COLLECTION

ARTICLE 25 – PREPARATION AND MAINTENANCE OF BOOKS AND RECORDS

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 in the country 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.

- 25.1 All corporations, limited liability companies, and partnerships are required to keep records whether they have taxable income or not.
- 25.2 The taxation administration is authorized by Article 25 of the Tax Administration Law to prescribe the records to be kept and the reports required of any taxpayer or class of taxpayers. The Ministry is authorized to insist on the completeness of records and verifiability of entries in order to audit a taxpayer's records. In general any double-entry system of accounting recognized and accepted by societies of professional accountants is prescribed for all corporations and limited liability companies. The accounting records must be kept current at all times, with transactions being recorded as they occur. The accounts shall be such that detailed financial statements may be readily prepared showing the financial position of the company as of a given date (balance sheet), and the operations of the company over a given period (profit and loss statement).
- 25.3 The taxation administration requires that all corporations, limited liability companies and other entities (including natural persons) engaged in business activities in Afghanistan and who are liable to pay annual income tax must maintain the following accounting records:
 - journals
 - ledgers

- inventory and stocktake records
- asset register
- banking and financial transaction information
- legal documents, including contracts
- statements, invoices and receipts
- income statements
- balance sheets.

25.4 Individuals who have no taxable income are not required to keep the full range of business records mentioned above, as many of these records will not be relevant to their circumstances. This does not mean that they should keep no records at all. Depending on the circumstances they may need to keep sufficient records to show that they have no taxable income.

Example

A natural person operating a small business makes a profit which is less than the taxable threshold for income tax. They would be required to keep basic records of their income (sales) sufficient to show that this is their level of income, but would not be required to keep the full range of accounting records mentioned above.

25.5 For individuals who claim to have no taxable income from business, the evidence depends on the circumstances. For example, a person who in previous years operated a business who claims to have no taxable income due to selling the business to another person may be required to produce evidence of the sale of the business.

25.6 Individuals with no taxable income include:

- individuals whose only income is from commercial activities taxed under fixed taxes that are in lieu of income tax;
- individuals whose income is solely from agriculture;
- individuals with income less than their own personal exemption of Afn. 5,000 per month (Afn 60,000 per year); and
- individuals with income from any source exempt from taxation, or individuals who, in addition to exempt income, also have income subject to taxation but in amounts less than Afn. 5,000 per month (Afn 60,000 per year).

Example: An individual receives Afn. 12,000 from sale of wheat and Afn. 25,000 from sale of grapes produced on his own land. He also has income from a fruit shop which is taxed under Chapter 11 of the Income Tax Law. A third source of income is salary from an employer in the amount of Afn. 4,000 per month.

Since the only income subject to income taxation is his salary and since his salary of Afn. 48,000 per year is less than the minimum amount required to be subject to income tax, this individual is not required to keep full records.

- 25.7 Individuals who claim to be in the fixed tax system in the Income Tax Law do not need to keep the full range of business records mentioned above, however they will be required to have evidence that they are correctly taxed through fixed tax. If they claim to be in the fixed tax system because their business income is below a threshold, they must keep evidence to prove this claim. This means keeping complete records of income. A cash book recording daily sales (including credit sales) is required.
- 25.8 Although an individual has no taxable income from his usual business, he is required to keep records and documents covering any other transaction that may result in taxable gain.

Example

A shopkeeper pays a fixed tax under provisions of Chapter 11 of the Income Tax Law. But he also receives a large dividend with respect to shares of stock that he owns. The dividend is subject to income tax. Although the individual does not have to keep records with respect to the activities of his shop, he has to keep records with respect to the dividend that he receives.

- 25.9 Persons with employees must keep a record of every salary or wage payment to each employee throughout the tax year. Persons making other payments subject to withholding, such as dividends, interest, royalties and contractor payments must also keep records of these payments. The record shall state the amount paid and the amount of tax withheld (if any).
- 25.10 The books and records required to be kept under Article 25 may be kept in electronic form. The person must take reasonable steps to ensure these the electronic records are kept safe and regular backup copies are made.
- 25.11 Records and documents must be kept for a period of 5 years after the end of the tax year to which the records and documents relate i.e. the period for which law provides limitation for amendment of assessment.

Translation of records

- 25.12 A taxpayer may keep books, records or computer stored-information in any language it chooses including a language that is not an official or current language of Afghanistan. However, this choice is subject to a condition if the taxation administration requires access to those records. The taxation administration may, by notice in writing, require the person to translate the books, records or computer-stored information into one of the official languages.
- 25.13 Under the Constitution, Pashto and Dari are official languages of Afghanistan. In addition, in some areas of Afghanistan a third language may also be an official language. In areas where the majority of the people speak in any one of Uzbeki, Turkmani, Pachaie, Nuristani, Baluchi or Pamiri languages, that language, in addition to Pashto and Dari, shall be the third official language for

that area. A person residing in one of these areas or operating a business in one of those areas may be required to translate specified records into the relevant third official language.

- 25.14 If records are considered for translation, the taxation administration must take care not to impose unreasonable costs on the person. The material for translation should be limited to only those items that are considered necessary for the conduct of its enquiries, audits or investigations.

Example

A Turkish construction business is being audited by the taxation administration. The business records are not in an official language of Afghanistan. The audit manager decided before commencing the audit that the investigation will focus on whether the business has declared all of its income and will not be concerned with the expenses of the business. In this case, the taxation administration should only request translation of records related to the income of the business and not require translation of other records not related to income.

- 25.15 The taxation administration should make reasonable efforts to accept records provided by a person in the Uzbeki, Turkmani, Pachaie, Nuristani, Baluchi or Pamiri languages, even if the language is not an official language in the area of residence or business operation of that person. The taxation administration should, if necessary, allocate or transfer the case to a taxation officer with the relevant language skills so that the burden of translation is not imposed on the person.
- 25.16 A person who keeps records in one of the official languages, including a language which is an official third language for the location of that person or their business, cannot be required to translate their records into another of the official languages.

Example

A business operating in Jalalabad keeps its records in Pashto. The taxation administration cannot require translation of these records into Dari. This is the case even if Dari would be more convenient for the auditor assigned to the case.

- 25.17 The taxation administration must take care not to impose unreasonable costs on people. This means that even if a person has kept records in a language which is not an official language, it should not require translation if it is possible for the taxation administration to understand those records.

Example

A business operating in Kabul is a branch of a company based in Dubai. It keeps its records in a format required by the business's head office in Dubai. Although these records are not fully in an official language of Afghanistan,

the auditors assigned to the case in the Kabul office of the taxation administration can read and understand the numbers and text in the records. It would be unreasonable in this case to require the business to translate these records.

Draft

Note for translator – Articles 26 and 27 have been swapped.

ARTICLE 26 – DEMANDING INFORMATION

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 (1) 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.

- 26.1 There are two powers provided to the taxation administration by Article 26. The first is the power to require a person to furnish books, records and information (including records stored on a computer) to the taxation administration. It may require specified documents to be provided to the taxation administration or it may require the person to provide answers to written questions that are asked by the taxation administration.
- 26.2 The second power is the authority to require a person to attend for an interview. Both powers in Article 26 can be used at the same time – the taxation administration can require a person to attend for an interview and also require them to bring specified documents to the interview.
- 26.3 The powers given by Article 26 are formally exercised by issuing a notice to the person or their representative. The notice must clearly state that it is a notice in accordance with Article 26 of the Tax Administration Law. A formal request in this manner creates an obligation upon the person to comply and opens the possibility of additional tax under Article 39 if the person fails to comply. In serious cases the person may be prosecuted under subsection (8) of Article 45.
- 26.4 The taxation administration may choose to request documents or request attendance for an interview without using the formal power provided under Article 26. In cases where taxpayers are known to be co-operative, an informal request without referring to the power in Article 26. For example, the taxation administration may make a request to a taxpayer by telephone. In these cases non-compliance is not punishable by additional tax or prosecution. However, where a person fails to comply with an informal request it is expected that the

taxation administration will proceed to making a formal request by notice under Article 26.

- 26.5 In cases where information or documents concerning a taxpayer are requested from a third party, the standard procedure is to use a formal notice under Article 26. The obligation under the tax laws to comply with the request overrides any confidentiality obligations that may exist between the third party and the taxpayer. By using the formal notice the third party is excused from their obligations to the taxpayer.
- 26.6 A person is not obligated to provide documents that are not under their control. Documents are under a person's control if they possess the documents or they have the power to obtain the documents from another person. For example, bank statements are considered to be under the control of an account holder even if they do not currently have a copy of the bank statements, because they have the power to request their own bank statements from their bank.
- 26.7 A notice to provide information or documents held by a company will generally be addressed to the company. In order to ensure that the notice is brought to the attention of a responsible official of the company, it is good practice for the taxation administration to provide a covering letter addressed to the official with the notice attached.

Example

Habib Petroleum Company has some documents that the taxation administration considers necessary to obtain for an audit. The taxation administration issues a formal notice addressed to the Habib Petroleum Company with the document stating that it is a formal notice under Article 26 of the Tax Administration Law.

In order to ensure the notice is received by the appropriate officials of the company, the taxation administration attaches a covering letter to the notice. The covering letter is addressed to the chief executive officer of the company and informs him that a formal notice under Article 26 of the Tax Administration Law is attached.

- 26.8 If a company fails to comply with a notice to provide information or documents under Article 26, it may be prosecuted. Under Article 48 the responsible officers of the company may also be prosecuted.
- 26.9 Unlike the process for a company, a notice issued to a government authority requesting information or documents should be addressed to a responsible official in the government authority. This is because a government authority will not be prosecuted under Article 48 for failure to comply with the notice. The government does not prosecute itself. However an individual government officer may be prosecuted as a natural person for failing to comply with the law.

Interviews

- 26.10 A notice to attend for an interview must clearly specify the time and place for attendance. The notice must also identify the tax officers who will be conducting the interview. A notice will be incomplete and invalid if any of these details are missing from the notice.
- 26.11 The notice should also contain a brief description of the subject matter of the interview. The amount of detail in this description will depend on the circumstances, but should be sufficient to allow the person to carry out any necessary preparation before the interview (including identifying any advisers or assistance they may need to accompany them).
- 26.12 A person required to attend for an interview is entitled to bring other persons to assist and advise them. For example, the person may bring a legal adviser, an accountant or a family member. These advisers may assist in answering the questions, however the person identified in the notice is still the person responsible for complying with the notice and ensuring the answers given are true and correct according to their knowledge.
- 26.13 A failure to attend for an interview as required by a notice under Article 26 may be prosecuted under subsection (8) of Article 45. The person should be informed of this by including a statement of this in the formal notice.
- 26.14 If a person attends a formal interview and gives false or misleading answers to questions they may be prosecuted under subsection (9) of Article 45. At the start of the interview the tax officers conducting the interview must inform the person that they are required to give true and correct answers to questions to the best of their knowledge and providing false or misleading information may be prosecuted under subsection (9) of Article 45. The tax officers must also inform the person that if they refuse to answer questions (where the answers are known to the person), they may be prosecuted under Article 46 for obstruction. The penalties available to a court under each of these provisions should also be mentioned.
- 26.15 In the case of information held by a company, a formal notice to attend for an interview must always be addressed to a natural person. The natural person should be a relevant company official who has that information or has the authority to obtain that information. A failure to attend or a failure to comply when attending will open that person to the possibility of prosecution.
- 26.16 In the case of information held by a government authority, a formal notice to attend for an interview must always be addressed to a natural person. The natural person should be a relevant government official with appropriate responsibility and access to information within the government authority. A failure to attend or a failure to comply when attending will open that person to the possibility of prosecution.
- 26.17 A person required to attend for an interview is entitled to provide their answers in their preferred language if that language is mentioned in Article 16 of the Constitution. For any other language, the person must provide a translator. The taxation administration may also choose to use its own translator.

26.18 Subsections (2) and (3) of Article 26 specify requirements for the proper service of a notice. Articles 52 and 53 must also be considered in preparing and delivering a notice.

Draft

ARTICLE 27 – ENTRY OF TAXATION EMPLOYEE TO PREMISES

Article 27

Entry of taxation employee to premises

- (1) The taxation administration may assign in writing a taxation employee to exercise the authorities mentioned in this Article.
- (2) The assigned taxation employee, if necessary, may resort to the following actions-
 - (a) free access at all times to any premises, property, book, record, computer, related devices and any other information of the taxpayer;
 - (b) take a copy of any book, record and computer-stored information;
 - (c) hold the required books or records 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) and of this Article the taxation employee shall provide to the owner a signed seizure document at the time of seizure and return the documents, computer and/or the device to them within 14 working days of completing the examination.

- 27.1 Article 27 provides the authority for specifically approved taxation employees to enter premises and access books, records, computers and related devices and any other information related to a taxpayer. This power is different and separate to the general authorities of tax auditors.
- 27.2 Tax auditors assigned to an audit of a taxpayer would normally be limited to using the powers in Article 26 and in most cases this will be sufficient to carry out the audit. However, in some circumstances it may be necessary to invoke

the special powers in Article 27. Only the most senior and experienced auditors may be assigned to this task.

- 27.3 Generally it is preferred that auditors will use the powers in Article 26 to obtain documents and information necessary to conduct an audit. Taxpayers and other persons are obliged to comply with notices issued under that Article and there are punishments available under the Tax Administration Law if there is a failure to comply (see the explanations in this Manual for Articles, 26, 39 and subsection (8) of Article 45). However in some circumstances it will be necessary to use the power provided in Article 27 to obtain information or documents necessary to complete an audit of a taxpayer. This power may be used instead of the power in Article 26, or it may be used after attempts to obtain information or documents under Article 26 have failed.
- 27.4 The use of powers in Article 27 without first attempting to obtain information or documents under Article 26 would only be in exceptional circumstances. Exceptional circumstance may include where the person has a previous history of non-compliance with tax administration requests or there are reasons to believe that the person will destroy documents if they have warning that the taxation administration is seeking those records.
- 27.5 In the normal situation, the use of Article 26 will be attempted first by the taxation administration and only if there is a failure to comply with Article 26 would the powers in Article 27 be considered.

Example

The taxation administration sends a notice to Fayaz under Article 26 requesting him to deliver his sales records for a tax year under audit to the taxation administration. After the required deadline has passed, Fayaz is sent a reminder letter and phone calls are also made to Fayaz informing him that he will be prosecuted if he does not provide the requested records. He refuses to comply.

In this case the taxation administration may consider using the powers in Article 27 to assign taxation officers to conduct a visit to the main office of Fayaz's business and search for his sales records.

- 27.6 A decision to use the powers in Article 27 is a serious action and should only be made with the approval of the Director General Revenue in each individual case. If approved the Director General shall provide the approval in writing identifying the taxation officers approved to carry out the visit and also identifying the premises that are the subject of the approval. The written approval shall specify the date or the period for which the approval is granted for entry to the premises. The original of this written approval shall be shown to the owner or occupant of the premises entered and a copy of the approval provided to them.
- 27.7 It is not necessary for advance notice (warning) to be given to the owner or occupant of the premises. In cases where there is a reasonable suspicion that

giving advance notice will endanger the records sought (the records may be moved, hidden or destroyed) then no notice should be given to the owner or occupant.

- 27.8 Taxation officers preparing for a visit to premises under Article 27 should liaise with the Ministry of Interior before the visit to obtain assistance for the visit. Security authorities are required by subsection (5) of Article 27 to provide any assistance necessary. Security personnel engaged in the visit are responsible for enforcing the entry and ensuring the safety of those conducting the visit, but will otherwise stand by as observers and not participate in the examination of records.
- 27.9 Under subsection (6) of Article 27, the owner or any occupier of the premises present at the time of the visit must provide necessary facilities and assistance to the authorised taxation employees. Examples of such facilities may include the use of electricity for taxation administration equipment or the use of photocopy equipment already present on the premises and owned by the owner or occupant of the premises. Examples of assistance to be provided by the owner or occupant are unlocking rooms, cabinets or storage containers when requested, logging on to a computer to allow access by the taxation officer, or answering questions about the location or content of records.
- 27.10 An owner or occupant of the premises who fails to provide necessary facilities or assistance may be prosecuted under subsection (6) of Article 45. If they actively resist or attempt to prevent a taxation officer from carrying out their search for records or examination of records, the person may be prosecuted for obstruction Article 46.
- 27.11 The taxation employee (or the most senior taxation employee, if more than one employee carries out the visit) must provide to the owner or occupant a signed document listing all items and original documents taken from the premises. The list will not include documents copied or examined where the original is left at the premises.
- 27.12 The examination of these items may continue for a period of time at the taxation administration's premises and this period is not limited by the Tax Administration Law, however it should be completed as soon as is practical. When the examination is completed, all of the items listed must be returned to the owner of the items within 14 days of completing the examination.
- 27.13 While books, records or computers are retained by the taxation administration, the owner of those items is entitled to access those items during office hours for the purposes of making copies.
- 27.14 The written authorisation must name the taxation employee and their position.

CHAPTER 7 - TAXPAYER IDENTIFICATION NUMBERS

ARTICLE 28 – APPLICATION FOR TAXPAYER IDENTIFICATION NUMBER

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.

- 28.1 Natural and legal persons subject to tax under the tax laws are required to file an application for a Taxpayer Identification Number (TIN). The requirement to apply for a TIN applies to persons with any liability to pay tax including withholding obligations. A person who does not yet have tax currently payable but who knows that they will be subject to tax in the future must file an application for a TIN immediately. Application forms may be obtained from ARD offices or downloaded from the ARD website.
- 28.2 Persons who import goods are also required to apply for a TIN. Such persons are not mentioned in Article 28; however by reason of the fact that an importer is required to quote a TIN under Article 30, these persons are effectively required to apply for a TIN.
- 28.3 Non-profit and welfare organizations required to withhold taxes from the salaries or wages of their employees must obtain taxpayer identification numbers.

Example 1

Aziz has not previously been employed or in business. As a natural person he starts a new business which commences trading on 1 Mizan. His first tax returns and tax payable will not be due until the end of the relevant period for each tax. Even though he has no tax due on 1 Mizan, he is required to file an application for a TIN by that time because he will be subject to tax.

Example 2

Wahid is an employee of a Non-Governmental Organization. Wahid earns Afn. 4,000 per month. Wahid does not have any other income so Wahid is not subject to income tax according to the tax rates and thresholds in Article 4 of the Income Tax Law. Wahid does not have to obtain a taxpayer identification number because he is not subject to tax.

Example 3

Wahid is an employee of a Non-Governmental Organization. Wahid earns Afn. 30,000 per month. Wahid is subject to tax according to the rates and thresholds in Article 4 of the Income Tax Law. Wahid must apply for a taxpayer identification number because he is subject to tax. The Non-Governmental Organization must also apply for a taxpayer identification number because it is obliged to withhold tax from Wahid's wages.

Example 4

Company A is an Afghan corporation that claims to be incurring losses every year that it has operated. Although Company A has generated losses, it is still required to file income tax returns to record these losses for possible use in future tax years. Under Article 30 the company is required to record a TIN in its tax returns, therefore it must apply for a TIN for that purpose.

Example 5

Company B is an Afghan corporation that is engaged in construction work in Herat. During its first year of operation, Company B imported goods that were subject to customs duty. Company B did not have any revenue in its first year of operation. Company B did not have any profit during its first year of operation. Even though Company B does not have to pay income tax or Business Receipts Tax during its first year of operation, it must obtain a taxpayer identification number, because it is liable for customs duties and must record a TIN on its import documents submitted to the Customs Department.

- 28.4 The requirement to apply for a TIN in Article 28 does not directly apply to liquidators, third parties or representatives as defined in Article 3. However, note that Article 30 may indirectly create a requirement for these persons to have a TIN if they are required to provide their details in an approved tax return or form to be filed with the taxation administration.

Example 6

Aziz decides to operate his business as a company and forms a company for that purpose. After considering his expected turnover, he determines that he is required to register for VAT under the VAT Law. As the chief executive officer of the company he must file a VAT Application for Registration form, which must contain his details and signature as the principal representative

of the company. The form requires the TIN of the principal representative to be provided and is an approved form under the VAT regulations. Therefore he must provide a TIN and if he does not already have a TIN it will be necessary for him to apply for one.

- 28.5 To obtain a taxpayer identification number, the taxpayer should request a Tax Identification Number application form from the Ministry of Finance or at a mustofiat office which has a TIN office co-located on the premises. The taxation administration's Tax Information Page at www.mof.gov.af/tax has application forms that can be downloaded, completed and submitted to the taxation administration.
- 28.6 The taxation administration must be satisfied of the applicant's identity. The following documents are acceptable as proof of identity in the case of an individual:
- national identity card
 - a current Afghan or foreign passport;
 - a current Afghan driver's licence;
 - a current foreign driver's licence provided it includes a photograph of the applicant.
- 28.7 In the case of a company, the proof of identity is the certificate of incorporation or registration of the company. In addition, at least one natural person representative of the company must also provide proof of identity in accordance with the requirements for an individual mentioned above.
- 28.8 In the case of a partnership, the proof of identity is the partnership deed or partnership agreement. In addition, at least one natural person partner in the partnership must also provide proof of identity in accordance with the requirements for an individual mentioned above.
- 28.9 In the case of any other body of persons, the certificate of registration or other document of creation. In addition, at least one natural person representative of the body of persons must also provide proof of identity in accordance with the requirements for an individual mentioned above.
- 28.10 The Ministry will issue a TIN if all three of the following requirements are met:
- An application on the approved form is filed, complete and correct;
 - The Ministry is satisfied of the identity of the taxpayer;
 - The Ministry cannot identify any existing current TIN as previously issued to the applicant.
- 28.11 The taxation administration will issue a TIN to the applicant in writing if these requirements are met. No fee is chargeable to apply for a TIN or receive a TIN.
- 28.12 In cases where the taxation administration identifies an existing and current TIN previously issued to that person and the earlier TIN has been compromised, the appropriate procedure is to first cancel the earlier TIN.

Having cancelled the earlier TIN, it will no longer be in force and it will be open to the taxation administration to issue a new TIN to the applicant (if all other requirements are met)

- 28.13 If the Ministry refuses an application for a TIN, it will notify the applicant in writing within 14 days of refusing the application. The 14 days are measured from the time of making the decision, not from the time of filing of the application.
- 28.14 Article 28 specifies who must apply for a TIN. It does not prevent the taxation administration from issuing a TIN of its own motion if it identifies persons who should have a TIN or if it is administratively convenient to allocate a TIN to a person. For example, if a liquidators, third parties and representatives who are not subject to tax on their own activities may have an administrative responsibility in relation to another person's tax obligations. It may be convenient for the taxation administration to allocate a TIN to a liquidator, third party or representative even though the person has not applied for a TIN and is not required to apply for a TIN.

Dispute of the taxation administration's decision to refuse TIN application

- 28.15 A decision by the taxation administration to refuse an application for a TIN is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry's decision (or non-decision) may then become a reviewable decision from which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

Non-residents

- 18.16 A non-resident person applying for a Taxpayer Identification Number is required to nominate a principal representative who is a resident of Afghanistan (Regulations).

ARTICLE 29– CANCELLATION OF 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).

29.1 The procedure for issuing a TIN is provided by Article 28 and is based on the Ministry of Finance being satisfied of the identity of the applicant. In cases of fraud, mistake or for any other reason it is later discovered that the person’s true identity is different to that which the Ministry of Finance understood at the time of the application, the Ministry must cancel the TIN.

29.2 The procedure provided by Article 28 for issuing a TIN also requires the Ministry of Finance to identify any previous TIN issued to that person. In cases of fraud, mistake or for any other reason it is later discovered that the person has another TIN in force, the Ministry must cancel the later issued TIN.

29.3 For the purposes of this Article a TIN is still in force if it has at any time since issue it has been used by the taxpayer and it has not been cancelled. The Ministry may choose to cancel an earlier issued TIN instead of a later issued TIN if the earlier TIN has never been used.

29.4 The taxation administration must cancel a TIN in the circumstances listed in Article 29. It may also cancel a TIN if deemed necessary in other circumstances.

Dispute of the Ministry of Finance’s decision to cancel a TIN

29.5 A decision by the taxation administration to cancel a TIN under Article 29(1) is a taxation decision as defined in Article 3 and may be objected against under Article 11. The Ministry’s decision (or non-decision) on the objection may then become a reviewable decision on which a dissatisfied taxpayer may apply to the Tax Disputes Resolution Board for review under Article 56.

ARTICLE 30 – QUOTATION OF TAXPAYER IDENTIFICATION NUMBER

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.

- 30.1 Taxpayers are required to quote their TIN when lodging income tax returns, VAT returns and business receipts tax returns.
- 30.2 Taxpayers are also required to quote TINs (if they have been issued with a TIN) on the following notices and forms submitted to the taxation administration or other persons:
- An application for extension of time to file a tax return under Article 7;
 - An objection to a taxation decision under Article 11(1);
 - An application under Article 11(2) for an extension of time to file an objection;
 - An application under Article 15(2) for an extension of time to pay;
 - An application to the Tax Disputes Review Board under Article 56(1);
 - An application to the Tax Disputes Review Board for an extension of time under Article 56(2);
 - Salary and tax statements provided to employees under Article 61(1) of the Income Tax Law;
 - Annual salary and tax statements provided to employees under Article 61(2) of the Income Tax Law;
 - Value Added Tax invoices as described in Article 20 of the VAT Law;
 - Value Added Tax debit and credit notes issued under Article 21 of the VAT Law;
 - An application for a refund under Article 25(3) of the VAT Law;
 - An application for a credit under Article 25(5) of the VAT Law;
 - A request for credit under Article 33(1) of the VAT Law.
- 30.3 A liquidator covered by Article 19 is required to quote the TIN of the taxpayer whose affairs they are administering in any document for which the taxpayer would have been required to quote a TIN if they were not in liquidation.
- 30.4 A liquidator is also required to quote the TIN of the relevant taxpayer in documents prepared in their capacity as liquidator. This includes:
- A notice provided to the taxation administration under Article 19(1);
 - A request for approval from the taxation administration to part with an asset under Article 19(3); and
 - Any objection against a decision of the taxation administration made under Article 19.

- 30.5 The taxation administration may refuse claims for refunds if a taxpayer fails to quote a TIN when required to do so and may continue to refuse the claim for as long as the TIN is not supplied.
- 30.6 The application by a payer under Article 17(2) is not required to contain a TIN since that person is not the relevant taxpayer. However, the payer may voluntarily provide a TIN in this circumstance. The same principle applies to the notice issued by a payer under Article 18(2).
- 30.7 Whether a notice of appeal to a court for review of a decision by the Tax Disputes Review Board is required to include a TIN is a matter to be determined by Court rules.
- 30.8 Nothing in Article 30 prevents the taxation administration choosing to accept a tax return, form, notice, application or document submitted without a TIN if the Ministry is able to identify the relevant TIN through other means.
- 30.9 For efficient administration and proper identification of taxpayers, the taxation administration will also state a taxpayer's TIN in any notice, correspondence or other document given to that taxpayer.
- 30.10 Importers are also required to quote their TIN to the Customs Department when submitting their documentation to clear an import.

CHAPTER 8 – REPRESENTATION OF A TAXPAYER

ARTICLE 31– LIABILITIES AND OBLIGATIONS OF REPRESENTATIVES

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.

31.1 Article 3 defines who is a representative. Article 31 states that a representative of a person is responsible for performing any and all tax obligations of the person. This does not mean that all representatives are always responsible for performing all obligations of a person; it depends on the type of representative and the level of authority which the taxpayer has granted to the representative to act on their behalf. The determination of these questions depends on other laws and commercial practices concerning principal and agent. A representative cannot be held responsible for doing something that the taxpayer has not authorised them to do.

31.2 The types of representative listed in the definition in Article 3 can be divided into two categories:

1. Persons who are a representative due to the position or office they hold (items 2, 3, 4 and 6 in the definition of representative in Article 3);
2. Persons who are authorised by the taxpayer or appear to be authorised to act on their behalf (items 1, 5 and 7 in the definition of representative in Article 3).

- 31.3 A person who is a representative according to the first category (due to the position or office they hold) is liable to perform the obligations of the taxpayer in accordance with the authorities that such a person normally holds in that position. For example, a partner is liable for the performance of all obligations of a partnership in accordance with partnership law and practice. A person who is a representative according to the second category will be liable only for those things that they are authorised to do by the taxpayer.
- 31.4 A chief executive officer of a company is liable for the management of a company, so will be liable to ensure that tax returns are filed on time and that the statements in the tax returns are true and correct. However the chief executive officer is not normally liable for payment of the tax of the company (except if they participated in a fraud or they are also a director of the company, see Article 32).
- 31.5 A liquidator is also liable for the filing of all necessary tax returns and forms in performing their duties as liquidator. They are only liable for the payment of taxes to the extent that they hold assets of the taxpayer being liquidated. They will only become personally liable for taxes to the extent that a shortfall in tax is due to a breach of their duties as a liquidator.
- 31.6 A person who is a representative under items 1 or 7 of the definition of representative is in a principal and agent relationship with the taxpayer they represent. Their liability for the obligations of a taxpayer is determined according to Afghanistan's commercial laws and practices and considering the authority given by the taxpayer to their representative in each case. For example, if a taxpayer appoints an accountant to represent them in meetings with the taxation administration, that person will be liable for their behaviour in those meetings but not liable for other things such as the payment of tax or filing returns if they have no authority or control over such actions.
- 31.7 A person who is a representative under item 5 of the definition of representative will have their liability determined according to their relationship with the taxpayer. If the person is an employee of the non-resident person, their liability is limited only to those obligations that they can fully control in Afghanistan. For example, an employee will not be liable for the payment of tax if their employer has not provided sufficient funds to them to pay the tax. If the person is an agent of the non-resident person, their liability for the obligations of the taxpayer is determined according to Afghanistan's commercial laws and practices for principals and agents.

Responsibilities of representatives

- 31.8 As explained above, a representative may be responsible for performing the obligations of a taxpayer but the level of responsibility depends on their position and authority as representative.

Example 1

Zahir is in partnership with Abid and Haseed in a transport business. Zahir mainly manages the drivers, rosters and daily operations. Haseed manages the finances and administration. Zahir provided a large amount of capital to start the business and only visits the main office for occasional meetings. Each partner is a representative of the partnership under the tax laws and the general laws of Afghanistan and therefore each is responsible for complying with the tax obligations of the business. It does not matter how they arrange or agree on duties between each other.

Example 2

Haji Ahadmir is the chief executive officer of the Paktia Banking Company. He is therefore a representative of the Bank according to the definition in Article 3. The bank has more than two hundred employees and is required to withhold tax and remit it to the taxation administration whenever salaries are paid to the employees. Haji Ahadmir is responsible for ensuring the tax is withheld and paid by the due date, since these are things that he is authorised to do on behalf of the Bank and it is within his control to do so. He is also responsible for providing annual statements to the employees and the taxation administration under the Income Tax Law.

Example 3

Hanif lives in Canada, but still owns a large building in Jalalabad. He has an agreement with Amrollah to manage the leasing of the building for him including collecting the rent and taking care of maintenance and license obligations. Amrollah is a representative of Hanif according to Article 3. Their relationship is one of principal and agent. Amrollah is therefore responsible for ensuring that tax obligations are met concerning income from the lease of the building because these are things that he is authorised to do on Hanif's behalf and are also within his level of control since he has all necessary information available and has control of the funds.

Example 4

Mohamed is an employee of a foreign engineering company. Mohamed is the most senior employee of the company in Afghanistan and manages the company's business operations in the country. He maintains records of all income and expenses for the company's activities including salary records for local employees; however expense transactions are done by the company's accountant in Dubai by payment from a Dubai bank account. Mohamed is a representative of the company according to the definition in Article 3. He will be liable to ensure that tax returns and other forms are filed for the company, however he will not be personally liable for the payment of taxes as this is not a matter that is within his control.

- 31.9 As explained above, a representative has a defined meaning in the Tax Administration Law and a person falling within that definition has certain obligations under the tax laws. Some approved tax forms ask for details of a contact person in relation to a taxpayer. A representative may be a contact

person if they are nominated as the contact person. Alternatively the contact person may be an administrative role with no tax obligations or responsibilities under the tax laws. The two different circumstances are shown in the following examples.

Example 1

A company applies for registration for VAT on an approved form in accordance with the VAT Law. The Chief Executive Officer is named on the form as the principal representative. The CEO decides that he will be the contact person so he provides his name and personal phone number as the contact details on the registration form. He has tax obligations in his position as a representative.

Example 2

A company applies for registration for VAT on an approved form in accordance with the VAT Law. The Chief Executive Officer is named on the form as the principal representative. The CEO is a very busy person so he has a secretary (Shigofa) who as his administrative assistant takes his business calls, receives and drafts correspondence on his behalf and manages his appointments. Shigofa is named on the registration form as the contact person. Shigofa is not a representative under the Tax Administration Law and has no tax obligations on behalf of the company.

ARTICLE 32 – OBLIGATIONS OF DIRECTORS AND CONTROLLING SHAREHOLDERS OF A COMPANY

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.

- 32.1 If Article 32 applies to a director or controlling shareholder, it will make that person personally liable for a tax liability of the company if the company does not pay the tax liability. If Article 32 applies to more than one director or controlling shareholder, each of those persons will be jointly and severally liable.
- 32.2 Article 32 applies if a company enters into a transaction or arrangement that causes the company to be unable to pay a tax liability. In determining whether the provision applies, a single transaction may be considered or a series of transactions or events may be considered if the series of transactions or events were part of an overall plan.

Example 1

A construction company with three directors completes a contract and has Afn.3,000,000 cash in the bank. It has various assets consisting of immovable property worth Afn.5,000,000 secured by bank loans of the same amount. The company has no other assets or liabilities and no further contracts. The directors of the company meet and unanimously pass a resolution for the company to pay a dividend to the shareholders. Soon afterwards the dividend is paid using all of the Afn.3,000,000 cash in the bank.

The meeting was held on 15th Qaws, shortly before the end of the income tax year. After the income tax year ends the company files a tax return showing that income tax payable of Afn.1,000,000. The company does not make any payment of the tax and goes into liquidation soon afterwards. After selling the assets and repaying the bank loans there will be no money left to pay the tax.

In this case subsection (1) of Article 32 will apply to the directors. As a result of the decision to pay the dividend, the company has been left with insufficient funds to pay its tax. Even though the tax liability was not payable at the time the directors made their decision to pay the dividend, the provision applies because it covers future tax liabilities.

- 32.3 Subsection (1) of Article 32 may apply to a shareholder if the shareholder is a controlling shareholder. A shareholder is a controlling shareholder if they directly or indirectly hold more than 50% of the voting rights in the company, or more than 50% of the rights to dividends, or more than 50% of the rights to the capital of the company. In calculating the percentage of rights held by a person, the rights of associates of that person are also counted. The taxation administration will apply the definition of associate in the VAT Law when considering whether a person directly or indirectly holds the rights jointly with other persons.

Example 2

Jamal and Maiwand are brothers who each own 30% of the shares in the company mentioned in Example 1 above. Daud owns the remaining 40% of the shares. Daud is not related to Jamal and Maiwand and is not in any other way an associate of Jamal and Maiwand. Jamal, Maiwand and Daud are not directors of the company; their interest is only as investors. All of the shares in the company are entitled to dividends if dividends are paid.

Jamal and Maiwand are brothers and therefore are considered to be associates. As associates their total shareholding has the right to more than 50% of any dividend. They are therefore each considered to be controlling shareholders. Subsection (1) of Article 32 will apply to both Jamal and Maiwand. The provision will not apply to Daud because he is not a controlling shareholder.

- 32.4 If Article 32 applies to more than one person, each person is jointly and severally liable for the unpaid tax. The taxation administration may take enforcement action against any one or more of the persons liable. If unpaid tax is collected from one of the persons liable, that person may seek reimbursement from the other persons but this is a civil matter between these individuals and the taxation administration has no involvement or responsibility in this matter.

Example 3

Continuing the same facts as mentioned in Examples 1 and 2 above, subsection (1) of Article 32 applies to five individuals – the three directors and also Jamal and Maiwand. These five individuals are jointly and severally liable for the unpaid tax. The taxation administration decides to take enforcement action against Jamal and collects the full amount from him. It is entitled to do this under Article 32. Jamal may seek reimbursement some of this amount from Maiwand and the three directors but this is his responsibility and the taxation administration will not be a party to that action.

- 32.5 Subsection (2) of Article 32 provides some protection from liability for directors of a company if it applies to the circumstances of their case. This provision does not protect controlling shareholders who are not directors of the company.

Example 4

Continuing the same facts in the previous examples above, the directors may consider subsection (2) of Article 32. That provision cannot apply to Jamal or Maiwand.

- 32.6 In order for a director to obtain protection from liability under Article 32, two requirements must be met. Firstly, the director must have obtained no benefit from the transaction or arrangement that caused the company to be unable to pay its tax. If this first requirement is not met, the director will not be protected from the liability and there is no need to consider the second requirement. If a director does meet this first requirement (no benefit from the transaction or arrangement) then it is necessary to consider the second requirement explained below.
- 32.7 In determining whether a director gained a financial or other benefit, the taxation administration will consider payments or benefits given directly to the director and also payments provided indirectly to that person, for example a payment or benefit provided to a family member.

Example 5

Continuing the same facts in the previous examples above, the three directors are Hamid, Mukhtar and Bashir. Hamid and Mukhtar are not related or connected to any other director or shareholder. However Bashir is Daud's son. When Daud receives the dividend he buys a new car for Bashir.

None of the directors received a direct benefit from the decision to pay the dividend, as they did not receive the dividend personally. According to the known facts Hamid and Mukhtar also did not receive any indirect benefit so they meet the first requirement in subsection (2) of Article 32. It is then necessary to consider the second requirement in subsection (2) of Article 32 which is explained below.

However Bashir's circumstances are different to Hamid and Mukhtar because he has indirectly benefitted from the decision to pay the dividend because his father received the dividend and gave Bashir a new car. He will

not be protected from liability by subsection (2) of Article 32. It is not necessary to consider the second requirement in subsection (2) of Article 32 because he did not meet the first requirement.

- 32.8 The second requirement in subsection (2) of Article 32 has two parts. Which part must be considered depends on whether the director had knowledge of the transaction or arrangement. If the director had knowledge of the transaction or arrangement before it is carried out, they will meet the second requirement in subsection (2) of Article 32 if they record their disagreement with the company and inform the taxation administration in writing of the transaction or arrangement. Alternatively they will meet the second requirement if they had no knowledge of the transaction or arrangement before it is carried out and they were not involved in the management of the company at that time.

Example 6

Continuing the same facts in the previous examples above, Hamid and Mukhtar met the first requirement in subsection (2) of Article 32 so now must consider the second requirement in that provision. It is clear that they had knowledge of the transaction or arrangement because they participated in the decision to approve payment of the dividend. Since they both voted for approving the dividend, they did not record their disagreement of this transaction with the company. Both Hamid and Mukhtar do not meet the second requirement in subsection (2) of Article 32 so they are not protected from liability by that provision. Both Hamid and Mukhtar are therefore liable for the company's tax debt under Article 32.

Note that if Hamid or Mukhtar had voted in the minority against the decision to pay the dividend, this would be recording their disagreement with the transaction. If the person who recorded their disagreement had then informed the taxation administration before the dividend was paid that the transaction would cause the company to be unable to pay its tax liabilities, that director would have met all of the requirements for protection from liability under subsection (2) of Article 32.

- 32.9 Article 32 does not impose liability on directors or controlling shareholders for a company's tax liability where the transaction or arrangements are normal commercial practices and it was not possible to predict that the transaction or arrangement would cause the company to be unable to pay its tax liability.

Example 7

A construction company bids for a large road project over two years and wins the contract. The bidding price was expected to generate a profit for the company and in the first year it is profitable as expected. However in the second year due to unexpected heavy rain and flooding the project is delayed and costs run well over budget. The company is unable to complete the contract and goes into liquidation. It is unable to pay all of its tax liabilities.

In this case the directors and any controlling shareholder will not be liable for the company's tax liabilities. The directors of the company carried on the business in a normal commercial manner and the company's transactions or arrangements could not be expected to cause the company to be unable to pay all of its tax liabilities.

Draft

ARTICLE 33 – REGISTRATION OF TAX ACCOUNTANT

Article 33

Registration of tax accountant

- (1) The taxation administration shall grant business licenses as tax accountants 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 shall be registered with the taxation administration as a tax accountant.
- (3) A tax accountant who has obtained a license from the taxation administration is allowed to provide accounting and advisory services to taxpayers for a fee.
- (4) A tax accountant holding a license may visit the taxation administration on behalf of the taxpayer.
- (5) The tax accountant shall be required to observe tax laws and other laws when they provide accounting and advisory services.

- 33.1 Article 33 provides for a system of registration for tax accountants. Professional tax accountants who charge fees for their services must be licensed by the taxation administration. Tax accountants will only be licensed after satisfying the requirements in this Article. The person must apply for registration, the application must provide evidence they have completed a relevant university qualification, they must have business premises and they must pass an exam set by the taxation administration.
- 33.2 The taxation administration will refuse to deal with a tax accountant who is not licenced if it knows or reasonably suspects that the person is charging a fee for their services contrary to law.
- 33.3 A tax accountant who is an employee of a business and provides tax advice services to their employer as part of their job is not required to be licensed.
- 33.4 A relevant higher education qualification will be a Bachelor degree in accounting or law.
- 33.5 The taxation administration shall maintain a list of currently registered tax accountants and publish this list on its website for public information. The list shall include the license number of the tax accountant, their name, business name (if any) and address.

- 33.6 A licensed tax accountant is permitted to represent their clients in all tax related communications with the taxation administration, provided that the client has provided confirmation that the tax accountant acts on their behalf.
- 33.7 If a taxpayer has authorised a licensed tax accountant to act on their behalf, the taxation administration shall document this in its records. If a taxpayer notifies the tax administration that it has changed tax accountant or otherwise cancels an authorisation, the tax administration shall update its records.

Draft

CHAPTER 9 – ADDITIONAL TAXES

This Chapter imposes a range of additional taxes for various failures to comply with tax liabilities and obligations. Each of these additional taxes, if applicable, is imposed by the taxation administration. The decision maker for each additional tax is determined by the delegations procedures.

All of these additional taxes are made payable by the issuance of an assessment notice to the person specifying the amount payable. The assessment notice procedures are the same as for an assessment of tax (Value Added Tax or Income Tax) and the same assessment notice may be used to notify the tax and the additional tax payable.

A taxpayer may dispute the correctness or application of any of the additional taxes applied by this Chapter, because they are imposed in a taxation assessment. A taxation assessment is a taxation decision under the definition of that term in Article 3, so may be disputed in accordance with the procedures in Chapter 4.

More than one additional tax may apply for the same tax and the same period. For example, a taxpayer who fails to file a tax return on time and fails to pay the related tax on time will be subject to separate additional tax amounts under each of Articles 34 and 35.

Additional taxes should not be confused with the monetary penalty provisions in Chapter 10.

ARTICLE 34 – ADDITIONAL TAX FOR LATE PAYMENT

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 for each day of delay.
- (2) The annual rate of additional tax under subsection (1) of this Article shall be determined 30 days before the end of each quarter of the fiscal year and shall apply for the duration of the following quarter. The rate shall be the weighted average of winning rates in the most recent 182-day capital note auction conducted by Da Afghanistan Bank, plus 8%.
- (3) If on the day for determining the rate under subsection (2) of this Article Da Afghanistan Bank has not conducted a capital note auction in the previous 6 months, the rate of additional tax shall be determined by the Minister of Finance having regard to any other similar rate applicable to the operations of Da Afghanistan Bank and prevailing economic conditions.
- (4) 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.
- (5) Additional tax due under this Article shall be payable in addition to other additional taxes mentioned under this chapter.

34.1 Article 34 imposes additional tax when tax is not paid by the due date. It is calculated as a percentage of the original tax that has not been paid by the due date. For these purposes original tax includes annual income tax, BRT, VAT, withholding tax and fixed tax imposed by the Income Tax Law and any new tax that may be imposed under a future new tax law. Original tax for the purposes of Article 34 is specifically mentioned to include amounts payable by third parties under Article 16. Original tax does not include additional taxes imposed by Chapter 9 of the Tax Administration Law and also does not include penalties imposed by Chapter 10 of the Tax Administration Law.

34.2 The additional tax is imposed at a daily rate. It applies to the tax liability outstanding at the beginning of each day. Additional tax for late payment only applies to original tax, it does not apply to additional tax outstanding.

Example 1

A VAT taxpayer has a tax liability of Afn.600,000 for the Mizan-Qaws quarter. In accordance with the VAT Law the tax liability is due by the 30th Jada, but the taxpayer does not make any payment by that day. On 5th Dalwa he pays Afn.300,000. On 10th Dalwa he visits the tax office to pay the

remaining tax liability including additional tax. (For the purpose of this example the daily rate of additional tax for late payment shall be 0.035%).

At the beginning of each of the days from 1st Dalwa to 5th Dalwa (5 days) the original tax liability outstanding is Afn.600,000. Therefore the additional tax for late payment for those 5 days will be $600,000 \times 0.035\% \times 5 = 1,050$.

At the beginning of each of the days from 6th Dalwa to 10th Dalwa (5 days) the original tax liability outstanding is Afn.300,000. Therefore the additional tax for late payment for those 5 days will be $300,000 \times 0.035\% \times 5 = 525$. On the 10th Dalwa the taxpayer would therefore need to pay Afn.300,000 original tax plus Afn.1,575 (total of Afn.301,575) to clear his total outstanding tax liability.

Determining the due date when the tax office is closed

- 34.3 Where the due date for payment of tax falls on a day where the person's local tax office is closed, the person will be accepted as having paid their tax if they pay by the next available working day after the specified due date. (Regulations)

Example 2

Jamal is registered for VAT and is required to pay VAT payable by 30 days after the end of the quarter. His VAT payment for the Hamal-Jawza quarter is due by 30 Saratan. The 30th day of Saratan falls on Jummaa (Friday) in the year in question and his local tax office is closed on this day. If he pays his VAT amount on Shambey (Saturday), 31 Saratan he will not be subject to additional tax for late payment because his local office was closed on the day that payment was due.

- 34.4 In calculating the number of days of delay after the due date, any days where the person's local tax office was closed are counted when those days occur after the taxpayer had the opportunity to pay the tax.

Example 3

Considering the same facts as the previous example, Jamal's VAT payment for the Hamal-Jawza quarter is due by 30 Saratan. The 30th day of Saratan falls on Jummaa (Friday) in the year in question and his local tax office is closed on this day. Shambey (Saturday), 31 Saratan is a day where his local tax office is open, but he does not pay his tax on or before that day. The 1st day of Asad his local office is closed due to a public holiday in his province. The office opens the next day, 2nd Asad, and he pays his tax on that day.

In this case he should have paid his tax by 31 Saratan but he failed to do so. He did not pay until 2nd Asad which is two days after the time when he should have paid. He will be subject to additional tax under Article 34 for two days including the public holiday on 1st Asad.

- 34.5 The additional tax applies to any tax that a person is required to pay under the tax laws. This includes withholding tax that a person is required to withhold and pay under the Income Tax Law. It also applies to late payment of an amount payable by a third party under Article 16 of the Tax Administration Law. If the third party is late in making the required payment, the additional tax under Article 34 applies to the third party.
- 34.6 Additional tax imposed by Article 34 on persons failing to pay withholding tax by the due date or a third party who fails to pay an amount required by Article 16 must be borne by that person. They are forbidden from recovering this additional tax from the payee, as this additional tax is a punishment for their own failure to comply with the law.
- 34.7 In the case of a third party who fails to pay an amount as required under Article 16, the additional tax is calculated until the day that the tax is paid. Payment by the third party, the taxpayer or by any other person is acceptable and will cause the additional tax to stop accruing.
- 34.8 In the case of a third party required to pay an amount under Article 16, the taxpayer also remains liable for the primary tax (see discussion in this Manual for Article 17). Therefore if a third party fails to pay a required amount, additional tax can be imposed on both the third party and the taxpayer for as long as each has failed to make their required payment.
- 34.9 Article 34 does not directly impose additional tax on a liquidator. However a liquidator may become indirectly liable for additional tax for late payment under Article 19 if they fail to fulfil their obligations as a liquidator. Additional tax for late payment is imposed upon the relevant taxpayer first of all. If the liquidator fails to comply with their obligations as a liquidator then the additional tax imposed on the taxpayer then becomes part of the tax liabilities that the liquidator may become personally responsible for under Article 19.

Quarterly adjustment of the daily rate

- 34.10 Article 34 provides a method for the rate of additional tax imposed under the Article to be adjusted for each quarter. The rate is linked to the 182 day capital note rate determined by Da Afghanistan Bank. This method is designed to ensure that the rate of additional tax under Article 34 rises and falls according to economic conditions in Afghanistan. The rate of additional tax uses the rate mentioned from Da Afghanistan Bank and adds 8% to obtain an annual rate. This annual rate may be divided by the number of days in the year to determine the applicable daily rate.
- 34.11 The rate of additional tax under Article 34 is intended to compensate the Government for the delay in receiving the correct tax when it was properly due. By adding 8% to the rate obtained from Da Afghanistan Bank, it is intended to be a high rate to discourage taxpayers from delaying paying their tax so as to use the funds for business capital or investment.

- 34.12 The taxation administration will publicise on the ARD website the current and historical rates of additional tax imposed by Article 34. The rate is determined quarterly (before the start of the fiscal quarter and applies for the duration of that fiscal quarter).

Example

The rate of additional tax for the fiscal quarter Jadi to Hoot 1397 is determined during Qaws 1397, based on information from Da Afghanistan Bank that is current on the first day of Qaws 1397. That rate will apply to the late payment of tax for all days of delayed payment of tax from 1st Jadi to the last day of Hoot 1397.

Determination of the daily rate by the taxation administration

- 34.13 Article 34 provides the method for the taxation administration to determine the rate of additional tax. This method is explained below. If the required information is not available, Article 34 allows the Minister of Finance to determine the rate. The Minister's method is explained in the next section.
- 34.14 The taxation administration will determine the daily rate by following these steps:

1. On or soon after the day that is 30 days before the end of a fiscal quarter, it shall obtain the weighted average rate determined by Da Afghanistan Bank of the most recent auction of 182-day capital notes. This information is generally available from the website of Da Afghanistan Bank. If it is not available on that website the taxation administration shall contact the Bank to request the information.

Example 1

The first day of Qaws 1397 is the day that is 30 days before the end of the fiscal quarter Mizan to Qaws. On that day (or 3-5 days after, to allow time for information to be released by Da Afghanistan Bank) the taxation administration must obtain the required 182-day capital note rate from Da Afghanistan Bank.

2. The taxation administration will add 8% to the rate obtained from Da Afghanistan Bank to obtain an annual rate.

Example 2

Continuing the previous example, on 5th Qaws 1397 the responsible taxation officer checks on the website for Da Afghanistan Bank and finds that the Bank's most recent auction of 182 day capital notes was on 16th Aqrab. The weighted average rate of successful bidders was 4.95%. Therefore, after adding 8%, the annual rate of additional tax under Article 34 for the period Jadi to Hoot 1397 is 12.95%.

3. The taxation administration will then divide the annual rate by 365. The number shall be rounded to 8 decimal places.

Example 3

Continuing the previous example, if the annual rate is 12.95%, the daily rate of additional tax for the fiscal quarter Jadi to Hoot is $12.95/365 = 0.03547945$. This daily rate will promptly be published on the ARD website (before the fiscal quarter starts) and will be updated to the taxation administration's computer systems for automatic calculation of additional tax for late payment on assessments issued.

- 34.15 The process explained above is repeated every quarter.

Determination of the daily rate by the Minister

- 34.16 Article 34 allows the Minister of Finance to determine the rate of additional tax if Da Afghanistan Bank has not conducted an auction for 182-day capital notes in the previous 6 months.

Example

The rate of additional tax under Article 34 must be determined for the fiscal quarter Jadi to Hoot 1397. If the taxation administration checks with Da Afghanistan Bank and is advised by the Bank that no auction was carried out for 182 day capital notes in the period Jawza to Aqrab 1397. The Minister of Finance must therefore determine the rate for the fiscal quarter Jadi to Hoot 1397.

- 34.17 The Minister has discretion to determine the applicable rate in these circumstances. However the Tax Administration Law provides some guidance to the Minister of the factors to be considered. Firstly he or she must look at other rates available from Da Afghanistan Bank. For example, if Da Afghanistan had not conducted a 182 day capital note auction in the previous six months but had in the previous month conducted a 28 day capital note auction and a 360 day capital note auction, the Minister may decide that the appropriate rate for additional tax under Article 34 is a rate between those two known rates, plus 8%. In this way the rate of additional tax is set at a similar rate to that which would have been set if the taxation administration had the necessary information to determine the rate.
- 34.18 The Minister may also consider other economic conditions in Afghanistan at the time of setting the rate of additional tax – such as the inflation rate and interest rates charged by the banks.
- 34.19 If the rate of additional tax is to be set for a quarter, but the Minister does not prescribe a new rate, the rate for the previous quarter shall be used.
- 34.20 There is no power to remit the additional tax for later payment after it has been imposed. However, the taxation administration can correct its records if this

additional tax was incorrectly imposed. For example, if the taxation administration mistakenly issued an assessment notice showing additional tax for late payment when the taxpayer had in fact filed a request for an extension of time to pay under Article 15 and the extension of time is granted and the very exceptional circumstances mentioned in paragraph 15.16 of this Manual exist, the additional tax may be removed as mistakenly imposed.

Draft

ARTICLE 35 – ADDITIONAL TAX FOR FAILURE TO SUBMIT A TAX DOCUMENT

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.

35.1 Article 35 imposes additional tax for failure to submit a tax document. This covers a failure to submit a tax return (as widely defined in Article 3). It also covers a failure to submit other documents required to be submitted under a tax law. An example of such a document is a balance sheet, if a taxpayer is required to file such a document with their tax return under Article 87 of the Income Tax Law. Note that this wider coverage of documents is an intentional change from the position previously in the Income Tax Law before the Tax Administration Law commenced.

35.2 The additional tax only applies to a failure to submit a document that the taxpayer is specifically required to file under a tax law. It does not cover documents that the taxation administration requests through other means or at other times.

Example

The taxation administration decides to conduct an income tax audit on Sherin's business. It issues a notice to him to provide various business records for the year 1395 including his sales records by 30 Jada 1398. Sherin fails to provide these records by the due date.

This failure is not subject to additional tax under Article 35 because it does not concern a specified tax document required to be submitted under the tax laws. The correct additional tax to consider for this case is determined under Article 39.

35.3 The additional tax under Article 35 is Afn.30 for natural persons or Afn.100 for legal persons. It applies to each tax return or document that is not filed by the due date.

Extension of time

- 35.4 If a person has obtained an extension of time to file a tax return in accordance with Article 7, no additional tax applies under Article 35 if the tax return is filed by the extended deadline.
- 35.5 However, if a person receives an extension of time and then fails to file by the extended deadline, the additional tax is calculated from the original due date.

Example 1

Sherin is required to file his monthly tax withholding report with details of tax withheld from salaries and wages (Article 60 of the Income Tax Law). This is a tax return as defined in Article 3 of the Tax Administration Law. His report for the month of Mizan is due by 10th of Aqrab, however he receives an extension of time from the taxation administration until 25th of Aqrab.

Sherin actually files the report on 24th of Aqrab. Normally he would be subject to additional tax under Article 35 for the 14 days from the 10th to the 24th. However because he received an extension of time and he complied with the extended deadline, no additional tax will apply under Article 35.

Example 2

Consider the same facts as in the previous example, except that Sherin does not actually file the report until 27th of Aqrab. In this case, because he failed to meet the extended deadline, additional tax applies from the original due date. He will be subject to additional tax from 10th Aqrab to 27th Aqrab – 17 days.

Default assessments

- 35.6 In cases where a person fails to file a tax return by the due date, the taxation administration may issue a default assessment. This is an assessment of tax based on information available to the taxation administration in the absence of the tax return. See Article 8 for further explanation of default assessments.
- 35.7 If a default assessment is issued, the additional tax under Article 35 is calculated from the date that the tax return was due until the date that the default assessment issues.

Example 3

Sherin is required to file his monthly tax withholding report with details of tax withheld from salaries and wages. His report for the month of Mizan is due by 10th of Aqrab; however by 20th Aqrab he has still not filed the report and has also not made any explanation or request for extension. The taxation sends him a notice on 21st Aqrab requesting him to file the report within 30 days (see Article 7).

Sherin does not comply with this request; so on 25th of Qaws the taxation administration issues him with a default assessment. The assessment notice show the estimated tax payable for the withholding tax due, plus additional tax under Article 35 for failure to file the report. This additional tax is calculated from 10th Aqrab to 25th of Qaws. (It should be mentioned that other additional tax may also apply under Articles 34 and 36. See those Articles for details).

- 35.8 The additional tax is imposed at a daily rate. Where the due date for filing the tax return falls on a day where the person's local tax office is closed, the person will be accepted as complying with the due date if they comply by the next available working day after the specified due date. (Regulations)
- 35.9 In calculating the number of days of delay after the due date, any days where the person's local tax office was closed are counted when those days occur after the taxpayer had the opportunity to file the document. See the discussion and examples in this Manual for Article 34. The same principles apply to Article 35.

Reasonable cause for failing to file

- 35.10 Additional tax under Article 35 does not apply if the person has a reasonable cause for failing to file. Generally ignorance of the obligation to file is not considered reasonable cause. The following examples illustrate how the taxation administration applies Article 35.

Example 1

Baran Company is an Afghan corporation. It is required to file its 1398 income tax return by the last day of Hoot, 1398. Baran Company does not file its tax return until ten (10) days after the last day of Hoot. When the Afghanistan Revenue Department asks Baran Company why it failed to file its tax return on time, Baran Company's management respond that they had trouble completing their financial statements. Baran Company does not have a reasonable excuse for not preparing and filing its tax return on time. Baran Company should be subject to the Afn.100 per day additional tax.

Example 2

Gul Company is an Afghan corporation. It is required to file its tax return for the 1398 year by the last day of Hoot, 1398. Gul Company fails to file its tax return until the first day of Jawza, 1397. The reason Gul Company did not file its tax return on time is that its office burned down and all of its financial records were destroyed. Gul Company filed its tax return as soon as it was able to do so after the fire. Gul Company should not be subject to the Afn.100 per day additional tax.

Example 3

Nesar Ahmad is an individual businessman who is engaged in export of fresh and dry fruits. He files his tax return for 1398 on the last day of Saratan 1397. When the Afghanistan Revenue Department asks him for the reason for delay in filing, he answered that he was busy with buying fresh fruits in the provinces, so he was unable to file his tax return on time. Nesar Ahmad's excuse was not found reasonable, therefore he should be subject to additional tax of Afn.30 per day for the period of delay.

Example 4

Gul Ahmad owns a market in Mandavi where he rents out his shops to shopkeepers. The market has three floors and the rent for each floor differs. The rent of shops in the first and second floors is more than Afn.10,000 per month and the lessees when paying the rent withhold tax and transfer it to the government bank account. The rent for space used as a warehouse on the third floor is less than Afn.10,000. According to the Income Tax Law, Ahmad is required to file his tax return by the end of the third month after the end of the tax year and pay his tax liability after deducting withholding tax. Ahmad filed his tax return on 25 Mizan of the following year. When asked about the reason for late filing, he responded that due to a dispute with shopkeepers over determination of rent price, he was unable to file his last return. This excuse is not reasonable. Therefore he is required to pay additional tax of Afn.30 per day up to the date of filing the return.

- 35.11 There is no power to remit the additional tax for late filing after it has been imposed. However, the taxation administration can correct its records if this additional tax was incorrectly imposed. For example, if the taxation administration mistakenly issued an assessment notice showing additional tax for late filing the taxpayer had in fact filed a request for an extension of time to file under Article 7 and the extension of time is granted.
- 35.12 the taxation administration can also correct its records if this additional tax was incorrectly imposed because the taxpayer had reasonable cause for filing late. If the taxpayer files late and has reasonable cause for filing late, any additional tax for late filing that was imposed can be removed.

Previous rates of additional tax for late filing

- 35.13 Under the former Article 102 of the Income Tax Law, the daily rate of additional tax applied from 18 March 2009 was Afn.100 for natural persons and Afn.500 for legal persons. This rate applies to each day of delay until 20 September 2013 when Article 102 was amended with effect from 21 September 2013. The amended daily rate was Afn.30 for natural persons and Afn.100 for legal persons and these same rates are continued unchanged in the Tax Administration Law.
- 35.14 The taxation administration interpreted the former Article 102 of the Income Tax Law to only apply to late filing of annual income tax returns. Article 35 of the Tax Administration Law applies to all tax returns including BRT and

withholding tax forms required to be filed by payers (which are included in the definition of tax return in Article 3). For tax returns covered by Article 35 of the Tax Administration Law that were not covered Article 102 of the Income Tax Law, additional tax will only be applicable for days of delay after the commencement date of the Tax Administration Law.

Draft

ARTICLE 36 – ADDITIONAL TAX FOR FAILURE TO WITHHOLD OR PAY WITHHOLDING TAX

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.

- 36.1 Article 36 applies additional tax if a person fails to withhold tax when required. It will also apply if a person withholds the tax but then fails to pay it to the taxation administration. Payments where withholding may be required include salary and wages paid by employers, rental payments, interest, dividends, royalties and certain payments to contractors.
- 36.2 A person may fail to withhold and fail to pay in which case only one amount applies under Article 36. In such a case an assessment notice imposing the additional tax may describe it as “additional tax for failure to withhold and pay withholding tax”.
- 36.3 Failure to pay the tax when required by the tax laws may apply when paid as little as one day late. A separate amount is also applied under Article 34 according to the number of days late.

Example

A company with employees is audited and found to have failed to withhold and pay a total of Afn.20,000 from wages to its employees. The tax administration issues an assessment to recover the tax of Afn.20,000. Additional tax of 10% - Afn.2,000 is included. At the time of issuing the assessment notice the company is 90 days late in complying with the withholding obligation so there is also additional tax under Article 34 of $0.1\% \times 20,000 \times 90 = \text{Afn.1,800}$. All of these amounts are included in the assessment notice.

- 36.4 Where the due date for payment of the withholding tax falls on a day where the person’s local tax office is closed, the person will be accepted as having paid the tax if they pay by the next available working day after the specified due date. (Regulations)

Additional tax to be borne by the person failing to withhold

- 36.5 The amount under Article 36 is 10% of the tax that the person failed to withhold. The person responsible for the failure to comply must personally bear this amount. It is not recoverable from any other person.

- 36.6 The payer may recover the actual tax from the payee, depending on the arrangements between the payer and the payee. The tax laws are silent on this question. Subsection (2) of Article 36 is only concerned with the additional tax, which must not be recovered from the payee or any other person. The purpose of the additional tax is to punish the payer for their non-compliance.
- 36.7 There is no power to remit the additional tax under Article 36 after it has been imposed. However, the taxation administration can correct its records if this additional tax was incorrectly imposed (imposed by mistake). For example, if the taxation administration mistakenly issued an assessment notice showing the additional tax under this Article when the withholding tax was actually paid and recorded incorrectly in the taxation administration's records, the additional tax can be removed.

Draft

ARTICLE 37 – ADDITIONAL TAX FOR FAILURE TO PREPARE AND MAINTAIN BOOKS AND RECORDS

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.

- 37.1 Additional tax applies to a person if they are found to have failed to prepare and maintain proper books and records when required by the tax laws.
- 37.2 Under paragraph (d) of Article 6 of the Tax Administration Law, a taxpayer is required to keep relevant books and records for the purpose of taxation. This means any records necessary for the correct calculation of their tax liabilities. See the explanation of Article 6 for more information.
- 37.3 The relevant failure can be related to income tax, withholding tax, value added tax or any other liability under the tax laws.
- 37.4 The discovery of the failure to prepare and maintain books and records would occur during an audit carried out by the taxation administration. During an audit the taxation administration may request a person to provide specified documents necessary for the determination of correct tax liabilities. If those documents are books and records required to be kept under the tax laws and the person fails to provide them, it will be assumed that the person did not prepare and maintain them.
- 37.5 Additional tax would not apply to a person if they can prove that their books and records have been lost or destroyed due to natural disaster or other events beyond their control.
- 37.6 The additional tax under Article 37 is applied for each occasion (audit) that the person is discovered not to have met the requirements. It does not apply for each individual document or tax period.

Example 1

Ahmad owns a transport company – Ahmad Transport Company. The company is audited by the taxation administration in 1399 and as part of the audit he is requested to provide a balance sheet and other records required by the tax laws for the years 1398 and 1397. The company fails to comply with the request and Ahmad has no explanation for the failure.

A single amount of Afn.20,000 additional tax applies to the company under Article 37 for the failures discovered in the audit.

- 37.7 If additional tax is imposed on a taxpayer for failing to prepare and maintain books and records (the first occasion), Article 37 can only be applied again (a

second occasion) for a subsequent failure after the date that the taxpayer was informed of the additional tax for the first occasion.

Example 2

Continuing the same facts as in Example 1, the additional tax mentioned in that example is imposed by the taxation administration issuing an assessment notice which the taxpayer received on 10th Jawza 1399. The notice explains the reason for the additional tax. In 1400 the taxation administration commences a new audit on the 1398 income tax year. It is found that the taxpayer did not prepare and maintain all required records for the 1398 income tax year.

In this case additional tax will not be applied under Article 37 because the non-compliance occurred before the date that Article 37 was first applied. The notice issued to the taxpayer on 10th Jawza 1399 punishes their behaviour before that day and also is a warning to the taxpayer that they must prepare and maintain proper records in the future. Since the taxpayer's non-compliance for the year 1398 has already happened, it is not possible for them to change that previous action. They have been punished for their behaviour up to that time by the first imposition of additional tax on 10th Jawza 1399 and are now only responsible for their behaviour after that date.

Partial failure

- 37.8 The failure to prepare and maintain books and records refers to a significant or substantial failure. A small failure or mistake in books and records is not intended to be covered by Article 37 and may be excused.

Example 3

A company generally keeps good books and records, but is missing three days of transactions during the year under audit. There is no evidence that this was intentional and it does not have a major impact on the total tax calculations because the auditor and the company are able to do some reconstructions and estimates of the missing information. Additional tax should not be applied under Article 37.

ARTICLE 38 – ADDITIONAL TAX FOR FAILURE TO COMPLY WITH A NOTICE

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.

- 38.1 A third party who fails to comply with a notice under Article 16 is subject to a additional tax equal to the amount of their failure to pay. This also applies to any recovery notice which has been varied under Article 17, which under subsection (4) of Article 17 is treated the same as a notice under Article 16.

Example

Yaghobi has an unpaid tax liability of Afn.50,000. The taxation administration has had difficulty enforcing payment from him, so it issues a notice to his bank which has money in an account belonging to Yaghobi.

The bank receives the notice on 12th Saratan 1396. At that time Yaghobi has Afn.30,000 in his account with the bank. The notice requires the bank to pay any funds in the account up to Afn.50,000 to the taxation administration by 26th Saratan 1396 as payment for his outstanding tax liability.

The bank ignores the notice, taking no action to comply within the period required. The bank is therefore liable to additional tax under Article 38 for the amount of the failure to pay. Since the funds available and covered by the notice were Afn.30,000, that is the amount of the failure to comply. The bank is still liable to pay the amount which they failed to pay according to the notice (Afn.30,000) under subsection (4) of Article 18. In addition it is liable to pay additional tax of the same amount under Article 38 – Afn.30,000. The total liability of the bank is therefore Afn.60,000.

Note that if Yaghobi later pays his outstanding tax liability personally, the bank will be relieved from paying the original tax liability mentioned in the notice, but it is still liable for the amount under Article 38 because this is a punishment for its failure to comply.

- 38.2 Where the due date for payment of the amount specified in the notice falls on a day where the person's local tax office is closed, the person will be accepted as having paid the amount by the due date if they pay it by the next available working day after the date specified in the notice. (Regulations)

ARTICLE 39 – ADDITIONAL TAX FOR FAILURE TO PROVIDE INFORMATION

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.

- 39.1 A failure to comply with Article 26 means failing to comply with the request specified in a notice issued in accordance with that Article. Additional tax is charged at a daily rate for each day of delay after the date specified in the notice until the person complies with the notice.
- 39.2 The failure to provide information may be:
- A failure to answer questions or requests in writing by the due date;
 - A failure to attend at the required place and time;
 - A failure to provide to the taxation administration any document, including a computer-stored document by the due date;
 - If a person is required to attend at a place and time for questioning, a failure by that person to answer a question at that time
- 39.3 The additional tax can only apply if the notice was properly issued. The notice must clearly state in words that it is “a notice under Article 26 of the Tax Administration Law”. Other correspondence issued by the taxation administration without referring to this authority which requests information, documents or attendance by a person are not subject to additional tax under Article 39.
- 39.4 The additional tax is not automatically imposed. It is necessary for the taxation administration to make a decision on whether the person has reasonable cause for failing to comply with the notice. Whether a person has reasonable cause for failing to comply will depend on weighing up a range of possible factors including:
- The type and quantity of information requested;
 - What actions the person has taken to comply with the notice, including partially complying with the notice;
 - The length of the delay;
 - Whether the person promptly informed the taxation administration of their reasons for failing to comply.
- 39.5 It is not possible to specify in this Manual all of the situations where a taxpayer would be considered to have reasonable cause for failing to comply, as there are many possible circumstances to consider. Each case must be determined on the circumstances of the specific person. Following are some examples of situations where the additional tax may not be applied.

Example 1

The taxation administration issues a formal notice to Nadir under Article 26 requiring him to provide specified documents related to his business within 30 days of receiving the notice. Nadir starts to gather the required information but 10 days before the deadline suffers a serious illness and is in hospital when the deadline passes. After he is discharged from hospital, he promptly recommences gathering the records and delivers the requested documents to the taxation administration 14 days late.

Nadir would be considered to have had reasonable cause for the delay in complying with the notice. No additional tax will apply under Article 39.

- 39.6 While a person may be considered to have reasonable cause for not complying with a notice within the required time, the taxpayer is still expected to take steps to comply with the notice as soon as possible. They will only be temporarily relieved from additional tax while there is reasonable cause for non-compliance.

Example 2

The taxation administration issues a formal notice to Nadir under Article 26 requiring him to provide specified documents related to his business within 30 days of receiving the notice. Nadir starts to gather the required information but 10 days before the deadline suffers a serious illness and is in hospital when the deadline passes. One week after the notice deadline he is discharged from hospital and returns to managing his business. He makes no further attempt to compile the requested documents and after one month has not provided any documents to the taxation administration.

Nadir would be considered to have had reasonable cause for the delay in complying with the notice while he was ill. However from the time he was discharged from hospital he has not made appropriate efforts to comply with the notice and therefore additional tax will apply from that delayed date.

- 39.7 In some cases the person may have reasonable cause for not fully complying with the notice by the deadline but may be able to partially comply, with the balance to follow at a later time. In this situation the question of whether additional tax applies depends on the person partially complying with the notice to the extent that this is possible.

Example 3

The taxation administration issues a notice under Article 26 to Samiullah requiring him to provide his business records for the last 4 years. The notice gives him 30 days to comply.

Before the deadline Samiullah provides the requested business records for the current and previous year. However he informs the taxation

administration that records for the earlier years are in storage and need to be retrieved from a warehouse. Samiullah is based in Kabul, while the older records are stored in a family warehouse in Jalalabad. Samiullah informs the taxation administration of the delay and eventually provides the remaining requested records two weeks after the deadline provided in the notice.

Samiullah made a genuine effort to comply with the notice and demonstrated partial compliance to the extent that it was possible. He continued to make reasonable efforts and fully complied within a reasonable longer time. No additional tax will apply under Article 39.

- 39.8 Additional tax under Article 39 is imposed by the taxation administration by issuing an assessment notice to the person informing them of the amount. As a taxation assessment, this is a taxation decision as defined in Article 3 and may be subject to objection by the person assessed.
- 39.9 The additional tax is imposed at a daily rate. Where the due date for complying with the notice falls on a day where the person's local tax office is closed, the person will be accepted as complying with the due date if they comply by the next available working day after the specified due date. (Regulations)
- 39.10 In calculating the number of days of delay after the due date, any days where the person's local tax office was closed are counted when those days occur after the taxpayer had the opportunity to comply with the notice. See the discussion and examples in this Manual for Article 34. The same principles apply to Article 38.
- 39.11 There is no power to remit the additional tax imposed by this Article. However, the taxation administration can correct its records if this additional tax was incorrectly imposed. For example, if the taxation administration mistakenly issued an assessment notice showing additional tax under this Article when the taxpayer had reasonable cause for failing to provide information, any additional tax that was imposed can be removed.

ARTICLE 40 – ADDITIONAL TAX FOR FALSE OR MISLEADING STATEMENTS

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 34 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.

Meaning of statement

- 40.1 A statement is anything said or disclosed orally or in writing for a purpose connected with a tax law. It includes anything said or disclosed to a taxation employee when exercising their powers or performing functions under a tax law. It includes anything said or disclosed to a customs officer when they are administering the Value Added Tax Law and any documents provided to the Customs Department that are used in administering the Value Added Tax Law.
- 40.2 A statement may be made or given in writing, orally or in any other way, including electronically. Statements may be made in a form, correspondence, a response to a request for information, a notice of objection, a request for an amendment to an assessment, in answer to a questionnaire or in connection with an examination or investigation.

- 40.3 A statement will include entering an amount or other information at a label on an application, approved form, declaration, notice, tax return or other document prepared or given under a taxation law.
- 40.4 A statement may also be made if a person fails to include information in a document or approved form when required to do so, and the document or approved form has a place for that information. The person is considered to have made a statement by omission. For example, the omission may effectively be a statement that there was no liability or that an event did not occur.

Meaning of false or misleading

- 40.5 A statement is false if it is contrary to fact or wrong, regardless of whether the person making the statement knew that it was false. It may be false because of something contained in the statement, or because something is omitted from the statement.
- 40.6 A statement will be misleading if it creates a false impression, is uninformative, unclear, or deceptive – even if the statement is true. It may be misleading because of something contained in the statement, or because something is omitted from the statement.
- 40.7 A material particular is something that is likely to affect a decision regarding the calculation of a person's tax-related liability. A statement which does not affect a person's tax position will not be a material particular for the purposes of Article 40.

Person liable for false or misleading statement

- 40.8 The person filing or providing the statement, or on whose behalf the statement is made, is generally liable to the additional tax. Generally, a person will be liable to the additional tax where a statement is made by their authorised representative. This includes statements made by the agent for the entity. A company will be liable to additional tax resulting from statements made by an authorised employee or director.
- 40.9 The statement will be considered false if it is contrary to fact, irrespective of whether you know or do not know that it is false. A statement will be misleading if it creates a false impression, is uninformative, unclear, or deceptive – even if the statement is true.

When the additional tax does not apply

- 40.10 If a false or misleading statement was made, there are two situations where the additional tax does not apply.
- 40.11 The first situation is where there is a tax shortfall related to the taxpayer objecting to the application of a tax law to their circumstances. Generally this does not refer to statements of fact, it refers to statements of the person's

interpretation, understanding or belief on how the tax law applies to their circumstances.

Example 1

A company (subcontractor) has a contract to perform services for another company which has a contract with an international organisation. In 1386 the Afghanistan Government signed an agreement with the international organisation providing certain tax exemptions for the activities of the international organisation. The wording of the agreement is unclear on some points and even within the Ministry of Finance there is some debate in some circumstances about whom the agreement applies to.

The subcontractor files a claim with the taxation administration stating that it is exempt from tax according to the international agreement. After some review within the taxation administration it is decided that the company is not exempt.

Even though the company made a false or misleading statement which caused a tax shortfall, the additional tax under Article 40 does not apply.

- 40.12 The second situation where the additional tax does not apply is where the person making the statement did not know and could not reasonably be expected to know that the statement was false or misleading. This requires consideration in the circumstances of what is reasonable for expectations of a person.
- 40.13 It is normal that a person will occasionally make a mistake. This includes both taxpayers and taxation employees. It is unreasonable to expect perfect knowledge by every person. Similarly it is not reasonable to expect a person to know all things. What is reasonable depends on what an honest, careful person would be expected to do.

Example 1

A taxpayer keeps a daily record on paper of their sales during the tax year. At the end of the year the taxpayer provides these records to another person who helps them to prepare their tax return. This second person enters these amounts into a spread sheet on a computer and adds the daily figures to calculate the total sales for the tax year. While entering the daily amounts the person mistakenly misses an amount for one day.

The incorrect total for the tax year is entered on the taxpayer's tax return and the taxpayer signs it and files it with the taxation administration.

In this case the mistake is minor and in the circumstances it is not reasonable to expect that the taxpayer should know that the tax return was false. The additional tax under Article 40 shall not apply.

Example 2

A taxpayer keeps a daily record on paper of their sales during the tax year. At the end of the year the taxpayer provides these records to another person who helps them to prepare their tax return. The taxpayer uses a spread sheet on a computer and adds the daily figures to calculate the total sales for the tax year which comes to Afn.12,500,000.

The taxpayer mistakenly writes the number Afn.1,250,000 in his tax return and files it with the taxation administration. As a result of the mistake a profit of Afn.2,000,000 was turned into a loss of Afn.9,250,000.

In this case the mistake is very large and in the circumstances it is reasonable to expect that the taxpayer should have known that the tax return was false. The additional tax under Article 40 shall apply.

- 40.14 There is no power to remit the additional tax imposed by this Article. However, the taxation administration can correct its records if this additional tax was incorrectly imposed. For example, if the taxation administration issued an assessment notice showing additional tax under this Article but after receiving more information from the taxpayer or considering information provided in an objection to the assessment it is determined that the circumstances mentioned in subsection (2) of this Article apply, any additional tax that was imposed can be removed.

ARTICLE 41 – ADDITIONAL TAX FOR TAX EVASION

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.

41.1 Tax evasion means intentionally committing an act that illegally results in less tax paid. It includes failing to do something that should have been done.

41.2 Examples:

- A business intentionally understating sales to reduce the amount of income tax payable;
- A business registered for VAT intentionally claiming tax credits for non-existent purchases;
- Intentionally overstating the cost of a depreciable asset to get a higher depreciation deduction;
- A taxpayer who knows they should file tax returns failing to file any tax returns.

41.3 Actions of avoidance to which Article 9 or 10 apply are not tax evasion.

41.4 Tax evasion is the most serious non-compliance. If Article 41 applies to a taxpayer's actions, additional tax applies.

41.5 The first time Article 41 is applied to a taxpayer that is a natural or legal person, the taxpayer must pay the tax that was evaded. The taxpayer must also pay additional tax equal to two times the amount of tax that was evaded.

Example

A company taxpayer is audited and found to have understated their income by Afn.1,000,000. The income was recorded in the accounts and books maintained by the company but the company intentionally declared less income in its tax return. At a company tax rate of 20% the tax evaded was Afn.200,000.

The actions of the company are evasion and Article 41 will apply. If this is the first time that the company has been discovered to evaded tax it will be subject to an additional tax of double the evaded tax. The additional tax for evasion in this case is Afn.400,000. Note that additional tax under Article 34 must also be considered.

- 41.6 The second time Article 41 is applied to a taxpayer that is a natural or legal person, the taxpayer must pay the tax that was evaded. The taxpayer must also pay additional tax equal to two times the amount of tax that was evaded. In addition, the taxation administration may choose to apply to the commercial court (maqima tejurat) for an order to close down the taxpayer's business.
- 41.7 Closing a business is a serious action and should only be done in the most serious cases of evasion. Article 41 therefore gives the taxation administration discretion to decide whether to seek a court order for closure of the business on the second (or more) occasion that a taxpayer evades tax. Before pursuing the order, the taxation administration should consider the following questions:
- Was the taxpayer's tax evasion and any related non-compliance and serious?
 - Is the additional tax imposed for the tax evasion enough punishment for the tax evasion?
 - Do the tax amounts involved justify closing down a taxpayer's business?
 - Will closing the business put payment of the tax at risk?
 - Does the taxpayer have a history of similar behaviour in the past?
 - Has the taxpayer taken any actions to prevent tax evasion in the future?
 - Are there possible actions to be taken under Chapter 10 (offences) that would be a more suitable punishment (including compounding such offences)?
- 41.8 As a general policy, the taxation administration will not seek a court order for closure of a business if the amount of tax evaded was less than Afn.400,000.
- 41.9 Article 41 refers to the second instance of evasion when considering business closure. This should also be understood to refer to third and subsequent instances of evasion, if the business was allowed to continue after the second instance.

Example

A taxpayer is found to have evaded tax for the first time in 1396 and additional tax is imposed under Article 41. Two years later the same taxpayer is found to have evaded tax for the second time. However, on this instance the amount of tax involved was only Afn.20,000 so in accordance with policy the taxation administration decides not to seek closure of the business for this second instance.

Four years later the same taxpayer is found to have evaded Afn1,000,000 in tax. This is the third time the taxpayer has been found to have acted in this way. The taxation administration may consider seeking closure of the business under Article 41. Given the amount of tax involved and the fact that this taxpayer has continued to repeat their bad behaviour, seeking closure on this occasion may be justified.

- 41.10 If it is decided that the tax evasion is so serious that closing the business would be justified, the responsible persons should file a request for closure with the commercial court (maqima tejurat).
- 41.11 If the court order is granted, the responsible persons should take the steps necessary to enforce the order. Enforcement may require the assistance of the Ministry of Interior.
- 41.12 If the evasion of tax concerns VAT on import, this additional tax will be applied to the importer. Collection and enforcement of this amount is the responsibility of the Customs Department.
- 41.13 There is no power to remit the additional tax imposed by this Article. However, the taxation administration can correct its records if this additional tax was incorrectly imposed. For example, if the taxation administration issued an assessment notice showing additional tax under this Article but after receiving more information from the taxpayer or considering information provided in an objection to the assessment it is determined that there was not intentional evasion, any additional tax that was imposed under this Article can be removed. Depending on the circumstances, additional tax under Article 40 may apply instead, or no additional tax.

ARTICLE 42 – ADDITIONAL TAX FOR FAILURE TO APPLY FOR TAXPAYER IDENTIFICATION NUMBER

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.

- 42.1 The requirement to have a Taxpayer Identification Number is indirectly created by Article 28 of the Tax Administration Law which requires specified persons to file an application for a TIN. Provided the person has properly filed an application for a TIN, that person will not be subject to additional tax under Article 42. If a person is found by the taxation administration as not having complied with Article 28 (not filed an application when required to do so) then the additional tax under Article 42 applies.
- 42.2 If a person has voluntarily applied for a Taxpayer Identification Number before receiving a request from the taxation administration to do so, they will not be subject to the additional tax under Article 42.
- 42.3 If the taxation administration has identified a person as not having voluntarily complied with Article 28 and has either demanded the filing of the application or has issued a Taxpayer Identification Number without the co-operation of the taxpayer, then the application of additional tax under Article 42 must be considered. It will apply unless the person can provide reasonable cause for the failure.
- 42.4 There is no power to remit the additional tax imposed by this Article. However, the taxation administration can correct its records if this additional tax was incorrectly imposed.

ARTICLE 43 – ADDITIONAL TAX FOR FAILURE TO COMPLY WITH THE VAT LAW

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.

- 43.1 The requirements for compulsory registration under the VAT Law are based on criteria in that Law. The test is based on taxable turnover for the previous 12 months and the next 12 months. Effectively the test for whether a taxpayer must apply for registration must be freshly considered at the end of each month. On the first occasion that a person meets the requirement to apply for registration, they must file an application within 15 days of meeting the requirement. The additional tax under subsection (1) of Article 43 therefore applies to any taxpayer who fails to file the required application by the due date. It will apply to taxpayers found to have applied late and will also apply to taxpayers who are registered through the taxation administration's actions due to a failure to file any application.
- 43.2 The additional tax under subsection (2) of Article 43 applies when there is misuse of VAT registration certificates, including falsifying certificates. Certificates are issued by the taxation administration as specific to taxpayers and business premises specifically identified in each certificate. Only the named taxpayer is able to use and display their certificate and then only in the identified business premises. A certificate cannot be assigned to another person or business premises. No other person can use or display a certificate in their premises, even if the approval of the taxpayer is obtained. Copies of certificates are not permitted. Breaches of any of these rules will cause the application of the additional tax under subsection (2) of Article 43.
- 43.3 A failure to display a VAT registration certificate when required will be subject to subsection (2) of Article 43. A failure to return a VAT registration certificate to the taxation administration when required is also covered.

- 43.4 Additional tax under subsection (2) of Article 43 may apply to both a taxpayer and another person, if the taxpayer allows the other person to use their VAT registration certificate.
- 43.5 Additional tax under subsection (3) of Article 43 applies if a person fails to issue a VAT document when required or issues a false VAT document. The relevant VAT documents covered by this provision at VAT invoices and VAT debit and credit notes. The additional tax under subsection (3) of Article 43 is imposed on the taxpayer at 25% of the tax shortfall caused by the missing or false document.
- 43.6 In some cases additional tax may also apply under other provisions. For example, a taxpayer who has issued false VAT documentation may also be subject to additional tax under Article 40. If so, both additional tax amounts will apply.

Example

A VAT registered business is audited by the taxation administration and is found to have falsified a VAT credit note. The false credit note was used to support a claim for Afn.10,000 as a false credit in its VAT return. In this case the taxpayer will be subject to additional tax of Afn.2,500 under subsection (3) of Article 43. Additional tax will also be considered separately under Article 40, or possibly Article 41.

- 43.7 Any other failure to comply with the requirements of the VAT Law is subject to additional tax under subsection (4) of Article 43. This provision applies if the failure is not specified in Chapter 9 of the Tax Administration Law (including subsections (1), (2) or (3) of Article 43 mentioned above). The amount is Afn.1,000 if a natural person and Afn.4,000 if a legal person. One situation where this additional tax may apply is a failure by a taxpayer to inform the taxation administration within 15 days that an economic activity has ceased.
- 43.8 There is no power to remit the additional tax imposed by this Article. However, the taxation administration can correct its records if this additional tax was incorrectly imposed.

ARTICLE 44 – ADDITIONAL TAX CALCULATION

Article 44	
Additional tax calculation	
(1)	If a tax monetary 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.
(2)	If the tax payable to which an additional tax was imposed is amended, the additional tax related to the tax shall be recalculated.
(3)	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.

44.1 Under subsection (1) of Article 44, additional tax imposed by a provision in Chapter 9 of the Tax Administration Law will cease to apply if a court imposes a tax penalty under a corresponding provision in Chapter 10. A corresponding provision is one that punishes the exact same non-compliance. The possible matching provisions are:

Non-compliance	Additional tax provision	Tax penalty provision
Failure to file	Article 35	Article 45(1)
Failure to withhold or failure to pay withholding tax	Article 36	Article 45(2)
Failure to prepare and maintain books and records	Article 37	Article 45(5)
Failure to provide information	Article 39	Article 45(8)
Making a false or misleading statement	Article 40	Article 45(9)

44.2 The additional tax imposed under Chapter 9 remains in place until the court makes a decision imposing a tax penalty. If the court finds the taxpayer guilty but imposes no tax penalty, the additional tax remains payable.

Example

A taxpayer is the subject of an audit and is found to have understated his income which caused a tax shortfall of Afn.400,000. The auditor imposed

additional tax of Afn.100,000 (25% of the tax shortfall) under Article 40 on the basis that the tax shortfall was caused by a false statement made by the taxpayer in their tax return. The case is then referred to the Attorney General for investigation and possible prosecution.

The additional tax remains payable during the investigation and prosecution. If the case goes to a court and the court imposes an amount of tax penalty under subsection (9) of Article 45 the additional tax imposed under Article 40 will cease. The taxation administration will then issue an amended assessment removing the relevant additional tax. If the taxpayer had paid the additional tax, it shall be refunded.

Additional tax is imposed by assessment notice

- 44.3 No amount of additional tax is payable until it is stated in an assessment notice provided to the person required to pay the additional tax (or their representative). The taxation administration must prepare the assessment notice stating the amount payable and the due date for payment and serve the notice in accordance with Article 53. The reason for the imposition of the additional tax should be stated in the notice or in an attachment to the notice.

Additional tax recalculated if primary tax is amended

- 44.4 Additional tax imposed by Articles 34, 36, 38, 40, 41 and 43(3) is based on a percentage of primary tax. If additional tax is imposed under any of these Articles and the primary tax amount is subsequently changed, the additional tax amount must also be recalculated.

Example

A taxpayer is the subject of an audit and an adjustment is made to their deductions which causes an increase in income tax of Afn.100,000. The auditor considered that a false statement was made concerning the deductions and so also imposed additional tax of Afn.25,000 under Article 40. An assessment notice is issued to the taxpayer requiring the payment of both amounts.

Later the taxpayer files an objection against the assessment, disputing the adjustment made by the auditor. The objection is considered and the decision is that the auditor's decision was partly incorrect. The adjustment made by the auditor is reduced by Afn.40,000, leaving the other Afn.60,000 as still payable. In this case the additional tax under Article 40 must also be recalculated. When recalculated the amount of additional tax will reduce from Afn.25,000 to Afn.15,000.

Order of allocation of payments received

- 44.5 When making a payment to the taxation administration, a taxpayer is entitled to specify what the payment is for. If the taxpayer has more than one tax liability (for example, both income tax and VAT), they may specify that the payment is

for one or the other or a mix of both. The taxation administration must accept the taxpayer's request and allocate the payment to the specified tax account accordingly. If a taxpayer specifies that a payment is for a particular tax, the taxation administration cannot take that payment and assign it to something else.

- 44.6 It is in the interests of taxpayers to pay their original tax amounts first, before paying any additional tax, as this can reduce the amount of further additional tax accrued. This is a reasonable practice for taxpayers to follow and is not an abuse of additional tax rules and procedures.
- 44.7 Under Article 5 a taxpayer has the right to receive from the taxation administration assistance (technical support) to calculate and pay their tax. It is therefore appropriate that advice be given to a taxpayer that is in their best interests. It is also appropriate that the taxation administration should act in the best interests of taxpayers when applying the law. Therefore if a taxpayer makes a payment without specifying what the payment is for, the taxation administration shall allocate the payment in the following priority order:
1. Overdue original tax, paid in order of oldest overdue tax first. Original tax means income tax, BRT, VAT withholding tax or any other basic tax imposed by the tax laws but does not include additional tax or penalties. If more than one original tax amount was due on the same day and the payment is insufficient to fulfil all of these amounts, it shall be allocated with priority in order of amount from largest to smallest.
 2. Next, additional tax amounts in order of time overdue for payment. The time overdue for payment is calculated according to the date the additional tax was assessed, either in a filed tax return or in an assessment notice issued to the taxpayer. If more than one additional tax amount was due on the same day and the payment is insufficient to fulfil all of these amounts, it shall be allocated with priority in order of amount from largest to smallest.
- 44.8 In cases where a person has made a payment without stating the tax liability being paid, the taxation administration may allocate the payment to a tax liability if there are other facts that indicate that the payment was intended to be for that tax liability. For example, if the amount of the payment exactly matches the amount of a tax liability previously notified to the taxpayer in an assessment notice.

CHAPTER 10 – TAX PENALTIES

ARTICLE 45 – TAX OFFENCES

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 27 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 26 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 54 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.
- (11) A person who intentionally attempts in any manner to evade any tax imposed under the tax laws or attempts to avoid the payment of such tax shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of Afn.100,000 and if a legal person to Afn.500,000 or imprisonment for a term not exceeding 1 year, or both.

Article 45(1) – Failure to deliver tax return

- 45.1 Article 35 applies additional tax to routine cases of failure to file a tax return or other document. Subsection (1) of Article 45 is intended to provide a higher level of punishment for the most serious acts of non-compliance in filing tax returns.
- 45.2 What constitutes the most serious cases of failure to deliver a tax return will depend on the circumstances. Relevant factors to consider are:
- The amount of tax expected to be determined in the tax return;
 - The compliance history of the taxpayer, including whether the taxpayer has repeatedly been late or failed to file previous tax returns;
 - The length of delay in filing the tax return.
- 45.3 Generally the taxation administration must have undertaken other enforcement action before referring a person for prosecution under subsection (1) of Article 45. Consideration for referral for prosecution shall only occur when the taxpayer has failed to act upon that enforcement action.
- 45.4 As a minimum, the taxation administration should first issue to the person a notice under subsection (2) of Article 7. If the taxpayer fails to file the tax return within the 30 day period mentioned in that notice, the taxation administration may consider prosecution.
- 45.5 The explanation in this Manual for Article 35 of what constitutes a failure to deliver a tax return and what would be reasonable cause for the failure to deliver the tax return is also relevant to subsection (1) of Article 45. However, note that Article 35 applies to tax returns and other documents required to be submitted under the tax laws, while subsection (1) of Article 45 applies only to tax returns. The meaning of tax returns is defined in Article 3 and is also explained in this Manual.

Article 45(2) – Failure to withhold or pay withholding tax

- 45.6 Article 36 applies additional tax to routine cases of failure to withhold or pay tax from payments subject to withholding tax. Subsection (2) of Article 45 is intended to provide a higher level of punishment for the most serious acts of non-compliance with withholding tax obligations.
- 45.7 What constitutes the most serious cases of failure to deliver a tax return will depend on the circumstances. Relevant factors to consider are:
- The amount of tax the person failed to withhold or failed to pay;
 - The compliance history of the taxpayer, including whether the taxpayer has a previous record of failing to withhold tax;
 - Whether the taxpayer has brought their withholding tax obligations up to date and if so, the length of delay in doing so.
- 45.8 The additional tax under Article 36 is 10% of the withholding tax that the person failed to withhold or failed to pay. The financial penalty available to a court under subsection (2) of Article 45 is also 10% of the withholding tax that the person failed to withhold or failed to pay. The additional punishment under prosecution is therefore only the potential for the court to imprison the offender for a term not exceeding 6 months. Therefore when the taxation administration is considering whether to refer a person for prosecution under this provision the question is whether the seriousness of the non-compliance deserves imprisonment.

Article 45(3) – Failure to comply with Article 19

- 45.9 A liquidator who fails to inform the taxation administration of their appointment within 14 days of their appointment is liable for prosecution under subsection (3) of Article 45. As is the case for other tax offences mentioned in Article 45, only the most serious cases shall be referred for prosecution, as the Attorney General and the courts have limited resources.
- 45.10 What constitutes the most serious cases of by liquidators will depend on the circumstances. The first relevant factor is the amount of tax that the taxpayer in liquidation owed. A liquidator should not be prosecuted under this provision if no tax was owed or the amount of tax was small.
- 45.11 The second relevant factor is whether the tax involved has been or will be subsequently collected by the taxation administration. A liquidator should not be prosecuted if they have complied subsection (4) of Article 19 either by paying the tax from the proceeds of the liquidation or paid the tax personally.

Article 45(4) - Failure to comply with Article 22

- 45.12 A person who fails to comply with a notice under Article 22 is liable for prosecution. Generally this would be the taxpayer whose business is closed under Article 22, if that person re-opens their business during the period of closure required by the notice. Removing the notice without the permission of the taxation administration will also be considered failing to comply with Article 22.

- 45.13 Other persons may also be prosecuted for failing to comply with the notice. For example, employees of the taxpayer may also be considered for prosecution if they ignore the notice. However, if an employee's non-compliance is due to following the instructions of the employer, the person giving the instructions shall be the offender prosecuted under subsection (4) of Article 45 considering, if necessary, Article 47.
- 45.14 Customers who ignore the notice displayed in the taxpayer's business by carrying on business with the taxpayer may also be considered for prosecution as failing to comply with Article 22.

45.15 The use of Article 22 by the taxation administration is a serious enforcement action. Therefore a failure by a taxpayer to comply with the notice will also generally be considered a serious action. Prosecution should be pursued in all cases of non-compliance by taxpayers unless there are exceptional circumstances.

Article 45(5) – Failure to prepare and maintain books and records

- 45.16 A person who knowingly fails to prepare and maintain books and records in accordance with the tax laws may be prosecuted. If convicted, they may be subject to a monetary penalty of Afn.25,000 if a natural person, or Afn.100,000 if a legal person. The court may impose a prison term of up to 6 months. The court may decide to impose the financial penalty or imprisonment or both.
- 45.17 For this provision to apply, it is necessary to prove that the person knowingly failed to comply with their obligation to prepare and maintain books and records under the tax laws. All taxpayers are expected to know their obligations under the tax laws, however in cases where a person has failed to prepare and maintain required books and records the taxation administration must decide between imposing additional tax under Article 37 or referral for prosecution under subsection (5) of Article 45.
- 45.18 Generally the taxation administration will apply Article 37 on the first occasion that a taxpayer is found to have failed to prepare and maintain books and records. When imposing that additional tax, the taxation administration should explain in detail what is expected of the taxpayer in the future. If on a later occasion the taxpayer is found to have ignored that explanation of their obligation to prepare and maintain books and records, referral for prosecution may be considered.
- 45.19 In exceptional circumstances the taxation administration may consider referring a taxpayer for prosecution under subsection (5) of Article 45 on the first occasion they are discovered to have failed to comply with their obligations. An example of exceptional circumstances would be where the taxpayer has deliberately destroyed books and records to prevent the taxation administration from conducting a full audit.

45.20 Following are examples of the application of this provision to serious cases.

Example 1

Bahar Security Company is an Afghan corporation. It provides security services to various businesses throughout Afghanistan. Bahar Security Company has two bank accounts. It has one bank account with a bank in Afghanistan and another bank account with a bank in Pakistan. The taxation administration audits Bahar Security Company for the tax year 1396. During the audit, the taxation administration learns that Bahar Security Company deliberately asked its clients to transfer money to the Pakistani bank account. Bahar Security Company did not record the monies that were transferred to Pakistan as revenue even though the money related to services that it performed in Afghanistan. The company did not maintain any records of the revenues that were earned from these contracts. In this case, Bahar Security Company failed to maintain adequate records of its revenues. Bahar Security Company failed to record the revenue in order to avoid paying the tax that it was required to pay in Afghanistan. Therefore, according to subsection (5) of Article 45, Bahar Security Company may be referred to the Attorney General's Office (Saranwali) for investigation and prosecution.

Example 2

Naemi Security Company is an Afghan corporation. It provides security services to various clients throughout Afghanistan. During the year 1396, Naemi Security Company claims that it has Afn.1,000,000 of revenue and Afn.900,000 of expenses. The Afghanistan Revenue Department learns, upon auditing Naemi Security Company, that it created invoices to justify Afn.250,000 of expenses that did not exist. Naemi Security Company created these false invoices in order to lower its income tax liability. According to subsection (5) of Article 45, the taxation administration may refer Naemi Security Company to the Attorney General's Office (Saranwali) for investigation and prosecution.

Article 45(6) – Failure to provide facilities or assistance

- 45.21 Article 27 of the Tax Administration Law allows authorised taxation officers to enter premises for the purposes of investigating compliance with the tax laws including accessing books, records, computers and related devices and information. Subsection (6) of that Article requires the owner or occupier of the premises to provide necessary facilities and assistance to the authorised taxation officers in performing their duties. A person who fails to comply with this requirement may be prosecuted.
- 45.22 The use of Article 27 by the taxation administration is a serious enforcement action. Therefore a failure by a person to comply with that article will also generally be considered a serious act. Prosecution should be pursued in all cases of non-compliance unless there are exceptional circumstances.

45.23 A person who refuses entry to the premises or part of the premises is committing a prosecutable offence under this provision. A refusal to open storage facilities (such as a filing cabinet) or grant access to computer records may also be prosecuted for this act. A refusal to answer questions that would assist the taxation officers in performing their search of the premises may also be prosecuted.

Article 45(7) – Use of a false taxpayer identification number

45.24 A person who knowingly uses a false TIN may be prosecuted. For these purposes a false TIN may be a number that has never been issued by the taxation administration, or a TIN that has been cancelled, or a TIN that belongs to another person.

45.25 As is the case for other tax offences mentioned in Article 45, only serious cases shall be referred for prosecution, as the Attorney General and the courts have limited resources.

45.26 What constitutes the most serious cases of false use of TIN will depend on the circumstances. Relevant factors to consider are:

- The amount of tax the person avoided or attempted to avoid by using the false TIN;
- The compliance history of the taxpayer; and
- Whether the person has promptly corrected their tax situation.

45.27 Knowingly using a false TIN is a fraudulent act if it seeks to avoid tax, so most cases of such an act should be considered for prosecution. A decision not to refer a person for prosecution would only be justified if the amount of tax involved is small, the person otherwise has a good record of tax compliance and has corrected the tax situation.

Article 45(8) – Failure to comply with a notice under Article 26

45.28 Article 39 applies additional tax to routine cases of failure to comply with a notice under Article 26. Subsection (8) of Article 45 is intended to provide a higher level of punishment for the more serious acts of non-compliance with Article 26.

45.29 The additional tax under Article 39 is applied on a daily rate and is the preferred punishment when a person has provided the items or information requested in the notice but was late in doing so. Subsection (8) of Article 45 should be considered in the more serious cases where a person has failed to provide the items or information requested at all, or if provided, there has been a very long delay in doing so.

45.30 The explanation in this Manual for Article 39 of what constitutes a failure to comply with a notice and what would be reasonable cause for the failure to deliver the tax return is also relevant to understanding the application of subsection (8) of Article 45.

Article 45(9) – False statements

- 45.31 A person who knowingly makes a false statement or makes a statement that is misleading or omits important information is liable for prosecution. This provision seeks to punish a similar act to that mentioned in Article 40, with one important difference. Article 40 may apply to a person who did not know the statement was false or misleading, if it is something that they should reasonably be expected to have known. Subsection (9) of Article 45 only applies where the person actually knew that the statement was false or misleading. In order to prosecute a person under this provision it is necessary to show that the person had knowledge of the statement being false or misleading.
- 45.32 As is the case for other tax offences mentioned in Article 45, only serious cases shall be referred for prosecution, as the Attorney General and the courts have limited resources.
- 45.33 What constitutes the most serious cases under subsection (9) of Article 45 will depend on the circumstances. Relevant factors to consider are:
- The amount of tax the person avoided or attempted to avoid by making the false or misleading statement;
 - The compliance history of the taxpayer; and
 - Whether the person has promptly corrected their tax situation.
- 45.34 In considering whether to refer a case for prosecution, the taxation administration should note that the financial punishment under Article 40 is 25% of the tax shortfall, while the financial penalty available to a court on conviction for the offence is Afn.40,000 for a natural person or Afn.160,000 for a legal person. Depending on the circumstances it is possible that the financial punishment under Article 40 will be higher than that imposed by a court and therefore considering subsection (1) of Article 44 (cancellation of additional tax when a court imposes a monetary penalty) the effect of prosecution may cause the financial punishment to be lower. Except where a term of imprisonment is sought, the taxation should give preference to Article 40 in these cases and not seek prosecution.

Article 45(10) – Breach of confidentiality

- 45.35 Taxation employees who breach the confidentiality requirements of Article 54 may be prosecuted. The confidentiality requirements are explained in this Manual in the section for Article 54.
- 45.36 Other persons who come into possession of taxpayer information obtained from the taxation administration and improperly disclose that information may also be prosecuted.

45.37 Confidentiality of information is an important part of the proper administration of the tax laws. Taxpayers may be reluctant to disclose their information to the taxation administration if they believe it will not be well protected. Therefore the Ministry of Finance should act upon breaches of confidentiality. Minor or accidental breaches may be dealt with through Civil Service disciplinary procedures, but deliberate breaches of confidentiality should generally be referred to the Attorney General for prosecution.

Article 45(11) – Evasion

45.38 Tax evasion is an offence under this provision. Tax evasion is the illegal evasion of taxes by a person. It refers to a deliberate action taken to incorrectly reduce a person's true tax liability. Examples include:

- A taxpayer failing to register with the taxation administration, including failing to apply for a TIN or failing to register for VAT when they know that they are required to do so;
- Failing to file a tax return;
- Omitting income from a tax return, such as declaring lower amounts of sales than the true sales in a tax period;
- Overstating deductions for expenses that were not actually incurred;
- Claiming false values for business assets bought or sold;
- Knowingly claiming exemptions or tax credits when not entitled;
- Disguising transactions so that they are hidden or appear to be something else;
- Deliberately failing to prepare and maintain books and records required under the tax laws.

45.39 In addition to the examples of evasion listed above that are aimed at misleading the taxation administration from knowing the correct tax liability of the taxpayer, subsection (11) of Article 45 also includes as an offence actions taken to avoid payment of tax. This would occur when the taxpayer's tax liability is known by the taxation administration but the taxpayer does something to prevent payment or prevent enforcement of the payment. Examples of attempting to avoid payment may include:

- Transferring money out of Afghanistan (where the only reason for doing so is to put it beyond reach of the taxation administration);
- Non-commercial transfer of property or money to associates;
- Disguising the actual or beneficial ownership of property or money.

45.40 In some cases the act of evasion may be an offence under subsection (11) of Article 45 and also an offence under other provisions of the tax laws. In such cases the person may be subject to prosecution for multiple offences. For example, a taxpayer who deliberately failed to prepare and maintain records may be prosecuted under both subsections (5) and (11) of Article 45.

ARTICLE 46 – OBSTRUCTIONS AGAINST TAXATION EMPLOYEES

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.

- 46.1 Article 46 may apply to a person who directly and physically obstructs a taxation employee from performing their duties, for example, by preventing access to business premises when a tax employee is carrying out action under Articles 22 or 27. It may also apply to actions that indirectly obstruct a taxation employee from performing their duties. Any action by a person that is taken to delay, mislead or prevent a taxation employee from performing their duties is covered by this Article. When referring to obstruction of a taxation employee, it may refer to a specific taxation employee assigned to a task or taxation employees in general performing the duties of the taxation administration.

Example 1

The taxation administration is auditing a company taxpayer and requests the company to provide its daily sales records for the previous tax year. The accountant for the company gathers the requested records and destroys them. The accountant may be prosecuted for obstruction of the auditors in carrying out their audit.

Example 2

A taxation employee is auditing a company taxpayer and requests an interview with the general manager by formal notice under Article 26. The general manager emails the auditor stating that he is out of Afghanistan for the next 2 months on business, but in fact he is actually in Afghanistan and available for interview. The general manager may be prosecuted for obstruction under Article 48 (note that he may also be prosecuted for failing to attend the interview under subsection (8) of Article 45 and also for making a false statement under subsection (9) of Article 45).

Example 3

The taxation administration sends a notice to a bank requesting the bank to suspend transactions on a taxpayer's account in accordance with Article 20. The bank refuses to comply with the request and allows the taxpayer to withdraw all of their funds from their account. The bank may be prosecuted for obstruction under Article 46 because their action has reduced the ability of the taxation administration to enforce payment of tax by the taxpayer.

ARTICLE 47 – ABETTING

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.

- 47.1 Article 47 creates a liability for persons to be prosecuted for an offence under the tax laws even if that person does not commit the offence himself or herself. They will be liable if they aid, abet, assist, incite or induce the principal offender to commit the offence.

Example 1

An importer of goods is required to provide their TIN number on their import documentation provided to Customs. The importer tells their import broker that they do not have a TIN number and instructs the broker to use a number which is false. The importer is liable for prosecution under subsection (7) of Article 45 because they knowingly used a false TIN on their import document. The broker is also made liable by Article 47 for prosecution for the same offence as the importer because the broker assisted in committing the offence.

Example 2

A person is appointed to administer the estate of a taxpayer who has died (and therefore is a liquidator according to the definition in Article 3). The liquidator is responsible for paying the debts of the taxpayer and distributing the assets to the family. There is a large outstanding tax debt owed by the deceased taxpayer. Some of the family advise the liquidator not to inform the taxation administration of his appointment as required by Article 19, as this will reduce the money and assets to be distributed.

If the liquidator acts as advised by the family and fails to comply with Article 19, those family members who incited the liquidator to do this will be liable to conviction for the same offence as the liquidator.

- 47.2 In order for the second person to be liable under Article 47, it is necessary that they knew or should have known the actions of the principal offender were not in compliance with the tax laws. In Example 1 above, the import broker was liable because they knew that the importer did not have their own TIN.

ARTICLE 48 – OFFENCES BY LEGAL PERSONS

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.

- 48.1 A legal person (such as a company) may be prosecuted or an offence under the tax laws. If convicted of the offence, the legal person may be punished by the court with a financial penalty; however it is not possible to punish a legal person with imprisonment because a legal person is not a living person. Furthermore, a financial penalty imposed on a legal person may not adequately punish those natural persons who actually made the decision to commit the offence. For these reasons Article 48 provides that certain natural persons in positions of authority over the actions or management of the legal person may also be treated as having committed the relevant offence.
- 48.2 If a legal person has committed the offence and a relevant natural person meets the conditions mentioned in Article 48, both the legal person and the natural person may be prosecuted. If the court decides on a conviction in both cases, the court may punish both the legal person and the natural person as it decides, including imposing the same financial penalty on each.
- 48.3 The liability of natural persons under Article 48 is not limited to those who are formally appointed to the position or are documented as holding the position. A person whose actions are similar to a person in an official holder of a position may be liable for prosecution. A person who temporarily acts in the position may also be liable for committing an offence.

Example

The Masoor Trading Company is owned by Masoor and his family. Mujeeb, the husband of one of Masoor's daughters runs the business from day to day but has never been formally employed as the general manager because it is a family arrangement. Mujeeb signs documents and contracts on behalf of the company and all of the employees answer to him as the general manager. If the company commits a tax offence, Mujeeb may be considered

for prosecution for that offence (subject to the conditions mentioned in subsection (2) of Article 48).

- 48.4 Directors and other natural persons mentioned in subsection (1) of Article 48 are not liable for an offence committed by the company if they meet the conditions in subsection (2) of that Article. If the taxation administration is satisfied based on its investigations and evidence obtained that a particular natural person meets the conditions in subsection (2), it should not refer that person for prosecution.
- 48.5 In cases where a natural person is referred for prosecution due to Article 48, that person may defend themselves in court by arguing that subsection (2) applies to their circumstances.
- 48.6 There are two conditions in subsection (2) of Article 48 that a natural person must meet if they are to avoid liability for an offence committed by the company. Both conditions must be satisfied.
1. The natural person had no knowledge of the actions or non-compliance of the company which constitute the offence; and
 2. The natural person has exercised proper care and attention to their duties to prevent the offence occurring.

Example 1

Four brothers are directors of a company. One of the brothers, Sediq, is in India studying for a year and during that year is not involved in the daily operations and decisions of the company. The company fails to withhold tax from salaries paid to employees for three months while Sediq is away on study. Sediq had no knowledge of this failure to withhold while he was away. He will not be liable for prosecution for this offence.

Example 2

Continuing the same facts as the previous example the brothers in Afghanistan generally divide the duties of managing the company between themselves. One brother, Amanuddin, has responsibility for paying the employees and the related administration of these duties including withholding and paying tax from these salaries. The brothers meet regularly to discuss the business and at these meetings Amanuddin always provided reports to his brothers that all pay obligations were completed and up to date.

In this case Amanuddin may be prosecuted for the offence committed by the company (failure to withhold and pay withholding tax). His other two brothers present in Afghanistan would not be prosecuted or may defend themselves in court if prosecuted on the basis that they had no knowledge of the offence committed. Furthermore, they may claim that they exercised proper care and attention to their duties as directors by regularly obtaining reports on pay matters which they did not know were false.

ARTICLE 49 – COMPOUNDING PROSECUTION

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.

49.1 The taxation administration may, when it discovers evidence that an offence has been committed under Chapter 10 by a person, refer that person to the Attorney General for prosecution.

49.2 However, in some cases the taxation administration can compound the offence. Compounding an offence generally means that instead of referring the person for prosecution, the taxation administration requires the person to pay an amount as punishment for the person's wrong actions. Compounding of an offence may be done for the purpose of simplifying the process of punishment and to have it carried out more quickly. It can also save costs of investigation and prosecution that would be incurred by the Attorney General and the courts if it went to trial.

Agreement in writing to compound the offence

49.3 Before the taxation administration can compound an offence, the offender must admit to committing the offence. The admission must be in writing. This means that compounding an offence requires agreement between the taxation administration and the offender.

- 49.4 Neither party is obligated to agree to compound the offence. It is a choice that each party can make. As for any such choice, each party will make their decision weighing up the advantages and disadvantages.
- 49.5 On the taxation administration's side, it may agree to compound the offence under Article 49 if it gives a fast resolution to the case yet still imposes some punishment on the offender. Agreement may save some expense of investigation either by the taxation administration or the Attorney General. The taxation administration may therefore be prepared to settle for payment of a lower amount than a court would impose if the case went to prosecution. Alternatively, if it believes the offence deserves a higher punishment than the offender is willing to accept, the taxation administration can insist on pursuing prosecution.
- 49.6 On the offender's side, they may choose to admit to the offence and pay the amount required by the taxation administration if it avoids the risk of additional punishment if the case went to court. They may also want to finalise the matter as quickly as possible so that they can get on with their business without worry. Alternatively, if the accused offender believes they are not guilty of the offence or they believe they will get a lower monetary penalty from the court, they may choose not to agree to compound the offence.
- 49.7 It can therefore be seen that compounding an offence may be beneficial to both the taxation administration and the offender.
- 49.8 By making the agreement to compound contingent (dependent) on the payment of the agreed amount by the specified due date, the taxation administration protects its ability to refer the case for prosecution if the person does not follow through with their side of the agreement. If the agreed amount is paid by the due date, the agreement is final and the offence is taken to be compounded. No prosecution is then allowed under the law – Article 49(4).
- 49.9 In order to encourage a balanced negotiation of an agreement, any admissions or statements made by either party when negotiating an agreement to compound an offence must not be used by either party for any other purpose, even if final agreement is not achieved.

Example

Mujeeb has a business that has been audited by the taxation administration. The auditors determine that Mujeeb has failed to withhold tax from salaries paid to some employees. The taxation administration is considering referring Mujeeb for prosecution of an offence under subsection (2) of Article 45, however the case is not one of the most serious examples of non-compliance since it only involved a small number of employees. This is the first time Mujeeb has been found to have committed a potential offence. The taxation administration is also aware that the Attorney General's office has a heavy workload of cases and successful prosecutions are taking a long time to obtain a conviction.

In this case the taxation administration may consider compounding the offence. It may propose this to the taxpayer, informing him that it would agree to compound the offence (not pursue prosecution) if he admits to the offence and agrees to pay all of the outstanding withholding tax plus a monetary penalty of 10%.

The taxation administration meets with Mujeeb and discussions are held about the terms of the agreement. Mujeeb says he is willing to admit the offence but makes a counter offer to pay a monetary penalty of 5%. The offers and admissions made during the negotiation process by both Mujeeb and the taxation administration are not binding until both parties reach agreement. Mujeeb's offer to admit to the offence cannot be used against him outside the meeting.

Restriction on compounding – first time offence

- 49.10 The taxation administration may only compound an offence by a person if it is the first time that it was committed by that person. If the person has previously been convicted by a court of the same type of offence or has previously had the same offence compounded by the taxation administration, that offence cannot be compounded.

Example 1

A person is appointed as a liquidator for a taxpayer in Sawr 1396 and fails to notify the taxation administration of their appointment as required by Article 19. The taxation administration discovers this non-compliance in Sonbola 1396. The person's failure is an offence under subsection (3) of Article 45.

This is the first time that the person has been a liquidator and failed to comply with Article 19 so the taxation administration decides to compound the offence and requires the person to pay an amount as punishment.

Three years later, in Sawr 1399 the person is appointed as a liquidator for a different taxpayer and again fails to notify the taxation administration of their appointment as required by Article 19. The taxation administration discovers this non-compliance in Asad 1399. Since this person has already had the same offence compounded previously, it cannot be compounded again.

- 49.11 Offences described by different Articles are different offences for the purposes of determining whether a person is a first time offender. An offence compounded or a conviction obtained under one Article will not restrict compounding of an offence under a different Article.

Restriction on compounding – excluded offences

- 49.12 Compounding is not permitted for three specified offences. These are – subsection (1) of Article 45 (failure to deliver a tax return), subsection (5) of Article 45 (failure to maintain proper records) and subsection (9) of Article 45

(making a false statement). All other offences mentioned in Chapter 10 may be compounded.

Timing

49.13 The taxation administration may decide to compound an offence even after referral of the case to the Attorney General. Agreement of the Attorney General is not required for any compounding. A decision to compound may be made by the taxation administration solely on its own judgement or on advice of the Attorney General.

49.14 If compounding of an offence occurs after referral to the Attorney General for the same offence, the taxation administration should inform the Attorney General as soon as possible. Subsection (4) of Article 49 would then prevent the Attorney General's office from prosecuting the person for the tax offence that has been compounded.

Amount to be paid for compounding

49.15 The amount to be paid by the person accused of committing the offence is a decision for the taxation administration, only limited by the maximum amount of monetary penalty prescribed for the offence.

49.16 When determining the amount to be paid, the taxation administration will consider all relevant circumstances. Some factors to consider, and the effect on the amount to be paid, are:

- The maximum fine specified for conviction;
- The amount and quality of the evidence available showing that an offence was committed (good evidence suggests going for a higher amount, poor evidence suggests settling for a lower amount);
- The prospects for successful prosecution and conviction if referred to the Attorney General (good prospects suggest going for a higher amount, poor prospects suggest settling for a low amount);
- Any history of the amount of penalties and imprisonment imposed by courts for similar offences (considering average penalties imposed by courts when similar cases have been prosecuted);
- The persons' compliance history (a good record of complying with all tax obligations suggests a lower amount would be suitable);
- Any explanations provided by the person or mitigating circumstances for their commission of the offence ;
- The costs to the government and the court system in pursuing a prosecution.
- The person's ability to pay.

Example 1

The taxation administration discovers that Bashir has been using a false Taxpayer Identification Number. This is an offence under subsection (7) of Article 45 and if convicted the person may be penalised by a court up to Afn.100,000. The taxation administration can therefore consider compounding this offence for payment of up to Afn.100,000.

The taxation administration has obtained documents signed by Bashir where he has quoted a false Taxpayer Identification Number. The digits are very different to his real Taxpayer Identification Number, so it is clear that it was not an honest mistake.

Bashir has a history of filing his returns late in some years and also paying his taxes late. In a prosecution of another taxpayer recently, the court imposed a monetary penalty of Afn. 90,000.

The circumstances indicate that an amount at the higher end of the range, between Afn.80,000 to 100,000 would be justified. This is because there is good evidence and it shows that Bashir's use of the false Taxpayer Identification Number was clearly deliberate. Bashir has a poor record of compliance and it appears that if it went to full prosecution it would be expected to receive a similar amount in monetary penalty.

Example 2

The taxation administration discovers that Hedayat, who operates a travel agency business, has not been withholding tax from salaries paid to his employees. Since he started the business a year ago, he has failed to withhold and pay to the taxation administration Afn.200,000.

Subsection (2) of Article 45 allows a court to impose a monetary penalty of up to 10% of the amount related to the failure. Since the amount he has failed to withhold and pay is Afn.200,000, the maximum monetary penalty possible on prosecution is 10% - which is Afn.20,000.

Hedayat claims that he did not understand his obligation to withhold tax. He has had no other history of problems with his taxes. As soon as he learned of his mistake he paid his arrears and is now completely up to date.

Looking at recent court cases it appears that courts have usually imposed the maximum monetary penalty or close to the maximum. However the court cases take a long time and use up a lot of resources of the Attorney General in investigations.

Considering all of the circumstances, the taxation administration could agree to compound the offence for payment half of the maximum possible monetary penalty.

[Previous Income Tax Law offences](#)

49.17 For the purpose of applying the rule that only first time offences may be compounded, a former offence under the Income Tax Law that concerns the same act as an offence under the Tax Administration Law shall be treated as the same offence. For example, an offence under the former Article 101 of the Income Tax Law (failure to maintain records) is to be treated as the same as the offence under 56 of the Tax Administration Law.

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ARTICLE 50 – TIME LIMIT FOR PROSECUTION

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.

- 50.1 The offences in Chapter 10 are the responsibility of the Attorney General to investigate and prosecute. The Attorney General can only file a case in court within 5 years of the date that the tax offence was committed. A case cannot be filed after that time.
- 50.2 For the purpose of calculating the five year period, the time of commission of the offence is generally the due date for compliance with an obligation under the tax laws.

Example 1

The offence under subsection (1) of Article 45 is taken to be committed on the final date that the tax return was due if the tax return is not filed by that date (or a later date permitted by the taxation administration under Article 7).

Example 2

The offence under subsection (8) of Article 45 is committed when the person fails to meet the due date specified in the notice under Article 26.

- 50.3 The time of an offence under subsections (7) and (9) of Article 45, or Articles 46 or 47 is the date that the act was done by the person. The time of an offence under subsections (2), (3), (4), (6) and (8) of Article 45 is when the person fails to do the act that should have been done. In the case of subsection (5) of Article 45 (failure to maintain proper records) the time of the offence is measured from the end of the tax period for which records have not been maintained.
- 50.4 The time limit imposed by Article 50 only refers to prosecution of offences under Chapter 10 of the Tax Administration Law. It does not affect the time for prosecution under other laws of Afghanistan (for example, Criminal Law) if a person has contravened such a law. Any time limits for offences outside of the Tax Administration Law would be considered under that other relevant law.

ARTICLE 51 – MISUSE OF POSITION

Article 51

Misuse of position

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

- 51.1 Various laws of Afghanistan cover the expected behaviour of taxation employees and provide punishments in certain cases where an employee acts contrary to those laws. Taxation employees are expected to act in accordance with their duties. They must not benefit or attempt to personally benefit from their position contrary to their duties or contrary to the interests of the taxation administration, the Ministry of Finance or the Government.
- 51.2 Laws that affect employees include:
- Criminal Law;
 - Anti-Corruption Law; and
 - Civil Service Law.
- 51.3 Article 51 imposes an obligation on the Ministry of Finance to ensure that any taxation employee who acts contrary to law must be punished. Taxation employees who observe another employee acting contrary to law must report this to an appropriate manager. Management must investigate and where necessary take appropriate action including necessary disciplinary action under the Civil Service Law and/or referral for prosecution.

CHAPTER 11 – FORMS AND NOTICES

ARTICLE 52 – PREPARING 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.

- 52.1 Subsection (1) of Article 52 requires the taxation administration to make available to the public all necessary forms and other documents prescribed by the tax laws. The taxation administration should also make available relevant instructions or guides necessary to assist taxpayers in completing forms and meeting their obligations under the tax laws.
- 52.2 If the taxation administration fails to comply with this requirement to provide forms or other documents to a taxpayer that are necessary for the taxpayer to comply with their obligations under the tax laws, the taxpayer may be considered to have reasonable cause for their delay in complying until such time as the required form or document is provided.

Example

A taxpayer in Balkh province is required to file a tax form by a date specified in the tax law. He visits the tax office in Mazari Sharif before the due date but is told that the form is not available as the office is waiting on supplies of the form from Kabul. The form is only produced in hard copy. The form is not available until one month after the due date for filing. The taxation administration has therefore failed to comply with its obligation to make the form available when needed by the taxpayer. The taxpayer has reasonable cause for their failure to file on time and so the additional tax mentioned in Article 35 will not apply.

- 52.3 Subsection (2) of Article 52 refers to official notices issued to taxpayers, for example assessment notices issued to a taxpayer under the tax laws or notices issued to a person under Articles 16, 19, 20, 21, 22, 23, 24 and 26 of the Tax Administration Law. An official notice is only valid if it is signed by an appropriately authorised person in the Ministry of Finance or it has the official stamp of the Revenue Department. Whether a person is appropriately authorised depends on whether that person (or the position they hold) has the delegated authority issued by the Ministry of Finance.

ARTICLE 53 – SERVICE OF NOTICE

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.

53.1 There are many situations in the tax laws which require the taxation administration to provide a written document to a taxpayer – for example assessment notices, amended assessment notices and objection decisions. In some cases it may be to another person – for example a document to be given to a third party under Article 16. Article 53 provides the rules and procedure for determining whether a document has been properly served under the tax laws.

53.2 If there is no specific rule in the relevant provision in the tax law concerning serving a written document, Article 53 applies. In many cases there are time limits for a taxpayer or another person to act on the document (for example, a time limit to file an objection against a taxation decision) and these time limits are generally measured from the time that the document is served under the law.

Served to a person

53.3 A document is served to a person if it is delivered to that person by hand, or delivered by hand to their representative. In these cases it does not matter where this happens, it may be done at an office of the taxation administration, the home or business premises of the person, or any other location.

53.4 The person delivering the document should have two copies of the document – an original to leave with the recipient and a copy, which the recipient is requested to sign as evidence of its delivery. The person delivering the document should note the date, time and place of the delivery. If the recipient refuses to sign a record of delivery, the person delivering the document shall sign it themselves attesting to the delivery.

53.5 A representative for these purposes means a representative as defined in Article 3. In order for this to apply, the recipient must be a representative at the time that the document is delivered.

Served to an address

53.6 A document may also be served to a person if it is delivered to their last known place of abode or place of business. In this case it is not necessary for the document to be handed to a person who is a representative as defined in Article

3. It can be handed to any person entitled to be present at the premises of delivery – for example a relative of the taxpayer or an employee of the business of the taxpayer.

Whole or partial compliance with an invalid notice

- 53.7 Where a person wholly or partially complies with a notice, they cannot later challenge the validity of service of the notice. This is the case even if the notice was not validly served. The effect of subsection (2) of Article 53 is that if a person wishes to challenge the validity of service of a notice they must do so before they take any action to comply with the notice. If the person acts to fully or partially comply with the notice this is deemed to be acceptance of the validity of service.

Example

Wahid is an employee of the Balk Trading Company. Wahid has a tax liability which is overdue for payment. The taxation administration prepares a notice under Article 16 to require Wahid's employer to deduct an amount from his salary and pay it to the taxation administration.

The taxation administration mistakenly delivers the notice to the owner of a shop next door to the main office of the Balk Trading Company. The shop owner is unrelated to the Balk Trading Company. The notice is therefore not validly served under subsection (1) of Article 53.

However as the notice is addressed to the Balk Trading Company and the shop owner knows this is his neighbouring business, the shop owner takes it to the company office next door and hands it over. The Balk Trading Company starts to comply with the notice by making a deduction from the next salary payment due to Wahid. After making one payment of the deducted amount to the taxation administration, the company tries to claim that the notice was not validly served and it should not be required to comply with it.

In this case since the company acted in partial compliance with the notice, the challenge to the validity of service must be rejected. The company must continue to comply with the notice even though it was not originally correctly delivered.

ARTICLE 54 – CONFIDENTIALITY OF INFORMATION

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.

- 54.1 Any information that a taxation officer obtains during the course of their duties is confidential. Any documents that come into their possession when performing their duties are also confidential.
- 54.2 Article 5(2)(b) also gives a taxpayer the right to confidentiality of their information.
- 54.3 The confidentiality requirement means that information and documents must not be disclosed by a taxation officer to any other person (including another taxation officer), except if the disclosure is:
 - Necessary for the performance of their duties as a taxation officer.
 - To the Tax Disputes Resolution Board or a relevant court in the course of proceedings under the Tax Administration Law.
 - To other Departments of the Government if it is necessary for the performance of their official functions.
 - Any foreign state based on an agreement between the Islamic Republic of Afghanistan and that state requiring such provision of information.
 - In the case of taxpayer information, to that taxpayer.
 - In the case of taxpayer information, to a representative of the taxpayer or a tax accountant authorised by the taxpayer to act on their behalf.
- 54.4 What is necessary for the performance of the duties of a taxation officer depends on the duty statement of that person and the tasks allocated to them by their manager or supervisor.
- 54.5 Information or documents that are confidential may be disclosed outside of the restrictions imposed by Article 54 if the taxpayer grants their approval. For example, the taxation administration may disclose information to an advisor of

the taxpayer if the taxpayer approves. Since unauthorised disclosure is an offence, a taxation officer disclosing information on these grounds should ensure that the taxpayer's permission is obtained in writing.

- 54.6 The confidentiality restriction is not limited to taxation material. All information or documents obtained are confidential even when not relevant to taxation. Special care should be taken with information or documents that are commercially valuable or that contain trade secrets. Material that is not relevant to determining a taxpayer's tax obligations should not be retained within the taxation administration.
- 54.7 Information received by a taxation officer related to one tax may be used or disclosed to another taxation officer for the purposes of administering another tax. For example, information collected for VAT purposes by a taxation officer can be used and disclosed to another taxation officer who requires the information for administering income tax.
- 54.8 Disclosure of information about a taxpayer for VAT purposes between taxation officers and customs officers is authorised by this Article when it is necessary for the purposes of performing their duties (administering the VAT).
- 54.9 An example of authorized provision of information to a foreign state is where an Article in a Tax Treaty with that foreign state provides for the exchange of information.
- 54.10 In addition to the above exceptions to disclosure, a taxation officer is also permitted to disclose a taxpayer's information and documents to that taxpayer. Article 5 gives taxpayers various rights, which include the right to receive assistance on their tax affairs, the right to receive in writing answers to questions concerning their tax affairs, and the right to access information on them kept by the taxation administration. Article 5(1)(d) also provides the right to representation, so disclosure of a taxpayer's information or documents extends to disclosure to their authorized representative including and authorised tax accountant.
- 54.11 Confidentiality of information and documents goes beyond taxpayer information to include such matters that are internal to the Ministry and for which a taxation officer is not authorized to disclose to others. Whether a taxation officer is authorized to disclose particular internal information depends on the duties and authorities of their position.
- 54.12 Breaches of confidentiality may be subject to disciplinary action by the Ministry of Finance, including termination of employment.
- 54.13 All breaches are an offence under subsection (10) of Article 45 and if convicted, an offender may be penalised up to Afn. 100,000 or imprisoned for up to 2 years, or both.
- 54.14 Documents or information may be disclosed to the Tax Disputes Resolution Board or a Court by the taxation administration if it is necessary for the Board

or the Court to perform its functions of review of a taxation dispute. The officers of the Board and Court are bound by Article 54 to observe the same confidentiality restrictions as taxation officers when they receive such documents or information.

- 54.15 Documents or information may be disclosed to the other Departments of the Government where necessary for the performance of their official duties. Disclosure may be permitted to the Customs Department if Customs are carrying out compliance checks on importers. Disclosure will also be lawful when disclosed to the Attorney General for the purpose of that Department investigating tax offences.
- 54.16 In some cases it may be necessary for the Revenue Department to provide limited information to licensing authorities in order to assist those Departments in performing their functions.
- 54.17 In any case of disclosure of information to another Department of the Government, the disclosure shall be limited to only such documents or information that is necessary and relevant to achieve the purpose of the disclosure. For example, a disclosure to a licensing authority would generally be limited to basic information about the existence and activities of a business. It would not be necessary to provide details of the income and deduction amounts for such a taxpayer.
- 54.18 Documents or information may be disclosed to a foreign state if a tax treaty is in effect between Afghanistan and that other state. Disclosure will only be permitted to the competent authority named in the tax treaty, which is customarily a similar counterpart to the Revenue Department in the foreign state. It is also customary for such tax treaties to include a confidentiality requirement that imposes an obligation on the foreign tax authority to restrict the use of the documents or information to only those activities necessary to fulfil its tax administration functions.

ARTICLE 55 – ESTABLISHMENT OF THE BOARD

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 elected by a majority of the Board members.
- (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) 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.

- 55.1 Article 55 provides for the creation of the Tax Disputes Resolution Board and the appointment procedure for members of the Board. The Minister of Finance proposes appointees for approval by the Council of Ministers.
- 55.2 Subsection (1) of Article 55 specifies the qualifications required for persons to be appointed to the Board. The listed qualifications are intended to provide a range of relevant expertise to the Board. While subsection (1) states that five members shall be appointed, one from each category of qualification listed in the subsection, under subsection (3) of Article 55 the Minister may appoint more than five persons if needed (for example if the number of Appeal cases and workload of the Board requires more members). The Minister may also vary the number of proposed members from each qualification categories listed in subsection (1), provided the Council of Ministers approves the change in composition from that stated in subsection (1).

Qualifications

- 55.3 Appointment to the Board is subject to meeting a qualification requirement. An appointee must meet at least one of the following conditions at the time of their appointment:
1. Be an economist with at least a Bachelor's Degree and at least five years of work experience in this field.
 2. Be a legal practitioner with at least a Bachelor's Degree and at least five years of work experience in this field.
 3. Be a professional accountant with at least a Bachelor's Degree and at least five years of work experience in this field.
 4. Be a tax specialist with at least a Bachelor's Degree and at least five years of work experience in this field. The work experience may be with the Afghanistan Revenue Department, the private sector, or a combination of both. If the work experience is with the Afghanistan Revenue Department, the appointee must have resigned or retired from that employment before appointment to the Board in order to avoid a conflict of interest. In the case of work experience in the private sector, relevant work experience is previous employment in a role where a principal responsibility of the position was attending to the tax obligations of the employer, or alternatively working in or operating a business providing tax services to clients.
 5. Be a professional of any kind with at least a Bachelor's Degree in Law or economics and at least five years of practical experience in the private sector.
- 55.4 A serving or retired Judge may be appointed as a member of the Board as qualified under item 2 mentioned above.

ARTICLE 56 – DISSATISFACTION WITH OBJECTION DECISION

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 objection 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.
- (4) The Tax Disputes Resolution Board meetings manner shall be regulated by a separate procedure (Tarzulamal).

56.1 Where a taxpayer filed an objection under Article 11 with the taxation administration and they are dissatisfied with the decision of the taxation administration on that objection (or there is a failure to provide the taxpayer with a decision within the time period mentioned in subsection (6) of Article 11) the taxpayer may file an application with the Tax Disputes Resolution Board. The application must be in the approved form and must be filed within 30 days of receiving the decision (or within 30 days of the failure to receive a decision).

56.2 A taxpayer may choose to file a case with the Board concerning all of the subject matter disputed in their objection, or only part of the subject matter if they only wish to pursue part of the subject matter for further dispute.

Example

Khushal's business is audited by the taxation administration and some problems are found with his tax return. An amended assessment is issued with three adjustments for items determined in the audit. The amended assessment includes additional income of Afn.50,000, disallowing an expense that he claimed of Afn.20,000, and imposing additional taxes for false or misleading statements and also late payment of Afn.23,000. Khushal now accepts the income adjustment but disputes the expense adjustment. He can choose to take only the part of the assessment concerning the expense as a dispute to the Board.

57.3 The Tax Disputes Resolution Board is part of the Ministry of Finance. Information on procedures for filing a case with the Board and contact details for the Board may be obtained from the Ministry of Finance. At commencement of the Tax Administration Law the Director General Administration provides

administrative assistance to the Board. He is responsible, through his staff, for receiving applications and other documents on behalf of the Board.

- 56.4 The procedures (Tarzulamal) for meetings of the Board are developed on the advice of the Board and approved by the Minister. Relevant procedures include the number of members necessary to be assigned to a case and how a decision is to be made where there is a disagreement among members of the Board assigned to the case.
- 56.5 The application form for filing a case with the Board is also approved through the same process. There are two approved forms:
- Application for review by the Tax Disputes Resolution Board
 - Application for an extension of time
- 56.6 The chairperson of the Board shall be informed by the DG Admin when applications are received and the date that it was received. The chairperson must schedule a hearing of the Board within 60 days from the date that an application is filed. He must inform all of the other members of the date of the hearing and the details of the cases to be examined. All members shall be provided with copies of the documents filed by the applicant. The parties to the dispute (the applicant and the taxation administration) must be informed of the date of the hearing at least 30 days before the hearing. The chairperson may perform these duties himself or request the DG Admin to fulfil the duties.
- 56.7 The applicant is entitled to attend the hearing himself or send an authorised representative. Both may attend. The authorised representative can be any person including a lawyer. The taxation administration may send employees or authorised representatives (such as lawyers) or both to make its case. All parties may make written submissions or oral submissions or both, for the purpose of presenting their arguments to the Board. Either party may also choose not to attend and rely only on their written submissions. Either party may bring other persons to present evidence to the Board, for example technical experts or witnesses.
- 56.8 A Board hearing is valid if at least three Members are in attendance. A hearing may be valid with a lesser number of members attending only if both parties to the dispute agree.
- 56.9 The chairperson of the Board will chair the hearing if he attends the hearing. If he is not attending but has authorised in writing another Member to be chair, that member shall be the chair. If no chair is identified by these rules, the Members attending shall elect a chair.
- 56.10 A Member who has a financial interest in the case must inform the Board chairperson of this fact and not attend a hearing on that case.
- 56.11 Any decision made at a hearing must be by a majority of the Members present. Any decision on the case after a hearing must also be by majority. In the case of a decision where the number is equally divided and the decision concerns

an assessment or other tax decision made by the taxation administration, the decision shall be deemed to be in favour of the taxation administration. That part of the assessment or taxation decision is treated as confirmed.

56.12 Where needed, the Members at a hearing may decide to suspend the hearing on a day and schedule a further hearing for another day. The next hearing must be within 30 days of the first hearing. The second hearing is treated as a continuation of the case and the parties have the same rights and obligations as for the first hearing. A third hearing or more hearings for the case may be scheduled as required.

56.13 The Board must make a decision on the case within 90 days of the final hearing.

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ARTICLE 57 - DECISION BY 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.

- 57.1 In making their decision on a case, each member of the Tax Disputes Resolution Board must consider the relevant tax laws (including regulations) and any facts and evidence presented by the taxpayer and the taxation administration in support of the respective parties' contentions and arguments. As provided in Article 14, the taxpayer is responsible for proving the incorrectness of the decision made by the taxation administration and each member of the Board will consider whether the taxpayer's arguments and evidence is accepted. The Board members may also consider arguments and evidence presented by the taxation administration.
- 57.2 On legal questions each member must apply their understanding of the tax laws and other relevant laws of Afghanistan to the facts of the case. Board members will consider rulings and guides issued by the taxation administration where relevant to the case but are not obligated to follow a ruling or guide if the member believes that the ruling or guide is not in accordance with the tax laws. A Board member may also consider information in a tax law Manual but is also not obligated to follow it if they believe it is not in accordance with the tax laws.
- 57.3 In a case where the Board makes a decision which is contrary to the taxation administration's position in a guide, public ruling or Manual and the taxation administration does not file an appeal to a court to have the decision reversed, the taxation administration shall be deemed to have accepted the Board's decision as the correct interpretation of the tax laws and it should withdraw and correct the guide, ruling or Manual.

ARTICLE 58 – POWERS AND DUTIES OF THE BOARD

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 which 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.

58.1 The Board is provided with wide powers by subsection (1) of Article 58. In relation to taxation assessments disputed by a taxpayer, the Board may confirm the assessment, reject the assessment in full, or partially amend the

assessment. Any rejection or amendment of an assessment must be in accordance with the subject matter disputed by the taxpayer.

- 58.2 A taxpayer is not permitted by law to raise new areas of dispute that were not part of their objection case and therefore the Board cannot not consider any new issues that were outside the scope of the taxpayer's dispute as filed with the Board. The Board cannot amend an assessment or make an order to the taxation administration to do something which was not part of the taxpayer's claims in their dispute as filed with the Board.
- 58.3 Persons appearing before the Board are expected to be honest and truthful when providing information. A person who makes a false statement to the Board cannot be directly punished by the Board, whoever it can indirectly impose a punishment by including in its final decision and order to the taxation administration to impose additional tax under Article 40 in a new assessment. The Board may also refer a case of a suspected false statement to the Attorney General under subsection (9) of Article 45.
- 58.4 The Board may amend an assessment to decrease the tax payable. In some cases the Board may increase the tax payable in an assessment, for example where it is a consequential increase in tax in one period as a result of a decision decreasing tax in another period – provided that the amendments are all directly relevant to the subject matter of the dispute.
- 58.5 The Board may choose to refer a case back to the taxation administration for determination of the tax in accordance with instructions given by the Board. For example, where the Board has made a decision on the legal principles applicable to the case but further facts unknown to the Board are necessary to determine the tax, the Board might refer the case to the taxation administration to determine the tax in accordance with their decision after gathering the necessary facts. As the taxation administration has the systems and stationery for the issue of assessments it is expected that where the Board determines that an assessment or amended assessment should be issued to a taxpayer, it will order the taxation administration to do it in accordance with instructions given.
- 58.6 In the case of taxation decisions that are not taxation assessments, the Board may affirm or amend the taxation decision or substitute a new decision. An amended or new decision overrides the original decision made by the taxation administration and has effect under the tax laws as a replacement of the original decision.
- 58.7 The Board may choose to refer a case back to the taxation administration for reconsideration of a taxation decision in accordance with instructions given by the Board. For example, where the Board has made a decision on the legal principles applicable to the case but further facts unknown to the Board are necessary to determine the tax, the Board might refer the case to the taxation administration to reconsider the relevant taxation decision after gathering the necessary facts.

- 58.8 All of the above is subject to the right of appeal to a court by either party (the taxpayer or the taxation administration, or both) under subsection (2) of Article 12. The taxation administration is not obliged to carry out the decision of the Board until the decision of the Board is final – not appealed to a court within the 30 days required under subsection (3) of Article 12. Once the decision is final, the taxation administration must comply with the decision and any instructions or orders issued by the Board.
- 58.9 The Board is required to record its decision on a case in writing. The written decision must explain the reasons for the decision including the facts accepted or rejected in making their decision, the evidence relied upon and the legal reasons for the decision. A copy of this document must be provided to each party to the dispute (the taxpayer and the taxation administration) within 7 days of issuing the decision. A failure by the Board to comply with any of these requirements may be grounds to be included in an appeal to a court.
- 58.10 In order to provide transparency and also to provide guidance to other taxpayers who may have similar tax issues to those decided in a case before the Board, the Board must publish each decision on a dedicated website available for access by the public. The decision must be edited to remove or make anonymous details that would identify the taxpayer, but otherwise the written decision issued to the parties to the dispute shall be reproduced in full on the website.

CHAPTER 12 – TAX CLEARANCE CERTIFICATES AND REFUNDS

ARTICLE 59 CERTIFICATE

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.

- 59.1 Government authorities and agencies with responsibility for issuing business licenses or licenses to operate economic activities can only issue or renew a license if the applicant provides a tax clearance certificate. Applicants are therefore required to obtain a tax clearance certificate from the taxation administration when applying for such a license or renewing the license.

Example 1

Ghaznawi Company obtained its license for commercial activities at the beginning of Sonbola 1395 from the Ministry of Commerce which is valid until the beginning of Sonbola 1398. In Asad 1398, the manager of Ghaznawi Company applies to the Ministry of Commerce to renew its license. When filing the application for renewal of the license, he should provide a tax clearance certificate obtained from the taxation administration. The Ministry of Commerce is required to demand the filing of the certificate with the application and must not renew the license if the manager fails to provide the certificate.

- 59.2 Taxpayers may request a tax clearance certificate from the taxation administration in writing or in person by visiting a taxation administration office. Subsection (1) of Article 59 requires the taxation administration to issue a certificate within 21 days of receiving the request, provided the person has filed their tax returns and paid their tax liabilities. This effectively requires the taxation administration to promptly conduct internal checks of its records and issue the certificate or decide to refuse the request within 21 days.
- 59.3 Afghanistan's tax laws operate on a system of self-assessment. Taxpayers prepare their own tax returns and are required to file their tax returns by the

due date and pay their taxes by the due date. Tax returns are presumed to be correct unless the taxation administration has evidence to prove otherwise. Therefore, the question of whether a taxpayer is entitled to a tax clearance certificate is to be answered according to the records of the taxation administration at the time the taxpayer makes the request for the certificate based on the self-assessment system.

Example 2

Following the same facts as in Example 1, the manager of Ghaznawi Company visited his local taxation administration office on 1 Asad 1398 to request a tax clearance certificate for the company. The taxation administration's records show that the company has filed its annual income tax return for 1397 and earlier years. The company has filed all required withholding tax returns due up to 1 Asad 1398. The company is registered for VAT and a check of the taxation administration's records also shows that it has filed its VAT return for the quarter ending Jawza 1398 and all previous quarters. The tax payable as recorded in those tax returns was paid when the tax returns were filed and the company has a nil balance payable on all of its tax accounts.

The taxation administration is required to issue a tax clearance certificate to the company. It must issue the certificate on or before 22 Asad 1398.

- 59.4 The initiation or conduct of an audit of the taxpayer does not relieve the taxation administration from its obligation to issue a tax clearance certificate within 21 days of the request. The obligation in subsection (1) of Article 59 is determined by the taxpayer's circumstances on the date of the request.

Example 3

Following the same facts as in Example 2, the taxation administration decides to commence an audit of the company's VAT return for the quarter ending Jawza 1398. The audit commences on 2 Asad 1398 by delivery of a notice to the company requesting various business records.

The taxation administration is required to issue a tax clearance certificate to the company. It must issue the certificate on or before 22 Asad 1398. The commencement of the audit on the VAT return does not alter this obligation because in accordance with Article 59 the company was, on 1 Asad 1398, fully up to date with the filing of its tax returns and had no tax payable on that day.

- 59.5 The conduct of an audit of the taxpayer does not relieve the taxation administration from its obligation to issue a tax clearance certificate within 21 days of the request, even if the audit commenced before the date of the request. This is also the case even if a tax return or an amount of tax payable becomes due after the date of the request but before the taxation administration issues the tax clearance certificate.

Example 4

The facts are as the same as in Example 2, except that an audit of the VAT return for the quarter ending Jawza 1398 commenced on 10 Saratan 1398. The audit is in progress on 1 Asad 1398 when the request from the manager of Ghaznawi Company is received for a tax clearance certificate. At the time of the request the auditor has been reviewing the business records of the company and has identified some discrepancies but has not yet issued an assessment notice. The auditor completes the audit on 12 Asad and issues an assessment notice on 13 Asad 1398 for additional VAT payable for the quarter ended Jawza 1398.

The taxation administration is still required to issue a tax clearance certificate to the company. It must issue the certificate on or before 22 Asad 1398. At the time the tax clearance certificate was requested (1 Asad 1398), the company was fully up to date with the filing of its tax returns and it had no tax payable on that day.

The tax clearance certificate will include a statement on it that the taxation administration certifies that Ghaznawi Company was, according to the records of the taxation administration on 1 Asad 1398, in full compliance with the filing of tax returns and taxes payable on that day. The statement is therefore correct and in compliance with Article 59.

- 59.6 While the law requires the issuance of a tax clearance certificate within 21 days of the date of the request, in most cases it will be possible to issue the certificate in a much shorter time. In the case of taxpayers with computerized records maintained by the taxation administration, it will be possible for the taxation administration to issue the certificate on the same day of the request.
- 59.7 In considering the filing of tax returns under Article 59, a taxpayer with an approved extension of time to file a tax return under Article 7 will be in compliance with their filing obligations during the time of the extension.
- 59.8 Where a taxpayer has a tax liability which within an approved extension of time to pay under Article 15, that tax liability shall not prevent the taxpayer from obtaining a tax clearance certificate. The same shall also apply to a tax liability that is subject to an arrangement to pay by installments, provided the taxpayer is in compliance with the installment arrangement on the day that the certificate is requested.
- 59.9 In some cases a taxpayer may have an amount of tax payable that is the subject of dispute. The taxpayer may have filed an objection under Article 11 of this Law, or an appeal to the Tax Disputes Resolution Board under Article 56 of this Law, or an appeal to a court under subsection (2) of Article 12 of this Law. While the initiation of a dispute does not prevent the collection of tax, the taxation administration may allow deferral of payment of some or all of the tax in accordance with the regulations when a genuine dispute exists. If there is unpaid tax on the day of the request for the tax clearance certificate and it is the subject of an existing tax dispute filed before that day, provided that the

unpaid amount has been approved by the taxation administration for deferred payment in accordance with the regulations, it will not prevent the taxpayer from being entitled to the tax clearance certificate under Article 59.

- 59.10 If a taxpayer has tax payable at the time of the request for a tax clearance certificate, they shall be considered compliant under Article 59 if the tax payable is the subject of full security provided as part of an agreement under subsection (6) of Article 24.

Dispute of refusal to issue a tax clearance certificate

- 59.11 A refusal to issue a tax clearance certificate (including failure to issue the certificate for any reason) is a taxation decision under the definition of that term in subsection (1) of Article 3. It may therefore be disputed by the person who requested the certificate. That person may file an objection under Article 11 and pursue their rights in accordance with Chapter 4.

Draft

ARTICLE 60 – REFUND

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.

60.1 Article 25 of the VAT Law provides a process where taxpayers may determine a refundable amount of VAT where their VAT paid is in excess of VAT payable. There are also circumstances in the Income Tax Law where a taxpayer may have an excess of tax paid over the amount of income tax that is properly payable. It is also possible that taxpayers may make a payment in error. In these situations Article 60 of the Tax Administration Law provides that the taxpayer is entitled to receive a refund if they claim the refund within 5 years of making the overpayment.

Example 1

A taxpayer registered for VAT exports most of their production. The taxpayer incurs VAT on material used in its production. As exports are zero rated, under the VAT Law each VAT period the taxpayer has an excess of VAT paid (tax credit) over the VAT payable for the period. Under Article 25 of the VAT Law the taxpayer is entitled to a refund of the excess after any necessary carry forward for two VAT periods. If the taxpayer applies for the refund within the five year time limit specified by Article 60 of the Tax Administration Law the Ministry of Finance is required to pay the refund (subject to the rules in Article 61, discussed below).

Example 2

A licensed trader commences business late in the annual income tax year and incurs fixed tax at 2% of the cost of goods imported under Article 70 of the Income Tax Law. Due to the short time period remaining in the income tax year the trader only has a small amount of sales income for the tax year and therefore has credit for more fixed tax paid than the tax liability determined in their annual income tax return. The taxpayer may apply for a refund under Article 60 of the Tax Administration Law and will then be entitled to the refund (subject to the rules in Article 61, discussed below).

Example 3

A taxpayer receives an assessment notice for a tax liability of Afn.10,000. He makes an electronic transfer from his bank account to Da Afghanistan Bank but makes an error when typing the amount and mistakenly pays Afn.100,000. He may apply for a refund under Article 60.

Example 4

A taxpayer files their annual income tax return for the year 1396 and pays the tax determined by that tax return. Six months later he realises that he used the wrong depreciation rate for some buildings and was actually entitled to a higher rate under the Income Tax Law. He requests an amendment of the 1396 tax return and the taxation administration determines that his tax liability for that tax year is lower than the amount he originally paid. An amended assessment notice is issued. The taxpayer may apply for a refund under Article 60 of the Tax Administration Law and will then be entitled to the refund (subject to the rules in Article 61, discussed below).

Example 5

A taxpayer is audited by the taxation administration and as a result of the audit an amended assessment is issued. The taxpayer pays the tax liability but also files an objection disagreeing with some of the amended tax. After following the dispute procedures in Chapter 4 the case finally ends in court. The court decision is in favour of the taxpayer and as a result the taxation administration is required to issue another amended assessment reducing the taxpayer's tax liability. As the taxpayer had already paid the tax, there has been an overpayment of tax by the taxpayer. The taxpayer may apply for a refund under Article 60 of the Tax Administration Law and will then be entitled to the refund (subject to the rules in Article 61, discussed below).

- 60.2 Under subsection (3) of Article 60 if a refund is paid to the taxpayer and it is later found that the taxpayer was not entitled to the refund (due to error, fraud or for any other reason) then the amount of the refund is regarded as tax payable from the date that the refund was paid to the taxpayer. This means that additional tax under Article 34 applies to the amount refunded from the date refunded.

ARTICLE 61 – OFFSET, CARRY FORWARD AND PAYMENT OF REFUND

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.

61.1 If a refund is payable under Article 60, Article 61 specifies the offset or carry forward requirements that the taxation administration must follow before determining whether any refundable amount remains payable to the taxpayer.

61.2 The taxation administration will not approve a refund to a taxpayer until the taxpayer's entitlement has been fully and finally determined. An entitlement that is fully and finally determined includes:

- The taxation administration's acceptance of a taxpayer's fully documented refund claim under Article 25(1) or (3) of the VAT Law;
- A decision under Article 57 that is favourable to a taxpayer and the taxation administration has decided not to appeal to a court or the time to appeal has lapsed;
- An entitlement to a refund of the proceeds from sale of property under Article 24(4);
- A final judgment of a court. A final judgment means a decision by a court which cannot be appealed or can no longer be appealed.

61.3 When an entitlement has been fully and finally determined, the taxation administration shall review its records to identify any other outstanding tax liabilities against which any credit balance should be applied. It is inherent to the operation of Article 61 that it must be possible for the taxation administration to verify whether any outstanding tax liability exists. This means that if any tax returns are outstanding (VAT returns, income tax returns including withholding or other statements required to be filed), no refund can be paid until those obligations have been satisfied.

- 61.4 If there are no other outstanding tax liabilities, or there is still a credit balance remaining after offsetting other outstanding tax liabilities, the taxation administration shall then check that the taxpayer does not have any outstanding customs duty liability.
- 61.5 If the taxpayer has outstanding liability for customs duty, the taxation administration shall then make arrangements with the Customs Department to ensure that the taxpayer's customs liability is credited by the amounts owed to the taxpayer.
- 61.6 If any amounts are still owed to the taxpayer after making appropriate credits for other outstanding taxes and customs duties the taxpayer may request offset against the tax liabilities of another taxpayer.
- 61.7 The taxation administration must notify the taxpayer in writing of any offsetting or crediting action taken against taxes or customs duties. If any amounts are still owed to the taxpayer after making appropriate credits for outstanding taxes and customs duties of the taxpayer or tax liabilities of another taxpayer the notice must also advise the taxpayer of their rights to the balance.
- 61.8 The notice shall advise that:
- The taxpayer may request offset against the tax liabilities of another taxpayer; or
 - The taxpayer may request refund of the amount to them, provided that the amount is Afn.1000 or more.
- 61.9 In the absence of such a request from the taxpayer, or if the amount remaining is less than Afn. 1000, the amount shall be carried forward for credit against future tax liabilities of the taxpayer.

CHAPTER 13 – MISCELLANEOUS

ARTICLE 62 – REGULATIONS AND RULINGS

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.

62.1 The taxation administration may issue manuals, rulings and guides and make these publicly available to taxpayers. These may be provided in paper form or by electronic form on the taxation administration's website. Manuals, public rulings or guides must not be in conflict with a tax law.

62.2 The taxation administration will not impose charges on taxpayers for copies of these materials – see Article 5(1)(a).

Orders, rulings and guides are binding

62.3 Any manual, ruling or guide produced by the taxation administration is binding on the taxation administration for as long as it remains current. Where a manual, ruling or guide makes a statement on how the tax law applies to a situation, the taxation administration is required by subsection (2) of Article 62 to comply with that statement. The taxation administration must act in accordance with statements made in manuals, rulings or guides for as long as the relevant publication is current.

62.4 A statement made in a manual, ruling or guide is binding on the taxation administration while the publication is current even if it is later found not to be in accordance with the law. Article 62 requires the taxation administration to comply with the statement made in the manual, ruling or guide and this Article overrides any other conflict with another provision in the tax laws. Article 62 is intended to give protection to taxpayers who act honestly in complying with manuals, rulings or guides which are later found to be incorrect due to mistakes made by the taxation administration or for any other reason.

Example 1

The taxation administration publishes a guide for taxpayers which explains depreciation deductions under the Income Tax Law. The guide lists the depreciation rates for various capital assets. One of the categories of assets is listed as having a depreciation rate of 50% when the Income Tax Law actually provides a rate of 25% for this type of asset.

According to Article 62, the taxation administration is required to comply with a guide while the guide is current. The taxation administration is required to allow taxpayers to claim a deduction for 50% depreciation on these assets in tax returns for the tax periods when the guide was current. Even though this depreciation rate is not in accordance with the Income Tax Law, Article 62 of the Taxation Administration Law overrides the other provision.

- 62.5 If a taxation officer disagrees with a statement made in a manual, ruling or guide, they are still obliged to comply with the statement for as long as the publication is current and will be acting lawfully in doing so. However, if they become aware of an error in a manual, ruling or guide it is their duty to raise this within the taxation administration to have it corrected.
- 62.6 Taxpayers are entitled to insist that the taxation administration comply with a current manual, ruling or guide and may pursue this with an objection under Chapter 4 of the Tax Administration Law.
- 62.7 If a taxation officer believes a statement made in a manual, ruling or guide is not in accordance with the tax laws, they may refer the issue to the appropriate authority within the taxation administration for review. Until the relevant publication is revoked, the taxation officer is still obliged to act in accordance with the relevant publication.
- 62.8 For the manual, ruling or guide to be binding, it must have been originally authorised for issue by a taxation officer with the appropriate delegation. Taxpayers are entitled to presume that all material on the taxation administration's website has been properly authorised. Taxpayers are also entitled to presume that a paper copy of manual, ruling or guide is properly authorised if it is listed on the website as a current document.

Revocation

- 62.9 The taxation administration may revoke manual, ruling or guide at any time. Such a document may be revoked by the taxation administration if:
1. It was issued in error;
 2. The relevant law has changed;
 3. A court decision relevant to the subject in the manual, the public ruling or guide shows that the taxation administration's decision was incorrect; or
 4. For any other reason the taxation administration has changed its understanding of the application of the law.
- 62.10 Notice of the revocation is provided to the public by either removing the document from the taxation administration's website or otherwise stating in a document on the website that it has been revoked.
- 62.11 The date of effect of the revocation is, in the case of withdrawal reasons 2 or 3 mentioned above, the date of effect of the law change or the court decision. In

any other case it is the date that the taxation administration gives notice of the revocation on its website.

- 62.12 The revoked document will no longer be binding on the taxation administration from the date of effect of the revocation. Taxpayers with transactions or activities that occurred before the date of effect of the revocation are entitled to continue to apply the document to those transactions or activities. This applies even if a tax return covering the transaction or activity is not prepared or filed until afterwards.
- 62.13 The taxation administration may keep a document available on its website after it is revoked, provided that it is clearly stated as a revoked document. Any document on the website not described as revoked shall be treated as current.

Example

Khatera provides services to the Herat Carpet Company during the month of Qaws 1396. At that time the taxation administration has a public ruling on its interpretation of whether services are provided by an employee or a contractor. It is available on the taxation administration's website. According to that public ruling, based on the circumstances Khatera is a contractor.

On 1 Jadi 1396 the taxation administration revokes the public ruling due to a change in its interpretation of the law. It removes the ruling from its website on that day and replaces it with a new ruling concerning employees and contractors. The new ruling mentions that the previous ruling is revoked and the new ruling shall apply from 1 Jadi 1396. According to the new ruling based on the circumstances Khatera is an employee.

Herat Carpet Company is entitled to apply the old ruling up to 30th Qaws 1396 and treat payments to Khatera for services up to that day as being paid to a contractor. Herat Carpet Company will only be expected to file employer statements concerning salary or wages paid to Khatera for work done from 1 Jadi 1396.

- 62.14 Article 62(1) relates to the preparation and issue of manuals, rulings and guides. Other tax laws may also authorise the taxation administration to issue regulations, rulings and manuals. For example, Article 34 of the VAT Law.
- 62.15 Article 62(2) applies to documents issued under the Tax Administration Law and similar documents issued under the authority of any other tax law.

Disputes

- 62.16 The law does not directly provide a procedure for disputing a position taken by the taxation administration in a public ruling or guide. If a taxpayer disagrees with the taxation administration's position or interpretation of the law in a public ruling or guide, it may file a tax return and dispute the resulting assessment following the procedures in Chapter 4.

62.17 A taxpayer who believes the taxation administration is not treating them in accordance with a binding order, ruling or guide may also follow the same dispute procedure in Chapter 4 against an assessment they believe is contrary to the binding document.

Application and ruling

62.18 A taxpayer may file an application for a private ruling. A private ruling is a decision made by the taxation administration in response to such an application, stating its position on how a tax law applies to the taxpayer. A private ruling must be issued in writing. **Regulations to elaborate.**

62.19 The taxation administration must issue a private ruling if the taxpayer has provided all relevant information necessary to make a decision. For these purposes necessary information in the application means that the taxpayer has fully described the facts and circumstances and has also identified the tax question which the taxation administration is requested to answer.

Example

A taxpayer has acquired machinery and installed it in one of its buildings. The taxpayer fully describes the machinery in its application and also explains the use or purpose of the machinery in earning business income. The application clearly asks if the taxpayer can claim depreciation under the Income Tax Law and if so, what rate it should use and what costs are included in the calculation.

The taxation administration must issue a private ruling to the taxpayer explaining whether depreciation is allowed and if so, the rate to apply to the machinery.

62.20 If there is insufficient information necessary for a decision on the private ruling application, the taxation administration is not required to issue a ruling. It must describe the missing information to the taxpayer, giving the taxpayer an opportunity to respond. If the taxpayer provides that missing information, the taxation administration shall consider it with the original application.

62.21 If the questions raised in an application for a private ruling are adequately answered in a public ruling or guide currently available from the taxation administration, it may provide a copy of that material with a statement that such material is the response to the application. This will constitute a private ruling satisfying the requirements of Article 62.

62.22 No time limit for issuing a private ruling is imposed by the law. However the taxation administration should in most cases issue a private ruling within 90 days of receiving the application provided all information necessary to make a decision.

Ruling is binding

62.23 A private ruling is binding on the taxation administration in its treatment of the taxpayer that it was issued to, provided that it was lawfully issued. A private ruling is lawfully issued if it was approved by a taxation officer authorised to make private rulings and that person did not contravene Article 51 (misuse their position) when making the private ruling.

62.24 A private ruling may be withdrawn by the taxation administration if:

1. It was issued in error;
2. The relevant law has changed;
3. A court decision that is similar or relevant to the subject in the private ruling shows that the taxation administration's decision was incorrect; or
4. For any other reason the taxation administration has changed its interpretation of the law.

62.25 Notice of withdrawal must be provided to the taxpayer in writing. The date of effect of the withdrawal is, in the case of withdrawal reasons 2 or 3 mentioned above, the date of effect of the law change or the court decision. In any other case it is the date that the taxpayer is given the notice of withdrawal.

62.26 The taxation administration is bound by the private ruling for any transactions or arrangements that occurred up to the date of withdrawal.

Publication

62.27 For the purposes of transparency, consistency and to assist other taxpayers who may be in similar circumstances, the taxation administration will publish on its website an edited version of every private ruling issued. The published ruling will be edited to remove any details that could identify the taxpayer.

62.28 A private ruling is not required to be published on the website if:

- There is already another private ruling with similar circumstances and the same decision currently published on the website;
- The private ruling decision is covered by a public ruling, guide or similar material that is currently available from the taxation administration; or
- After the necessary editing of details that would identify the taxpayer, the remaining content will not be useful or understandable by other taxpayers.

62.29 A published private ruling is treated as a public ruling for the purposes of Article 62. The taxation administration may revoke it as a public ruling at any time. Any such revocation will apply to all taxpayers, except the taxpayer that applied for and received the private ruling.

Dispute

62.30 The law does not directly provide a procedure for disputing a decision made by the taxation administration in a private ruling. A taxpayer who disagrees with a

decision in a private ruling may file their tax return in accordance with the decision in the private ruling and then pursue the taxation dispute process in Chapter 4 in relation to the assessment determined by the tax return.

Draft

ARTICLE 63 – TRANSITIONAL PROVISIONS

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.

- 63.1 Article 63 applies the Tax Administration Law to any taxation assessments issued before the commencement of that Law. It shall also apply to any act or omission that occurred before the commencement of the Tax Administration Law. A relevant act or omission may be by a taxpayer or the taxation administration. However, see the three exceptions noted below.

Example

Article 28 of the Tax Administration Law imposes an obligation on specified persons to apply for a Taxpayer Identification Number. If this obligation occurred before the commencement of the Tax Administration Law and a person failed (omitted) to file an application, if the taxation administration discovers this failure after the commencement of the Tax Administration Law it may impose additional tax on the person under Article 42 for their failure (omission).

- 63.2 There are three exceptions to the transitional application of the Tax Administration Law under Article 63. The first exception is that an appeal that was filed before the commencement of the Tax Administration Law shall continue to be resolved in accordance with the previous law. This refers to an appeal to a court under the former subsection (2) of Article 89 of the Income Tax Law.
- 63.3 The second exception is where a prosecution has commenced before the commencement of the Tax Administration Law. Relevant prosecutions under the Income Tax Law are those mentioned in the former Articles 101, 102, 103, 104 and 106 of that Law. In determining whether a prosecution has commenced, the date of filing the case with the court is considered, not the date of referral to the Attorney General.
- 63.4 The third exception is where a period allowed under the Income Tax Law to file an application or appeal has expired at the time that the Tax Administration Law commences. If the Tax Administration Law allows a longer time for the

same type of application or appeal, a person is not entitled to use the longer period under the Tax Administration Law.

Example

Under the former Article 89 of the Income Tax Law, a taxpayer may file an objection within 30 days of receiving an amended assessment notice under that Article. Under Article 11 of the Tax Administration Law a taxpayer is allowed 45 days to file an objection.

Hamed receives an amended assessment under the former Article 89 of the Income Tax Law 35 days before the commencement of the Tax Administration Law and does not file an objection during the permitted 30 days under that Article. On commencement of the Tax Administration Law he would have 10 days left to file an objection under Article 11 of that Law. However, because of the exception in Article 63, he is therefore not entitled to benefit from the longer time period and cannot file an objection.

Draft

ARTICLE 64 – PRIMACY OF THE LAW

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.

- 64.1 Subsection (1) of Article 64 asserts the primacy of the Tax Administration Law over other laws, contracts, agreements or other legislative documents. If any of those provisions are different to the Tax Administration Law, then those provisions will be considered to have no effect to the extent of the inconsistency and the provisions of the Tax Administration Law shall apply.
- 64.2 The Tax Administration Law does not directly impose taxes such as income tax and value added tax. The relevant tax law such as the Income Tax Law and the Value Added Tax Law imposes taxes. Specific exemptions and concessions related to those taxes may be provided in those laws. Tax exemptions and tax concessions are only allowable if specified in law. These may be specifically stated, as for example the exemptions for specified goods and services mentioned in Article 5 of the VAT Law, or they may be provided in properly authorized international agreements between Afghanistan and foreign countries and international organizations.
- 64.3 The Tax Administration Law does not impose taxes, so no specific exemptions and concessions are included in this Law. However it does provide for the assessment, collection and enforcement of taxes, including additional taxes where necessary. Article 64 recognizes that the Government of Afghanistan may make international agreements with other countries or international organizations concerning taxation. These international agreements have priority over the tax laws including the Tax Administration Law. Article 64 therefore authorizes the taxation administration to assess, collect or enforce taxes in accordance with international agreements that may provide different tax treatment to that specified in the tax laws.
- 64.4 Article 64 will only apply to international agreements properly made and authorized under Afghanistan's laws and Constitution. International agreements are agreements made between governments, or between a government and a recognized international organization such as the United Nations.
- 64.5 The Ministry of Foreign Affairs generally represents the Government of Afghanistan in dealings with foreign governments and international organizations. In the case of tax agreements the Ministry of Foreign Affairs

would generally consult with the relevant Ministry with responsibility for the subject matter of the agreement. In the case of tax matters, the relevant Ministry is the Ministry of Finance.

- 64.6 In the normal course of government administration, a public official of a government Ministry (including the Minister) will enter into contracts or agreements, for example, in procuring goods or services. Although the Minister may have the authority to purchase goods or services and make other agreements according to their responsibilities, these officials cannot override the laws of Afghanistan on his/her authority alone. Where these contracts presume to provide special tax treatment inconsistent with the tax laws, those provisions of the contract (but not necessarily other provisions) will be ineffective.

Example 1

A government Minister, on behalf of a Ministry, enters into contract with a foreign contractor company for the construction of a building. The agreement states that the building contractor will be exempt from income tax. The tax exemption granted by the Minister will not be effective. The tax exemption is only allowable if it has been provided in a tax law or a properly approved international agreement covering the circumstances of the taxpayer and the activity.

Example 2

A government Minister, on behalf of a Ministry (which is not the Ministry of Foreign Affairs), enters into an agreement with a foreign government as donor for the funding of the construction of a building. The agreement states that the building contractor will be exempt from income tax. This Minister alone cannot create the tax exemption mentioned in the agreement, it must be provided for in the existing tax laws including if necessary through a properly authorized international agreement. The Ministry of Foreign Affairs is the responsible Ministry for treaties and international agreements and an agreement which gives up Afghanistan's sovereign right to tax activities within its borders is not valid if it has not been done through the correct channels.

- 64.7 In Article 64, the meaning of international agreement is an agreement (including a treaty) between the Afghanistan Government and a foreign government or a recognized multilateral international organization. It does not cover contracts between the Afghanistan Government and private contractors and other non-government organizations.
- 64.8 Examples of recognized multilateral organizations are the United Nations and its affiliated organizations, the European Union, the International Monetary Fund and the World Bank.

ARTICLE 65 - ENFORCEMENT DATE

Article 65

Enforcement date

- (1) This Law shall come into force from 1 Hamal 1393 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.

Appendix A

Approval to use a different tax year

The definition of tax year in Article 3(1) allows for the use of a different period by a taxpayer, provided that their request is approved by the taxation administration.

Article 3(2) of the Income Tax Law also provides that legal persons may apply to use a different tax year. Use of a different tax year under the Income Tax Law is subject to approval by the taxation administration.

The Tax Administration Law is compatible with the Income Tax Law in relation to the use of a different tax year by a taxpayer. However, the Tax Administration Law expands the potential use of a different tax period in two ways:

1. Any person may request approval to use a different tax period. Previously under the Income Tax Law only a legal person could do so.
2. The tax period is no longer restricted to 12 months. Previously under the Income Tax Law a tax period could end on a different date, but the period still had to be 12 months. The Tax Administration Law does not confine a tax year to being 12 months.

In practice the taxation administration will still insist on the use of 12 months as a tax period on an ongoing basis. A different period may be approved for the purposes of a one-off transitional year (more or less than 12 months) to allow a taxpayer to change their tax year end date.

Circumstances justifying approval

The tax laws specify the tax periods to be used by taxpayers. It is administratively efficient to have most taxpayers using the same end dates and periods. Therefore, the taxation administration will only approve different arrangements if there are good reasons to do so.

The following provides examples of situations that may justify approval. It is possible that other situations not mentioned below would also justify approval. However those situations will be rare and will be examined very carefully by the taxation administration.

ALIGNING WITH FOREIGN ACCOUNTING PERIODS

Where an Afghan taxpayer is a subsidiary of a foreign company or is a member of a corporate group that includes foreign companies and for business reasons the accounts of the Afghanistan taxpayer are prepared for a period that is different to the standard Afghanistan tax year, this may be a justifiable reason for approval to be given.

Generally it will be companies with such arrangements; however approval may be justifiable for non-corporate ownership structures. For example, where a foreign natural person owns a business with a branch or division operating in Afghanistan. If the foreign owner has business reasons to prepare accounts on a different period, approval may be given to use a tax year that aligns with their accounting period.

Another example may be a partnership involving foreign and Afghan resident partners. Joint ventures between foreign and Afghan entities may also justify a different tax year for an Afghan resident member.

Acceptable business reasons for using a different accounting period would include:

- The foreign owner is aligning the accounting period with tax laws in their home country;
- A foreign parent company requires its Afghan subsidiary to use the same accounting period as the parent company;
- The foreign owners or members of the corporate group are following industry practice.

Example 1

E Telecom operates a mobile phone business in Afghanistan. It is a subsidiary of a larger parent company based in a European country. The parent company prepares its accounts based on a financial year that is different to Afghanistan's tax year. Due to the computerisation and integration of accounting records across the group, it would be very difficult for E Telecom to prepare separate Afghanistan accounts for the local tax year.

The taxation administration would be justified in approving a request to use a tax year based on the foreign parent company's accounting period.

2. Adjustment for seasonal activity

Approval to use a different tax period may be justified if there is a seasonal business that means the normal tax year end falls during the time when the taxpayer has its most significant business activity.

Example 2

A taxpayer has a business processing agricultural production into food for export. Due to the time for harvesting of the product, most of the business activity and income from export happens in the 2 months before and after the tax year. The business does not operate for the other 10 months of the year.

The taxation administration would be justified in approving a request to use a different tax year that ends during the seasonal period when the business is normally closed each year.

Situations where approval is not justified

Taxpayers whose only income is from salary or wages, rent, interest and dividends will not have justifiable reasons to use a different tax year.

A business group with business activity inside and outside Afghanistan would not be able to justify using a different tax year when:

1. The group is owned or controlled by an Afghanistan resident entity; or
2. The foreign operations are only a small part of the overall business.

In either of the cases above it would be expected that the business group would use the Afghanistan tax year, if necessary preparing its accounting records on that basis. If convenient, it may choose to make a request to use a different tax year to the foreign country's tax authority for any tax obligations in that foreign country.

Example

A large Afghanistan bank has a small subsidiary company in Pakistan. Pakistan uses a different tax year to Afghanistan.

It is not justifiable for the Afghanistan bank to request approval to use a different tax year in Afghanistan merely to be the same as its Pakistan subsidiary. The bank should use Afghanistan's tax year. It may, if it chooses, request approval from the Pakistan tax authority for its subsidiary to allow alignment of the subsidiaries tax year with Afghanistan's tax year. This is a Pakistani matter and of no concern to Afghanistan's tax administration.

Transitional periods

In cases where an existing Afghan business that has been filing tax returns is approved to change to a different tax year, it will be necessary to take account of a transitional period in the changeover.

Approval by the taxation administration for the taxpayer to change tax year will be conditional on the taxpayer agreeing to file for the transitional period as determined by the taxation administration.

The transitional period shall not be less than 3 months and shall not be more than 15 months. Subject to that rule, the transitional period will start from the end of the old tax year and finish at the start of a new tax year.

If necessary, tax rates and thresholds will be adjusted proportionally to the length of the transitional tax period.

Example

Jalalabad Transport Company has been filing income tax returns for a tax year ending 30 Qaws. In Hamal 1397 it is taken over by a larger Pakistani company, which prepares accounts based on a year ending 30 June (9 Saratan).

The Afghan subsidiary requests approval to change to a tax year ending 9 Saratan, which is approved. The first tax return will therefore be for the transitional period 1 Jadi to 9 Saratan, being more than 3 months and less than 15 months.

Draft

Appendix B

Transactions between connected persons

The following is adapted from the material that previously appeared in the Income Tax Manual for the former Article 97 of the Income Tax Law.

1. The purpose of Article 9 of the Tax Administration Law is to ensure that taxpayers do not engage in transactions with related persons in order to achieve a tax benefit that would not have been obtained had the transactions taken place between unrelated parties. The Ministry of Finance believes that Article 9 and the explanation that follows is consistent with the Organization for Economic Cooperation and Development's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (1995).

Example 1

Asahi owns all of the issued stock of Company A and Company B. Company A and Company B are Afghan corporations. Asahi causes Company A to sell products to Company B at a price of Afn. 1,000 per unit. Identical products are being sold in the market under the same terms at Afn. 800 per unit. Asahi wanted Company A to sell the products at a higher price in order to reduce the profit of Company B and increase the profit of Company A. Company A has a net operating loss that it can use to offset the profit from selling units to Company B. Under Article 9, the Ministry of Finance can restate the profits of Company A and Company B as if Company A sold products to Company B for Afn. 800 per unit.

Example 2

Asahi owns all of the issued stock of Company A and Company B. Company A is an Afghan corporation. Company B is an Uzbek corporation. Asahi causes Company A to sell products to Company B at a price of Afn. 800 per unit. Identical products are being sold in the market under the same terms at Afn. 1,000 per unit. Asahi wanted Company A to sell the products at a lower price in order to reduce the profit of Company A and increase the profit of Company B. The result will be that Company A pays less tax in Afghanistan. Under Article 9, the Ministry of Finance can restate the profits of Company A as if Company A sold products to Company B for Afn. 1,000 per unit.

2. Taxpayers are "connected" with each other if their actions are controlled by the same person or entity. For this purpose, a taxpayer's spouse, brothers, sisters, children and parents will all be considered connected to each other. Whether or not other taxpayers are under the control of the same person will be determined based on the facts and circumstances. Nevertheless, the taxation administration will apply the following rules in

determining whether two taxpayers are controlled by the same person.

- a) A taxpayer is connected with a legal person (e.g., partnership, limited liability company or corporation) if the taxpayer owns more than fifty percent of the voting rights in the entity.

Example 1

Wahid owns 51% of the issued stock of an Afghan corporation. Unrelated parties own the remaining 49% of the stock of the corporation. The corporation has a single class of stock issued. Wahid's stock gives Wahid the right to elect the majority of the corporation's board of directors. Wahid is therefore connected with the Afghan corporation.

Example 2

Company A is an Afghan corporation that has a single class of stock issued. Wahid owns 20% of the issued stock of Company A. Wahid's wife, Asieh, owns 20% of the issued stock of Company A. Wahid's son, Najib, owns 12% of the issued stock of Company A. Wahid, Asieh and Najib are all considered connected persons. They are all considered connected with Company A.

- b) A taxpayer is connected with a legal person if the taxpayer owns more than fifty percent of the voting rights of the entity indirectly.

Example

Wahid owns 80% of the issued stock of Company A, an Afghan corporation. Company A owns 80% of the issued voting interests in Partnership B, an Afghan limited partnership. Wahid will be considered connected with Company A because he owns more than 50% of the voting rights in Company A directly. He will also be considered connected with Partnership B, because he owns 64% of the voting rights in Partnership B indirectly ($80\% \times 80\% = 64\%$).

- c) If two legal persons are considered to be connected to the same taxpayer, the two legal persons will be considered to be connected with each other.

Example 1

Wahid owns 80% of the issued stock of Company A. Company A is an Afghan corporation. Wahid also owns 51% of the voting rights in Partnership B. Partnership B is an Afghan limited partnership. Wahid is considered to be connected with Company A and Partnership B. Moreover, Company A and Partnership B are considered to be connected to each other.

Example 2

Company A is an Afghan corporation. Company A owns 80% of the issued stock of Company B. Company B is an Afghan corporation. Company A also owns 51% of the voting rights in Partnership B. Partnership B is an Afghan limited partnership. Company A is considered to be connected with Company B and Partnership B. Moreover, Company A and Partnership B are considered to be connected to each other.

- d) A taxpayer will be considered “connected” with a legal person if the taxpayer owns less than a majority of the voting rights in that legal person, if the facts and circumstances indicate that the taxpayer has the power to control the decisions of the company.

Example 1

Zaid owns 50% of the issued stock of Company A, an Afghan corporation. Zaid’s two cousins, Saad and Najib, each own 25% of the Afghan corporation. Zaid, Saad and Najib are not connected with each other, because they are cousins. Nevertheless, a review of the minutes of the board of directors meetings and shareholders meetings for Company A indicates that Saad and Najib take direction from Zaid and typically vote the way that Zaid wants them to vote. Thus, Zaid should be considered to control Company A and be connected to Company A.

Example 2

Zaid owns 50% of the issued stock of Company A, an Afghan corporation. Zaid’s two cousins, Saad and Feroz, each own 25% of the Afghan corporation. Zaid, Saad and Feroz are not connected with each other, because they are cousins. Moreover, after investigation, the taxation administration learns that Zaid disagrees with Saad and Feroz about many issues. All three individuals have very different ideas about how to operate Company A. Moreover, no single individual controls the operation of Company A. In this case, Zaid should not be considered connected to Company A.

3. A “connected transaction” is any transaction between connected taxpayers. An “unconnected transaction” is any transaction between taxpayers that are not connected. The price at which a connected transaction takes place is called a “transfer price”.

Example

Wahid owns all of the issued stock of Company A, an Afghan corporation. Wahid also owns all of the issued stock of Company B, an Afghan corporation. Wahid, Company A and Company B are all considered “connected” taxpayers. If Company A sells a product to

Company B, the sale is considered to be a connected transaction. The price that Company B pays for the good is considered to be the transfer price.

4. In determining the true taxable income of taxpayers under Article 9, the taxation administration should look to unconnected transactions.

Example

Wahid owns all of the issued stock of Company A, an Afghan corporation. Wahid provides services to Company A every year as the president of Company A. Company A pays Wahid for his services as president. Wahid knows that Company A will be entitled to a deduction for every Afghani that Company A pays Wahid. Wahid also knows that Company A is taxed at a 20% rate, but that Wahid is taxed on some of his income at a 0% rate and a 10% rate. To determine whether or not the payments made by Company A to Wahid comply with Article 9, the taxation administration must look to the salaries that other companies pay presidents in unconnected transactions. For example, assume that Company B, an Afghan corporation, is similar to Company A. It is approximately the same size as Company A. It is in the same business as Company A. Company B is not controlled by any single individual. Company B is not owned by the government or any branch of the government. Company B pays its president Afn. 10,000,000 per year. The salary that Company B pays its president is an unconnected transaction. The taxation administration can use that transaction to determine whether or not the salary paid to Wahid is reasonable.

5. The taxation administration may use a number of different methods, described below, to determine what the correct price would be between unconnected persons. Each method relies on different types of unconnected transactions to determine the appropriate taxable income. Thus, to determine the best method, the taxation administration should consider the similarity between the connected transactions and unconnected transactions used with respect to each method. In particular, the taxation administration should consider the following facts and circumstances:
 - a) Functions. The functions performed in the connected transaction and unconnected transaction should be similar. If the functions performed in the connected transaction and the unconnected transactions are similar, the unconnected transaction will be more helpful in determining the accurate transfer price. If the functions performed in the connected transaction and the unconnected transactions are not similar, the unconnected transaction will be less helpful in determining the accurate transfer price.

Example

Adib owns all of the issued stock of Company A, an Afghan

corporation. Company A operates a business in the Wazir Akbar Khan area of Kabul. The store sells used automobiles. Adib also owns 60% of the voting rights in Partnership B, an Afghan limited partnership. Partnership B operates a business near Kabul that sells spare auto parts. Partnership B does not offer any assistance with the repair of the automobile itself. Partnership B only sells the parts. When Company A purchases an automobile for the automobile shop, Company A will usually need to repair the vehicle. Company A will always purchase the spare parts from Partnership B. Adib is connected with Company A. Adib is connected with Partnership B. Thus, Company A and Partnership B are connected with each other. The price that Partnership B charges Company A for spare parts is a “transfer price.” To determine whether the transfer price complies with Article 9, the taxation administration will review unconnected transactions. There are two unconnected transactions that the taxation administration identifies. The first unconnected transaction involves Company C. Company C is an Afghan corporation that is located near Kabul. Company C sells auto parts to various customers in the Kabul area. Company C does not assist in the repair of the automobile. It only sells auto parts. The second unconnected transaction involves Company D. Company D is an Afghan corporation. Company D is also located near Kabul. Company D sells auto parts in the Kabul area. Company D employs a number of mechanics. Company D provides significant assistance to anyone who purchases auto parts. Company D helps the purchaser of the parts to determine how the repair work should be done. Company C transactions are similar to Partnership B’s transactions, because the functions of the first company and Partnership B are similar. Hence, Company C’s transactions may provide better evidence of the correct transfer price.

- b) Contractual Terms. The contract terms used in the connected and unconnected transactions should be similar. In this respect, the taxation administration should focus on terms that relate to the economic arrangement between the parties (i.e., payment terms, time for performance, etc.).

Example

Daood owns all of the issued stock of Company A. Company A is an Afghan corporation. Company A publishes a magazine. Company A sells the magazines for money. Company A also charges people money for printing advertisements in the magazine. Daood also owns Company B. Company B is an Afghan corporation that operates a courier service. If someone wants to send a document from one location to another within a particular Afghan city, they can contact the courier service and pay the courier to deliver the document. Company B usually guarantees that the document will arrive at its destination within one day. Company B charges Afn. 100 for the delivery. Company A always uses Company B’s courier service when it wants to deliver a document to someone. But when Company B provides

services to Company A it does not guarantee that the document will be delivered in one day. It only charges Company A Afn. 80 for the delivery. The price charged by Company B to Company A is not necessarily unacceptable. This is because Company B provides delivery services to most of its customers on the same day that Company B receives the document. Company B does not provide the same timely service to Company A. Thus, it may be appropriate under these facts that Company B charges Company A less money. Thus, if possible, the Afghanistan taxation administration should try to find a unconnected transaction that more closely matches the connected transaction.

- c) Risks. The risks borne by the parties in the connected and unconnected transactions should be similar.

Example

Adib owns all of the stock of Company A, an Afghan corporation that imports motorcycles. Adib also owns all of the issued stock of Company B, an Afghan corporation that purchases motorcycles from Company A and sells them to customers throughout Afghanistan. When Company A sells the motorcycles to Company B, Company A bears the risk that there will be a loss during shipment. Thus, if a motorcycle is lost or damaged during transit, Company A bears the loss, not Company B. When the taxation administration is analyzing unconnected transactions, it should try to find unconnected transactions where the seller bears the risk that a loss will occur during the transportation of the products.

- d) Economic Conditions. Afghanistan is emerging from a conflict environment. Thus, in analyzing connected and unconnected transactions, the taxation administration must be careful to take into account the relevant economic conditions. In particular, the level of profit that one might expect from a business in Afghanistan may be dramatically different from the level of profit that one may expect from a business located in a more developed country, given the risks of investing in a post-conflict environment. Thus, in determining the correct transfer price, the taxation administration is encouraged to look to the profit levels that are generated with respect to similar investments under similar economic conditions.

Example

The taxation administration is investigating Company A. Company A is an Afghan corporation that purchases radios from a connected person in China. Company A then sells the radios to various stores in Afghanistan. In determining whether the price paid by Company A for the radios is reasonable, the taxation administration could look to transactions between unconnected parties in more developed countries. In reviewing these transactions, the taxation administration

should carefully consider whether the special economic and other conditions in Afghanistan make those other transactions less helpful in providing guidance.

e) Similarity of Property or Services. In ascertaining the correct transfer price, the connected and unconnected transactions should involve similar property or services. If the connected transaction involves the sale of a car, the taxation administration should attempt to find comparable unconnected transactions involving the sale of a car. The taxation administration should not attempt to rely on an unconnected transaction involving the sale of a motorcycle, because the sale of a motorcycle is very different than a sale of a car.

6. It may be necessary in certain cases to make adjustments to ensure that the unconnected transaction is comparable to the connected transaction.

Example

The connected transaction involves a sale of auto parts from Company A to Company B for Afn. 300,000. The terms of sale require that Company A bear the risk that the auto parts may be lost or damaged as they are transferred to Company B. The taxation administration has identified one unconnected transaction that is comparable to the foregoing transaction. In the unconnected transaction, however, the purchaser bears the risk of loss for the parts during the time that the goods are transported. The taxation administration may, in this case, adjust the price used in the unconnected transaction upward to approximate the sales price that would have been used in the unconnected transaction had it been structured in the same way as the connected transaction.

7. In some cases, the application of a pricing method (described below) may generate a single result that represents the best indication of what the appropriate transfer price should be. Alternatively, application of a pricing method may generate a range of results.

If each of the unconnected transactions is similar in all material respects to the connected transactions, or can be adjusted so that it is similar in all material respects, then all of the results create a range of reasonable transfer prices. If the taxpayer's transfer price falls within that range of results, then the taxpayer's transfer price should not be adjusted.

If, however, all material differences cannot be eliminated, then the results should be divided into three distinct categories. The first category should include the lowest 25% of the results. The second category should include the next 50% of results. The third category should include the last 25% of results. If the taxpayer's transfer price is within the second category, the taxpayer's transfer price should not be adjusted. If the transfer price is in the first or third category, the taxation administration has the authority to restate the transfer price so that it is within the second category.

Example 1

Adib is an Afghan citizen. Adib owns all of the issued stock of a Canadian corporation. Adib also owns all of the issued stock of an Afghan corporation. The Canadian corporation sells raw materials including color dyes and ink to the Afghan corporation. The Afghan corporation uses those dyes and ink to produce carpets. The Afghan corporation then sells those carpets to customers throughout the world. The taxation administration locates 4 comparable transactions involving the sale of color dyes. The results are listed below:

1st Comparable Transaction 100 Afn. per Litre
2nd Comparable Transaction 300 Afn. per Litre
3rd Comparable Transaction 380 Afn. per Litre
4th Comparable Transaction 500 Afn. per Litre

If all of these unconnected transactions are similar in all material respects to the connected transaction, then the range of reasonable transfer prices is Afn. 100 to 500 per Litre. If the connected transaction falls within that range, it should not be adjusted.

Example 2

The facts are the same as in Example 1, except that the comparable transactions are not similar in all material respects with the connected transaction. Moreover, adjustments cannot be made to ensure that the comparable unconnected transactions will be similar in all material respects to the connected transaction. Thus, the foregoing comparable transactions should be separated into categories. The 1st Comparable Transaction represents the bottom 25% of the results. The 2nd and 3rd comparable transactions fall into the middle 50% of results. The 4th comparable is in the top 25% of results. Hence, if the Canadian corporation sells colored dyes to the Afghan corporation at a price that is more than Afn. 100 per Litre, but less than Afn. 500 per Litre, then the transfer price should not be adjusted.

In certain situations, the number of results will not be a multiple of the number four (4). In these cases, all of the results should be added and then divided by the number of results to create an average. This average should be added to the lowest result and divided by two. This figure will establish the highest result in category one. The average should be added to the highest result and divided by two. This figure will establish the lowest result in category three.

Example 3

Adib is an Afghan citizen. Adib owns all of the issued stock of a Canadian corporation. Adib also owns all of the issued stock of an Afghan corporation. The Canadian corporation sells raw materials

including color dyes and ink to the Afghan corporation. The Afghan corporation uses those dyes and ink to produce carpets. The Afghan corporation then sells those carpets to customers throughout the world. The taxation administration locates 7 comparable transactions involving the sale of color dyes. The results are listed below:

1st Comparable Transaction 100 Afn. per Litre
2nd Comparable Transaction 300 Afn. per Litre
3rd Comparable Transaction 380 Afn. per Litre
4th Comparable Transaction 500 Afn. per Litre
5th Comparable Transaction 520 Afn. per Litre
6th Comparable Transaction 540 Afn. per Litre
7th Comparable Transaction 600 Afn. per Litre

There are differences between these transactions and the controlled transaction. Adjustments cannot be made to eliminate these differences. Thus, a range of reasonable results must be created. There are seven results. If the number of comparable transactions (7) is divided by the number four (4), the result will be a fraction (1.). Thus, the results should be added together and divided by seven (7). This average figure is 420. The lowest result is 100. Thus, the highest edge of the first category is 260 $(100 + 420)/2$. The highest result is 600. Thus, the lowest edge of the third category is 510. Thus, if the price charged by the Canadian company is higher than 260 and lower than 510 then it should not be adjusted.

8. If an adjustment is made to the taxpayer's transfer price, the taxation administration should also be prepared to make or accept a corresponding adjustment to the income earned by the other taxpayers that were involved in the connected transaction. Thus, if a transfer pricing adjustment has the effect of increasing the income of one connected taxpayer, a corresponding adjustment should typically be made to reduce the income of the other connected taxpayer that participated in the connected transaction. A corresponding adjustment should only be made pursuant to the following rules:
 - (a) A corresponding adjustment should not be made until there has been a "final determination" of the primary adjustment.

Example 1

Corporation A is an Uzbek corporation. Corporation B is an Afghan corporation. Adib is an Uzbek resident that owns all of the issued stock of Corporation A and Corporation B. Corporation A leases equipment to Corporation B. The taxation administration determines that the rent charged by Corporation A to Corporation B is Afn. 100,000 higher than the rent that would be charged between unconnected taxpayers. The taxation administration increases Corporation B's income by Afn. 100,000. If Corporation B accepts the increase and pays any resulting income tax due, then the taxation administration should also make a

corresponding downward adjustment in the amount of tax due with respect to the rental payment.

Example 2

The facts are the same as Example 1, but Corporation B disputes the taxation administration's position. The taxation administration should not reduce the amount of tax due with respect to the rental payment unless or until there has been a final determination as to what the rental charge should be.

(b) If a corresponding adjustment is made, the connected taxpayers may want to make a cash transfer in order to conform their books and records to the new transfer price. Thus, if a corresponding adjustment is made, the connected taxpayers should be permitted, at their option, to create a receivable and payable in their books and records with the following characteristics:

- 1) The receivable or payable should be created as of the last day of the year in which the connected transaction took place.
- 2) The receivable or payable should accrue a reasonable rate of interest from that date.
- 3) The receivable or payable should be denominated in the currency of the underlying transaction.
- 4) The receivable or payable should be large enough to cover the entire transfer pricing adjustment. The amount should not be larger than the transfer pricing adjustment. As such, the creation of the receivable/payable should not cause either party to be subject to additional tax.

Example

Corporation A is an Uzbek corporation. Corporation B is an Afghan corporation. Corporation A and Corporation B are owned by Adib, an Afghan resident. Corporation A sells goods to Corporation B during 1395. The sales are all paid for in Afghanis. The taxation administration audits Corporation B's 1395 tax return during 1397. After its investigation, the taxation administration determines that the transfer price charged by Corporation A to Corporation B is too high. The taxation administration therefore increases Corporation B's taxable income by Afn. 1,000,000. Corporation B agrees with the revision and pays additional Afghan income tax. Corporation A and Corporation B may elect to set up a payable and a receivable equal to Afn. 1,000,000 on the last day of 1395. Corporation A will have a payable of Afn. 1,000,000 to Corporation B and Corporation B will have a receivable from Corporation A of Afn. 1,000,000. This intercompany receivable/payable must bear a reasonable rate of interest from the

last day of 1395 until the amount is ultimately paid. Because the amount is the same size as the transfer pricing adjustment, the creation of the receivable/payable will not cause Corporation A or Corporation B to be subject to additional tax.

9. The method for determining an appropriate interest rate with respect to a loan advanced between connected parties is set forth in this paragraph.
- (a) The appropriate interest rate is the rate that would be charged between two persons who are not connected pursuant to a loan with similar conditions. In determining the appropriate rate, the taxation administration should look to all of the loan terms including the term of the loan, the repayment provisions, and the security provided for the repayment.

Example 1

Adib is an Afghan citizen, but he is resident in the United States of America during the tax year. Adib lends his wholly owned Afghan corporation Afn 1,000,000. The loan bears interest at a 13% rate. The loan must be repaid in 10 years. The loan is unsecured, which means that Adib does not have a security interest in any of the corporation's assets. The Afghan corporation can demonstrate that it recently obtained a loan that has to be repaid in 8 years from a bank. The bank loan bears interest at a 12% rate. The 13% rate charged by Adib should be considered appropriate.

Example 2

The facts are the same as Example 1, but the bank loan had to be repaid in 3 years and not 8 years. In this case, the bank loan does not represent a valid comparison. Adib and his Afghan corporation will have to rely on different evidence to prove that the 13% rate is appropriate. For example, they may refer to the interest rates that banks are charging on loans with longer terms.

- (b) The taxation administration shall issue procedures from time to time with respect to appropriate interest rates. In the meantime the benchmark interest rate should be based on rates charged by Da Afghanistan Bank for the use of funds. For example, Da Afghanistan Bank issues 30-day capital notes bearing a rate of interest that changes from time to time. A loan with a term of less than 1 year will be presumed to have an appropriate interest rate if the rate charged is within 3 percentage points of the rate charged on 30-day capital notes. Connected persons will always be permitted to use a rate other than the benchmark rate listed in procedures. If a different rate is used, however, the taxpayer must be prepared to show that the rate is appropriate under the preceding paragraph.

10. The method for determining an appropriate charge for services in a

connected transaction is set forth in this paragraph.

- (a) A person will usually charge a connected person a fee for services if the services provide a definite benefit for the person receiving the services and the service is one that unconnected persons would be willing to pay for. If the service does not provide a definite benefit or the service is one that unconnected persons normally do not pay for, then no charge is required.

Example

Company A is a Pakistani corporation that owns all of the issued stock of Company B, an Afghan corporation. Company A periodically sends its representatives to Afghanistan to monitor Company B's performance and review its financial information. The services provided by Company A do not provide a definite benefit for Company B and they are not the type of services that an unconnected company would pay Company A to provide. Company A should not charge Company B for these services but if it does, Company B will not be entitled to an income tax deduction for the payment.

- (b) If a person decides to charge a connected person for services provided, the charge should be similar to the amount that one person would charge an unconnected person for the same or similar services.

Example

Azziz owns all of the stock of Company A. Company A is an American corporation. Azziz owns all of the stock of Company B. Company B is an Afghan corporation. Company B provides telecommunications services to customers in Afghanistan. Company A provides consulting services to Company B. The services that Company A provides include repair services and computer support services. The services that Company A provides to Company B provide a direct benefit to Company B and the services are the type of services that one person would pay an unconnected person for. Company A is entitled to charge Company B for the services that Company B receives. The amount charged should be similar to the amount that one person would charge an unconnected person for the same or similar services.

- 11. The method for determining an appropriate charge for the lease or rent of tangible property between connected persons is set forth in this paragraph. In summary, the appropriate charge is the amount that would have been charged for the lease or rent of the same or similar property between unconnected persons under similar circumstances.
- 12. The method for determining an appropriate charge for the sale or transfer of tangible property between connected persons is set forth in this paragraph. In summary, there are five possible methods for determining the appropriate charge for the transfer of tangible property between

connected persons.

1. Comparable Unconnected Price Method
2. Resale Price Method
3. Cost Plus Method
4. Transactional Net Margin Method
5. Unspecified Method

The best method to use is the method determined under the rules described above in paragraph 5.

- (a) Comparable Unconnected Price Method. The purpose of the Comparable Unconnected Price method is to compare the price that is charged for the tangible property in the connected transaction to the price that is charged in unconnected transactions involving the same property.

Example 1

Azziz owns all of the issued stock of Company A and Company B. Company A is a French corporation. Company B is an Afghan corporation. Company A sells steel pipes to Company B. Company B purchases the pipes from Company A and uses them in its construction business in Afghanistan. Company A sells a one-meter pipe for Afn.50. The sales contract provides that Company A bears all risks related to the transportation of the pipe from France to Afghanistan. Company B can demonstrate that it can buy the exact same one meter pipe from unconnected Chinese companies for Afn. 40 or Afn. 42. The Chinese suppliers will also bear all risk related to the transportation of the pipe from China to Afghanistan. The transfer price from Company A to Company B should be adjusted to reflect the fact that Company A should only be charging Company B Afn. 42 for the pipe.

Example 2

The facts are the same as in Example 1, except that the Chinese suppliers do not bear all of the risks related to the transportation of the pipe from China to Afghanistan. The taxation administration estimates that the cost of insuring the risks associated with the transportation of pipe would be approximately Afn. 5 to Afn. 10 per pipe. Thus, no adjustment to the transfer price is necessary in this case.

- (b) Resale Price Method. The Resale Price Method is used to determine whether the amount charged in a controlled transaction is appropriate by reference to the gross profit margin earned in similar unconnected transactions. Gross profit equals the revenues from the sale of a product minus the cost of the product for the seller. Gross profit is not reduced by operating expenses, like advertising expense or interest expense. To determine the appropriate transfer price, the appropriate gross margin percentage is multiplied by the applicable resale price.

The appropriate gross margin percentage is the ratio of the gross profit earned on sales of similar property to the sales price of the property. The applicable sales price is the price at which the connected party sells the property to unconnected persons. This method is typically used when one of the connected parties purchases and sells tangible personal property without adding substantial value to the property. For this purpose, packaging, labeling and minor assembly do not constitute the addition of substantial value. Whether or not this method represents the best method is determined using the factors set forth in paragraph 5 above.

Example 1

Adib owns all of the issued stock of Company A, an Uzbek corporation, and Company B, an Afghan corporation. Company A sells electric generators to Company B. Company B then sells the electric generators to customers in Afghanistan. Company B charges Afn.20,000 per generator. Company B purchases the generators from Company A for Afn. 18,000 per generator. The applicable sales price for the generator is Afn. 20,000. The gross margin earned by Company B is Afn. 2,000 (Afn. 20,000 – Afn. 18,000). The gross margin percentage is 10%.

Example 2

The facts are the same as Example 1, except that the taxation administration determines that Company B's competitors purchase generators from unconnected companies. The taxation administration also determines that these companies earn the following gross margin percentages:

Company C	12%
Company D	15%
Company E	18%
Company F	22%

Because there are differences between the products sold by Companies C, D, E and F, that cannot be corrected for, the percentages above 12% and below 22% represent the relevant range of gross margins that Company B should earn with respect to the generators. Thus, the taxation administration is entitled to adjust the transfer price between Company A and Company B to ensure that Company B earns a gross margin of at least 12%.

- (c) Cost-Plus Method. The Cost-Plus Method is used to determine the appropriate transfer price by looking at the amount by which the sales price of property exceeds the cost to produce the property. This excess is referred to as the “markup”. The “markup percentage” is the ratio of this excess markup over the costs of producing the property. This method is usually used in cases involving the manufacture, assembly

or other production of goods that are sold to connected parties. The Cost-Plus Method is used to determine an appropriate price by adding the appropriate gross profit to the connected taxpayer's cost for producing the property involved in the connected transaction. The appropriate gross profit is computed by looking at the markup percentage earned in unconnected transactions.

Example 1

Wahid owns all of the issued stock of Company A, an Afghan corporation, and Company B, a British corporation. Company A makes carpets in Afghanistan and sells them to Company B. Company B sells the carpets to customers in Britain. Company A sells the carpets to Company B for Afn. 30,000 per carpet. It costs Company A Afn. 25,000 to make each carpet. The mark-up earned by Company A is Afn. 5,000. The markup percentage is 20% (Afn. 5,000 / Afn. 25,000).

Example 2

The facts are the same as in Example 1, except that the taxation administration identifies three other Afghan carpet manufacturers in the same geographic location. These manufacturers sell very similar carpets to unconnected companies in Europe. The taxation administration determines that these three manufacturers incur costs that are similar to Company A. These other companies earn different mark-up percentages, however:

Company C	16%
Company D	22%
Company E	23%

The taxation administration determines that Companies C, D, and E are all providing very similar goods on terms that are very similar to the terms offered by Company A. Thus, all three of the foregoing results create a range of reasonable results. Because the markup percentage earned by Company A is within this range, no adjustment should be made.

Example 3

The facts are the same as in Example 2, but the taxation administration discovers four potential unconnected transactions. These transactions are very similar to the transactions conducted by Company A, but there are differences. For example, some of the carpets sold in the unconnected transactions are not made of 100% sheep's wool. The taxation administration does not believe that it can make adequate adjustments to the unconnected transactions to make them more similar to Company A's sales to Company B. The applicable markup percentages are set forth below:

Company F	15%
Company G	18%
Company H	21%
Company I	24%

Because these unconnected transactions are not sufficiently similar to Company A's sales of carpets to Company B, the taxation administration has to create a reasonable range of results. The reasonable range of results excludes the lowest 25% of the results and the highest 25% of results from the unconnected transactions. In the foregoing list of results, the lowest result is 15% and the highest result is 24%. Thus, the range of reasonable results is above 15% but below 24%. The taxation administration may adjust the transfer price between Company A and Company B so that Company A's markup is above 15% but below 24%.

- (d) Transactional Net Margin Method. The Transactional Net Margin method can be used for transfers of tangible and intangible property. Thus, the rules regarding the Transactional Net Margin Method are described separately in paragraph 14.
 - (e) Unspecified Methods. Unspecified Methods can be used for transfers of tangible and intangible property. Thus, the rules regarding unspecified methods are described separately in paragraph 5.
13. The method for determining an appropriate charge for the sale or transfer of intangible property is set forth in this paragraph. Determining the appropriate transfer price for the sale or transfer of an intangible can be very difficult. Determining the appropriate transfer price is made complicated by the fact that the right to use an intangible can be separated into a number of different parts. Thus, a single item of intangible property can have multiple owners. For example, one person could have the right to use a specific name to sell carpets in Helmand province and someone else could have the right to use the exact same name to sell carpets in Bamiyan province. Thus, the first task in analyzing the transfer price for intangible property is to determine the owner of the property. Normally, if the intangible property is legally protected, the legal owner of the intangible property will be considered the owner, unless that person transfers substantially all of their rights to someone else pursuant to a contract.

The following examples assume that Afghan law provides one person with the sole legal right to use a particular name in the conduct of a trade or business for a province. The examples are for illustration only and should not be interpreted as a comment on the intangible property laws within Afghanistan.

Example 1

Afghan law provides Azziz with the exclusive right to use the name “Afghan Carpets” in the Helmand and Bamiyan provinces. As a result, Azziz can open carpet stores in Helmand and Bamiyan with the name “Afghan Carpets” but no one else is permitted to open a carpet store with the same name. Azziz would normally be considered to own the intangible right to use that name in his business in those provinces for tax purposes.

Example 2

The facts are the same as in Example 1, except that Azziz enters into a contract with Wahid. The contract provides that Azziz will transfer all substantial rights in the name “Afghan Carpets” to Wahid for the Bamiyan province in exchange for Afn. 1,000,000. Thereafter, Azziz will be the only person permitted to use the name “Afghan Carpets” in Helmand province and Wahid will be the only person permitted to use the name “Afghan Carpets” in Bamiyan province. In this case, Azziz will only be considered the owner of the intangible in Helmand province. Wahid will be considered the owner of the intangible in Bamiyan province.

If the intangible property is not legally protected, then the person that developed the intangible property will be considered to own the intangible property. If two or more connected persons develop the property, then the owner will be that person that bore the largest portion of the direct and indirect costs associated with the property.

Example 3

Azziz owns all of the issued stock of Company A and Company B. Company A is an Afghan corporation. Company B is an Uzbek corporation. Employees from Company A and Company B work together to develop a new process for applying colored dye to cloth. At the time the process is developed, Afghanistan does not have a law that would provide Company A or Company B any legal protection for the new process. Hence, both Company A and Company B need to ensure that their employees do not tell other people about their new secret process. They both enter into contracts with their employees to try and protect the secrecy of the process. Company A incurred Afn.3,000,000 in developing the secret process and Company B incurred Afn. 2,800,000 in developing the secret process. Company A should be considered to own the secret process.

It is important to determine the owner of the intangible property because the owner of the property is the person that is entitled to receive compensation for the use of the intangible. The other parties that assisted in the development of the intangible are only compensated for their services.

Example 4

The facts are the same as in the previous example. Because Company A is the owner of the process, Company A should pay Company B to reimburse Company B for its costs plus a reasonable profit. Company A needs to make this payment, because Company B provided services for Company A. If Company B uses the process in its business, Company B must pay Company A for the use of the process.

Once the owner has been determined, the Afghanistan Revenue Department must use a transfer pricing method in order to determine whether the transfer price for the intangible property is appropriate. In summary, there are three acceptable methods for determining the appropriate price for the transfer of intangible property. These methods are the Comparable Unconnected Transaction Method, the Transactional Net Margin Method and Unspecified Methods.

- (a) Comparable Unconnected Transaction Method. The purpose of the Comparable Unconnected Transaction Method is to determine whether the amount charged between two connected persons for the transfer of an intangible property is reasonable by comparing that charge to the amount that would be charged in a similar transaction between two unconnected persons. This method is typically only used when a very similar transaction between unrelated persons can be found.

Example 1

Azziz owns the right to use the name “Afghan Carpets” in Helmand province and Bamiyan province. He grants Wahid the right to use the name in Helmand in exchange for a fee equal to 5% of Wahid’s carpet sales every year for the next six years. At the same time, Azziz grants his son, Adib, the right to use the same name in Bamiyan province in exchange for a fee of 3% of Adib’s carpet sales every year for the next six years. The taxation administration determines that there is no significant reason why the right to use the name “Afghan Carpets” is any more valuable or any less valuable in Helmand province than Bamiyan province. Thus, the taxation administration has the right to adjust Azziz’s income upward to reflect the fact that Azziz should be receiving an amount equal to 5% of his son’s carpet sales.

Example 2

Azziz owns all of the issued stock of Company A and Company B. Company A is an Afghan corporation. Company B is a Canadian corporation. Company A puts soda into bottles for sale in Afghanistan. To perform its business, Company A imports bottles and syrup from outside of Afghanistan. Company A then takes the bottles and syrup and converts them into soda for sale in the markets. Company B owns the rights to a secret process that makes it easier to put soda into plastic bottles. Company B grants the right to use this process to

Company A in exchange for a fee equal to 5% of Company A's revenues. Company C is unconnected to Azziz, Company A and Company B. Company C owns the right to use the name "Afghan Cola" in Afghanistan. Company C grants Company A the right to use this name when Company A puts labels on the bottles that it sells. Company C charges Company A a fee equal to 1% of Company A's revenues. The right to use a secret process and the right to use a name are completely different rights. Thus, the taxation administration cannot use the Comparable Unconnected Transaction Method to decrease the fee paid by Company A to Company B to 1% of net revenue, and thereby increase Company A's profits.

- (b) Transactional Net Margin Method. The Transactional Net Margin Method can be used for transfers of tangible and intangible property. Thus, the rules regarding the Transactional Net Margin Method are described separately in paragraph 14.
 - (c) Unspecified Methods. Unspecified Methods can be used for transfers of tangible and intangible property. Thus, the rules regarding the unspecified methods are described separately in paragraph 15.
14. Transactional Net Margin Method. The Transactional Net Margin Method is used to determine whether the amount charged in a connected transaction is reasonable based on objective measures of profitability. The Transactional Net Margin Method can be used for transfers of tangible and intangible property. These objective measures of profitability are often referred to as "Profit Level Indicators". These Profit Level Indicators are derived from an investigation of transactions occurring between unconnected taxpayers that engage in similar business activities under similar circumstances. This method should only be used if the other methods described above cannot be used.

Example 1

The taxation administration reviews the profits earned by automobile sellers in Kabul, Herat, and Mazar-e-Sharif, for the past three years. The department learns that a typical businessman's profit from the sale of automobiles to customers will equal between 3% of his sales revenue and 10% of his sales revenue. Thus, if the sales price for an automobile is Afn. 100,000, the businessman's profit from that sale is between Afn. 3,000 and Afn. 10,000. This ratio of profit to revenue is a Profit Level Indicator.

Under the Transactional Net Margin Method, a reasonable profit margin is determined by applying the Profit Level Indicator that was derived from unconnected parties to the transactions under investigation.

Example 2

The facts are the same as in the previous example, except that the taxpayer under investigation is Wahid. Wahid owns and operates a business in Kabul that sells used automobiles to customers. One of Wahid's most significant customers is his son, Adib. Adib owns a company in Kabul that provides security. Adib purchases all of his vehicles from his father's business. The taxation administration discovered that the ratio of Wahid's profit to his revenue from selling cars to his son is typically less than 1%. The taxation administration can use the information it derived from unconnected transactions in Kabul, Herat and Mazar-e-Sharif to increase Wahid's profit from the sale of cars to his son until the ratio of the profit that Wahid earns to the revenue that Wahid earns is between 3% and 10%.

Many different ratios can be considered Profit Level Indicators. For example, the ratio of profit to revenue is one type of Profit Level Indicator. Another Profit Level Indicator is the ratio of operating profit to operating expenses. It is important to attempt to isolate the profit with respect to a particular transaction, rather than the profit generated by an entire company.

Example 3

Azziz owns a store in Pakistan that makes cloth. Azziz sells the cloth to his son, Adib, who lives in Afghanistan. Adib uses the cloth to make suits for men. Adib sells these suits in his store located in the Shar-e-Now area of Kabul. The taxation administration investigates Adib for the tax year 1396. The taxation administration learns that Adib earned the following profit during the year 1396:

Revenue	Afn. 10,000,000
Cost of Goods Sold	<u>- 8,000,000</u>
Gross Profit	2,000,000
Operating Expenses	<u>- 1,000,000</u>
Net Profit	<u>1,000,000</u>

The foregoing information can provide a number of different Profit Level Indicators. For example, the ratio of net profit to revenue is 10%. Razique is unconnected to Azziz and Adib. Razique also owns a store in Shar-e-Now. The taxation administration knows, from reviewing the tax returns of Razique for the last four years, that Razique's ratio of net profit to revenue is approximately 5%. Unlike Adib, however, Razique sells men's suits, and shoes and various Afghan crafts. The taxation administration cannot determine what profit Razique earns only on the sale of suits. Thus, the taxation administration should not use Razique's results to adjust Adib's profit under the Transactional Net Margin Method.

To enhance the accuracy of the method, a number of years of data should be reviewed. Generally, at least three years of data should be analyzed to develop a Profit Level Indicator.

Example 4

The taxation administration wants to determine what a reasonable profit should be for the sale of used automobiles so that it can develop a Profit Level Indicator. The Department obtains information for two companies, Company A and Company B. Company A has the following information:

<u>Year</u>	<u>Revenue</u>	<u>Profit</u>	<u>Ratio</u>
1395	10,000,000	100,000	1%
1396	20,000,000	200,000	1%
1397	5,000,000	500,000	10%

The taxation administration should take the average of the results for the past three years, or 4% $(1\% + 1\% + 10\%)/3$. The taxation administration should not simply take the 10% figure from 1397 because it is the highest figure. Company B has the following information:

<u>Year</u>	<u>Revenue</u>	<u>Profit</u>	<u>Ratio</u>
1395	10,000,000	200,000	2%
1396	20,000,000	200,000	1%
1397	5,000,000	300,000	6%

The taxation administration should take the average of the results for the past three years, or 3% $(2\% + 1\% + 6\%)/3$.

The taxation administration should take the same steps with other companies that it believes engage in similar activities in order to develop a reasonable range of Profit Level Indicators as required under paragraph 7.

In addition, it is important to ensure that the businesses that are analyzed to develop the reasonable range of Profit Level Indicators use the same methods of accounting.

Example 5

Azziz owns a store in the Wazir Akbar Khan area of Kabul. The store sells breads and cookies and pastries. Azziz uses the cash method of accounting. Azziz buys all of his flour from his son, who owns a store in Pakistan. If the taxation administration wants to use the Transactional Net Margin Method to investigate the transfer price that Azziz pays for flour, it must find a similar transaction between unconnected parties who use the cash basis of accounting.

As noted above, the Transactional Net Margin Method can be used to

establish an arm's length price on transfers of tangible or intangible property.

Example 6

Najibullah is an Afghan citizen and resident that owns all of the issued stock of a Canadian corporation and an Afghan corporation. The Canadian corporation licenses the Afghan corporation the right to use certain technology in the Afghan corporation's business of manufacturing steel. The Afghan corporation pays a royalty to the Canadian corporation during the year 1397. The payment of the royalty is the only connected transaction between the Afghan corporation and the Canadian corporation. The royalty equals 8% of the Afghan corporation's sales revenue. The taxation administration chooses net profit as a percentage of sales as its profit level indicator. The taxation administration reviews the net profits and sales revenues earned during the last three years for each of four companies. The results are as follows:

<u>Company</u>	<u>Year</u>	<u>Profits/Sales</u>
Company A	1396	6%
	1395	5%
	1394	7%
	Average	6%
Company B	1396	5%
	1395	2%
	1394	8%
	Average	5%
Company C	1396	2%
	1395	4%
	1394	0%
	Average	2%
Company D	1396	2%
	1395	1%
	1394	0%
	Average	1%

Company D's average 1% profit margin represents the bottom 25% of results. Company A's average 6% profit margin represents the top 25% of results. To the extent the Afghan corporation generates a ratio of profits to sales above 1% but below 6%, the royalty it pays to the Canadian corporation should not be adjusted.

Assume that the Afghan corporation generates a loss in 1397. The taxation administration can reduce the royalty that the Afghan corporation pays the Canadian corporation until the Afghan corporation's ratio of profits to sales exceeds 1%.

15. Unspecified Methods. The taxation administration and taxpayers may both use methods that are not described above to determine the appropriate transfer price in a connected transaction. In the event that one of the specified methods (mentioned above) and an unspecified method can be used, the specified method is preferred. Like the Transactional Net Margin Method, Unspecified Methods can be used to determine the arm's length price for transfers of tangible and intangible property.

Example 1

Wahid owns all of the issued stock of Company A and Company B. Company A is an Afghan corporation. Company B is a Pakistani corporation. Company A supplies lapis stone to Company B. Company B takes the lapis stone and transforms it into jewelry. Company B then sells the jewelry throughout the world. Company A only sells lapis stone to Company B. Company A does not sell lapis stone to any other unconnected person. Company A does not have enough information to use one of the specified methods to determine what the appropriate transfer price should be between Company A and Company B. The taxation administration does not have enough information to use one of the specified methods. Company A has received an offer from Company C, an unconnected Pakistani company, to purchase lapis stone for Afn. 90,000 per kilogram. This offer from the Pakistani company is not considered an "unconnected transaction" because it is only a bid. It does not represent a completed transaction. Because one of the specified methods above cannot be used, Company A and the taxation administration can both rely on this offer from Company C to determine what the appropriate transfer price should be.

Example 2

Wahid owns all of the issued stock of a Canadian corporation and an Afghan corporation. The Canadian corporation licenses certain technology to the Afghan corporation in exchange for an annual royalty equal to 8% of the Afghan corporation's net sales. The Afghan corporation is in the business of manufacturing steel. The taxation administration attempts to apply the Comparable Uncontrolled Transaction Method, but it cannot find a reasonable comparable unconnected transaction. The taxation administration attempts to apply the Transactional Net Margin Method, but it cannot obtain financial information about unconnected corporations in the same business as the Afghan corporation. If it is impossible to apply one of the specified methods, both the taxation administration and the Afghan corporation can look at the profit level indicators generated by unconnected companies in related businesses to determine whether the Afghan corporation's profits are appropriate. For example, they could look at the profits earned by businesses that manufacture concrete or bricks or other building materials.

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