

# AFGHANISTAN

# INCOME TAX LAW

**2009**

An unofficial translation of the Income Tax Law 2009 as published in Official Gazette number 976 dated 18<sup>th</sup> March 2009 incorporating consolidated amendments published in the Official Gazette number 1103 dated 14 April 2013, the Official Gazette number 1115 dated 21 September 2013, the Official Gazette number 1118 dated 20 October 2013, the Official Gazette 01198 dated 18 November 2015, the Official Gazette 1181 dated 16 September 2015, the Official Gazette 1206 dated 15 March 2016, and Official Gazette 1209 dated 13 April 2016.

*This translation has been prepared by the Afghanistan Revenue Department, Ministry of Finance. It is not an official version of the law and should be read and used with regard to this limitation. All reasonable effort has been made to provide an accurate translation of the law as published in the Official Gazettes. Where a person requires more certainty than an unofficial translation of the law can provide, that person is advised to seek professional advice based on the law in the languages of Dari and Pashtu as published in the Official Gazettes.*

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## CHAPTER 1

### GENERAL PROVISIONS

Article 1 Authority (1) This Law is established under the authority of Article 42 of the Constitution of Afghanistan for the purpose of tax determination and tax payment.

(2) Tax is a compulsory payment collected from natural and legal persons in accordance with the provisions of this Law for the purposes of financing of government and social welfare without the taxpayer receiving any direct goods or services from the government.

(3) Any tax deducted or collected by the government or non government agencies in accordance with the provisions of this Law shall be paid to a specific government (Ministry of Finance) bank account.

Article 2 Tax implementation (1) Tax shall be imposed on all income of natural and legal persons derived from Afghan sources in and out of the country, and on the income of residents of Afghanistan derived from non Afghan sources and from out of Afghanistan in accordance with the provisions of this Law.

(2) A natural or legal person shall be considered a resident of Afghanistan if:

1. The person has their principal home in Afghanistan at any time during the tax year; or
2. The person is present in Afghanistan for a period or periods aggregating to one hundred eighty-three days in the tax year; or
3. The person is an employee or official of the Government of Afghanistan and has been assigned to perform services abroad at any time during the tax year; or
4. An entity has been established during the tax year or has the center of its administrative management in Afghanistan.

*Afghan sources:* the income which is derived by residents of Afghanistan from sources within Afghanistan and from State properties outside Afghanistan.

*Non Afghan sources:* the income which is derived by residents of Afghanistan from other countries sources within Afghanistan.

*Internal sources*: the income received by persons from the country's internal sources both Afghan and non Afghan sources.<sup>1</sup>

Article 3 Tax (fiscal) year (repealed – see note<sup>2</sup>)

Article 4 Tax calculation (1) The income tax of legal persons shall be 20 percent of taxable income for the tax year.

(2) Income in foreign currency shall be converted to afghanis for purposes of taxation. The rate of conversion shall be the average of open (current) rates used by Da Afghanistan Bank to purchase such foreign money at the end of each month.

(3) The income tax of natural persons shall be the amount calculated in accordance with the following schedule:

From Afs.0 to Afs.5,000 monthly	0%
From Afs.5,001 to Afs.12,500	2%
From Afs. 12,501 to Afs. 100,000	10% + Afs. 150 fixed amount
From Afs. 100,000 and above	20% + Afs.8,900 fixed amount.

Article 5 Tax on residents (1) Tax on income of natural persons resident in Afghanistan shall be calculated as follows:

1. Income tax on taxable income including income from sources outside Afghanistan.
2. Any income tax paid to the government of a foreign country shall be taken as credit only against that part of the income tax attributable to foreign income of the taxpayer.
3. If a resident natural person derives income from more than one foreign country, the income tax credit shall be given in proportion to the income from each country as prescribed in the Income Tax Manual.

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<sup>1</sup> Retranslated May 2015 to better capture the expression in Dari. No actual change in Dari law.

<sup>2</sup> Note: This Article was repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed Article is as follows:

Article 3 Tax (fiscal) year (1) The tax year is the solar (Hejiri Shamsi) year which starts on the first day of Jadi (21 December) and ends on the last day of Qaws (20 December) of that year.<sup>2</sup>

(2) A legal person wishing to use a tax year other than that provided in paragraph (1) of this Article shall apply, in writing, to the Ministry of Finance setting out the reasons for the change of that person's tax year to another twelve-month period. The Ministry of Finance may grant such application but only where the application is justifiable.

(3) Permission to use a different tax year under paragraph (2) of this Article shall take effect from the date specified by the Ministry of Finance by notice in writing.

(4) The Ministry of Finance is authorized to withdraw the approval granted under paragraph (3) of this Article when required.

(2) All resident legal persons shall be subject to income tax on taxable income from all sources within and outside Afghanistan according to the provisions of paragraph (1) of this Article.

Article 6 Non-residents tax exemptions Non-resident persons are exempt from income tax imposed by paragraph (3) of Article 4 provided that the foreign country grants a similar exemption to the non-resident Afghans of that country.

Article 7 Non-residents payment of tax and allowable deductions (1) Non-resident natural and legal persons not engaged in trade or business are subject to income tax based on the income gained from Afghan *internal sources* from interest, dividends, rents, royalties, and any other income according to the provisions of this Law.<sup>4</sup>

(2) Deductions allowed under this Law shall only be allowed in respect of income other than interest, dividends, rents and royalties to those non-resident legal persons which file a true and accurate tax return including all information required by this Law and the Income Tax Manual established by the Ministry of Finance.

Article 8 Tax on business activities (1) Non-resident natural and legal persons engaged in economic, business or service activities in Afghanistan shall be subject to tax on their income from sources within Afghanistan.

(2) Deductions shall be allowed to the extent they are connected with income from sources within Afghanistan.

(3) Income derived from the operation of aircraft and by its staff under the flag of a foreign country in Afghanistan shall be exempt from tax provided that the foreign country grants a similar exemption to income from the operation of aircraft and by its staff under the flag of Afghanistan in that country.

(4) A correct apportionment of expenses with respect to sources of income within Afghanistan shall be determined as provided under this Law and the Income Tax Manual.

(5) Where a non-resident person carries on business through a branch in Afghanistan, the taxable income of the branch shall be determined as if the branch was a separate legal person, and calculated as follows:

1. payments or amounts incurred to other parts of the non-resident person's business shall be deemed to be dividends under paragraph (3) of Article 13 of this Law,

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<sup>4</sup> Retranslated May 2015 to better capture the Dari expression and reflect the use of the defined term "internal sources". No actual change in Dari law.

2. no deduction shall be allowed for payments or amounts incurred to another part of the non-resident person according to provisions of paragraph (2) of Article 18 of this Law, and
3. expenses incurred by the branch or another part of the non-resident person's business that is related directly to the earning of gross income of the branch shall be treated as expenses incurred by the branch as a separate legal person.

Article 9 Tax on foreign governments and international organizations

The tax liability of foreign governments, international organizations, and their non-resident employees in Afghanistan on income derived from sources within Afghanistan shall be determined by the provisions of existing agreements, treaties and protocols with the government of Afghanistan.

Article 10 Tax exempt organizations (1) Contributions and income received from the necessary operations of organizations fulfilling the following conditions shall be exempt from tax:

1. The organization must be established under the laws of Afghanistan.
2. The non-profit organization must be established and operated exclusively for educational, cultural, literary, scientific, or charitable purposes.
3. Contributors, shareholders, members or employees, either during the operation or upon dissolution of the organization mentioned in sub-paragraphs 1 and 2 of this paragraph, must not benefit from the organization.

(2) The procedure for exemption from income tax for organizations mentioned in paragraph (1) of this Article shall be provided in the Income Tax Manual.

Article 11 Tax exemptions of government The income of agencies and departments of the State and of municipalities shall be exempt from tax. Government enterprises shall be excluded from the provisions of this Article.

CHAPTER 2  
**DETERMINATION OF TAXABLE INCOME**

Article 12 Definitions

Taxable Income is the total of all receipts of an individual, corporation, limited liability company, or other legal persons less those exemptions and deductions authorized under this Law.

Exemptions are deductions from income of the taxpayer given in accordance with the provisions of this Law.

Deductions are expenses of production, collection, and preservation of income which are allowed, by provisions of this Law, to be deducted from receipts.

Expenditures and costs not specifically defined as exemptions or deductions are not deductible.

Net Operating Loss is the amount that exceeds income after allowance of deductions prescribed in this Law.

Article 13 Receipts subject to tax (1) The following receipts are subject to income tax:

1. salaries, wages, fees and commissions,
2. all receipts derived from business, industry, construction and other economic activities,
3. receipts from sale of movable and immovable property,
4. interest, dividends, rents, royalties, rewards, prizes, winning from lotteries, *bakhshishis* (gratuities, bonus payments etc.),
5. distributive shares of partnership income,
6. any other income from labor, capital, or economic activity,
7. income from other circumstances provided in this Law.
8. any other income which has not been provided in this Law.

(2) Dividends mean any distribution by a company in money or in property and any benefit provided to shareholders in their capacity as shareholders including:

- (1) any tangible or intangible assets;
- (2) shares in the company;
- (3) discounts on any purchases from the company;
- (4) loans to shareholders; and
- (5) the use of any property of a company.

(3) Where a branch in Afghanistan of a non-resident person (as defined in Article 8 of this Law) pays or incurs an amount to the non-resident person or any person connected to the non-resident person, that amount will be treated as a dividend.

Article 14      Non-taxable income      The following receipts are not subject to income tax and not included in tax returns of natural and legal persons:

1. grants, gifts, and awards of the State;
2. grants, gifts, and awards of foreign governments, international organizations, or nonprofit organizations for contributions to science, art, literature, social progress, and international understanding;
3. all scholarships, fellowships, and other grants for professional and technical training;
4. health, accident, and unemployment insurance benefits;
5. life insurance paid on death;
6. compensation or damages for personal injuries or sickness or restitution of reputation;
7. proceeds of borrowing;
8. proceeds of issues of stocks and bonds by companies;
9. acquisition of assets in connection with mergers of domestic corporations and other legal persons;
10. acquisition of movable or immovable property through expropriation of property of debtors by creditors;
11. payments on principal received from debtors;
12. interest on bonds issued by the State and by municipalities; and
13. any other receipts according to the provisions of this Law.

Article 15      Food and fuel tax exemption      Income represented by the value of food, fuel, and goods consumed or used by the producer of the same or by members of their household shall be exempted from income tax.

Article 16      Taxes on rent or lease of immovable properties      Rent received in money or otherwise from renting or leasing of immovable property used for commercial, industrial and other economic purposes is subject to income tax. Taxation of agricultural lands, gardens, and livestock together with their income are taxed by separate laws.

Article 17     Liability to withholding tax from salary and wages     (1) Ministries, agencies and other government organizations, enterprises, companies and charitable organizations shall be required to withhold tax from the salary and wages of its employees when they are being paid and transfer the withheld amount to the government account.

(2) Pensions of government employees are exempt from income tax.

Article 18     Deductible expenses     (1) Deduction of all ordinary and necessary expenses of production, collection, and preservation of income of natural and legal persons shall be allowed in accordance with the provisions of this Law as follows provided that these expenses have been incurred during the tax year or one of three previous years.

1. any expense related to the cost of production or trade and business, such as insurance and freight expenses, etc.;
2. the cost of supplies, materials, fuel, electricity, water, and other necessary expenses incurred in the production of income, or in a trade or business;
3. wages, salaries, commission, and fees paid for services rendered by employees in trade or business;
4. interest paid on loans utilized for business and trade ;
5. rent paid on property necessary to and used for the purposes of trade or business;
6. cost of repairs and maintenance of properties and equipment necessary to and used for purposes of the business or trade;
7. depreciation of movable and immovable property (except agricultural land) used in trade or business, or held by the producer for the production of income, in accordance with the Income Tax Manual. The total of deductions for depreciation of the property shall not exceed its cost to the taxpayer. However, a natural or legal person will not be entitled to claim depreciation for that part of the cost of an asset which the person does not withhold tax from payment for that asset in accordance with Article 72 of this Law;
8. any tax or charge that is a necessary expense of doing business, holding property and equipment for earning income or producing income, if paid or accrued during the tax year. Taxes imposed by this Law and taxes not qualifying as necessary business expense shall not be deductible except as otherwise provided by this Law;
9. damages to movable or immovable property caused by fire, earthquake, and by disaster of any kind, over a period of three years, to the extent that the cost is determined and

substantiated by records and the loss was not covered by insurance;

10. losses in business or trade from bad debts according to the Income Tax Manual;
11. dividends paid in money by a legal person established under the laws of Afghanistan; and
12. other expenses of doing business and of holding movable or immovable property for the production of income under relevant legislative documents.

(2) No deductions shall be allowed for the following expenses:

1. Expenses incurred to provide entertainment or advertising that are not connected to economical or commercial activities;
2. Dividends, interest, royalties, rent, commissions, wages, salaries, payments which are the subject of Article 72 of this Law, and other similar income from which legal and natural persons are required to withhold and pay tax under the provisions of this Law, but have failed to do so; and
3. in the case of a branch in Afghanistan of a non-resident person, any expenses paid or incurred to the non-resident person or any person connected to the non-resident person.

Article 19     Non-deductible expenses     (1) Personal expenses including the following expenses shall not be deductible:

1. payments made to persons for their or their family's benefit and enjoyment;
2. expenses and costs of maintenance, repair, construction, improvement, furnishing, and other expenses of the taxpayer's family house or residence or any property devoted to the taxpayer's own personal or family use;
3. interest on personal loans;
4. costs of commuting to and from work and cost of travel for personal purposes;
5. cost of life, accident, health, and liability insurance for the protection of the taxpayer and their family; and
6. cost of insurance of any kind for the protection of property used for personal purposes.

(2) The following expenses shall not be deductible:

1. The cost of acquiring land, buildings, durable items (such as machinery, equipment, fixtures, and furniture, or costs of additions or improvements to the same). Depreciation expense allowable under sub-paragraph 7 of paragraph (1) of Article 18 and the provisions of Chapter 3 of this Law shall be excluded from the provisions of this paragraph.
2. Additions to reserves for contingencies, bad debts, and other similar purposes; and
3. Taxes paid to foreign countries by non-resident persons on income from sources within Afghanistan, except as provided by an existing treaty.

Article 20 Income from *internal sources* (1) Income from *internal sources*<sup>5</sup> shall be as follows:

1. Interest from loans, profit on deposits, and income from investments;
2. Dividends received from resident companies operating in Afghanistan;
3. Salaries, wages, and income from self-employment;
4. Rental income and royalties from any movable and immovable property;
5. Gains from sale of immovable and movable property;
6. Commissions on sales including insurance of any type;
7. Income from commercial activities within Afghanistan;
8. Gains from the sale or transfer of any movable property used in commercial or employment activities;
9. Royalties, fees and commissions paid by a resident of Afghanistan;
10. Income from discovery and extraction of any minerals, petroleum, or any other resources;
11. Income from other sources within Afghanistan which is subject to tax according to the provisions of this Law.

(2) For the purposes of this Law, apart from Articles 29 and 30, the term "immovable property" mentioned in subparagraph 5 of paragraph (1) of this Article includes any benefit in a company or other entity where the value of the

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<sup>5</sup> Article heading and opening text retranslated May 2015 to show the use of a term defined in Article 2. No actual change in Dari law.

assets of the company or entity results principally from ownership either directly or indirectly through other persons of –

- 1 immovable property in Afghanistan; or
- 2 benefits in immovable property in Afghanistan, including hydrocarbon contracts and mining licenses and mining authorizations as defined in Chapter 12.

(3) For the purposes of this Law, apart from Articles 29 and 30, exploitation of an interest described in subparagraph 10 of paragraph (1) of this Article includes any sale of or other dealing with an interest.

**CHAPTER 3**  
**GAIN OR LOSS FROM THE SALE, EXCHANGE,**  
**OR TRANSFER OF ASSETS**

- Article 21     Gains subject to income tax     The gain from the sale or exchange of capital assets or investment in trade or business shall be subject to income tax.
- Article 22     Taxable gain of tax year     The gain from the sale or exchange of any asset of a corporation or a limited liability company shall be taxable income in the tax year in which the asset was transferred.
- Article 23     Tax on transfer of property     (1) Gain from the sale, exchange, or transfer of the following assets shall be taxable income:
1.     a trade or business, including goodwill;
  2.     a factory including equipment, machinery, buildings and land, or any part of such assets;
  3.     equipment used in the business of transporting persons and goods; and
  4.     shares of stock in corporations or limited liability companies.
- (2) Gain from the sale or transfer of movable or immovable property acquired by inheritance shall be excluded from the provisions of paragraph (1) of this Article.
- Article 24     Deduction of expenses from taxable income     Proceeds from sale, exchange and transfer of assets (except by inheritance), shall be reported in full. The following deductions are allowed in determination of taxable gain:
1.     Cost to the taxpayer of the asset and investment sold, less the total amount allowable for its depreciation since it was acquired.
  2.     Sale expenses including commission, advertising, documents and other expenses of transferring the asset.
- Article 25     Tax determination based on market value     The market value of the movable or immovable asset at the time it was transferred or exchanged (except inheritance), shall be the basis for computing the gain.

- Article 26     Form of transfer not to affect tax liability     The form of transfer of movable or immovable assets (except by inheritance) shall not affect taxability of the gain from the transfer.
- Article 27     Deduction of loss incurred from taxable income     Losses from the sale or exchange of capital assets used in trade or business shall be deductible from the taxable income of the taxpayer in the tax year in which the sale or exchange took place, provided that a gain from such sale or exchange would have been taxable.
- Article 28     Non-deduction of additional loss from taxable income     Loss from sale or exchange of shares of stock shall not be deductible except from the gain from sale or exchange of shares of stock in the same year. For any such gain, if in excess of loss from such transactions, the excess is taxable, but if any such loss is in excess of gain, the excess loss shall not be deductible.
- Article 29     Calculation of tax on capital gains     The method of determining and computing tax on capital gains shall be as follows:
- (1) Gain, taxable under Article 23 of this Law, from the sale or transfer of an asset owned by a person eighteen months or more shall be subject to the provisions of this Article if one or more of the following conditions are met:
    - the transfer of property (except by inheritance) was not a sale;
    - the asset transferred was a capital asset;
    - the asset was transferred on sale or liquidation of a business.
  - (2) The income tax of any person in any tax year where assets were transferred under any of the circumstances described in paragraph 1 of this Article will be the product of the person's taxable income from all sources multiplied by the special rate imposed by paragraph (3) of this Article.
  - (3) The special rate imposed by this Article shall be determined as follows:
    - the gain from transfer of any asset (except by inheritance) is divided by the number of years it was owned;
    - the average annual gain or gains so determined are added to all other taxable income and income tax is computed according to the rate schedule in Article 4 of this Law.
    - the tax so computed, divided by the amount of taxable income for which it was computed is the special rate. If the resulting rate is less than two percent, the applicable rate shall be two percent.

Article 30     Tax on sale of movable or immovable property     (1) According to the provisions of Article 23 of this Law, the price receivable from the sale or transfer of movable or immovable property by a natural person shall be subject to one percent tax at the time of transfer of ownership of the property in lieu of income tax.

(2) According to the provisions of Article 23 of this Law, the price receivable from the sale or transfer of movable or immovable property by a legal person shall be subject to one percent tax at the time of transfer of ownership of the property. The tax paid will be allowed as a credit against tax payable when the tax return is filed.

## CHAPTER 4

### PARTNERSHIPS

#### Article 31 Definitions

1. A partnership is an association of two or more persons carrying on business and sharing profit or loss in accordance with the partnership agreement.
2. A partner is a person who has a share in the partnership.
3. The partnership agreement is the body of provisions agreed to by the partners under which they operate the partnership.
4. A general partnership (Sherkat-Tazamoni) is one in which the partners are liable for payment of all debts of the partnership individually and collectively.
5. A special partnership (Sherkat-Tazamoni-Mekhtalet) is one in which one or more partners have unlimited liability for debts of the partnership and the rest of the partners have liability limited to their shares of capital in the partnership.
6. A limited liability company (Sherkat-Mahdudul Masseliat) is a company in which the partners (shareholders) are not individually liable for debts of the company but each partner (shareholder) has liability limited to their shares of capital in the company.
7. A corporation (Sherkat-Sahami) is a company which has its capital determined and divided by shares and liability of each partner (shareholder) is limited to their shares.

#### Article 32 Limited liability companies and special partnerships.

(1) A limited liability company shall be subject to the same provisions of this Law as corporations (Sherkat-Sahami). Partners in such companies shall be considered shareholders and distribution of profits as dividends for the purposes of this Law.

(2) A special partnership shall be subject to the same provisions of this Law as a general partnership.

Article 33 General partnerships A general partnership as a legal entity shall not be subject to the income tax imposed by this Law. Partners as natural persons shall be liable for income tax only in their separate and individual capacities. The income of the general partnership shall be taxable as income of the partners individually, each of whom shall be required to include their share of the partnership income in their taxable income.

Article 34     Determination of net income           Every general partnership shall be required to make an annual report of all its receipts, expenses, and disbursements, and to determine its net income in the same manner as an individual. The partnership shall be required to report separately the share of the following items for each partner:

1.       the net income or net loss;
2.       the gain or loss from sale or exchange of movable and immovable property; and
3.       salary, interest, dividends, advances, etc.

Article 35     Distribution of receipts           The income, expenses, and net profit of a general partnership shall be deemed to have been shared by the partners according to the terms and conditions of the general partnership agreement.

## CHAPTER 5

### RULES FOR ACCOUNTING

Article 36     Maintenance and preservation of records     All natural and legal persons with taxable income in a tax year shall prepare, keep and maintain records of all transactions, all movable and immovable property, and of all income. Such records shall be made available to the Ministry of Finance upon request.

Article 37     Accrual method of accounting     Corporations and limited liability companies shall compute their income using the accrual method of accounting which recognizes income and expenses when due.

Article 38     Cash method of accounting     A person shall compute their taxable income using the cash method of accounting at the time of receipt of income and payment of expense. The Ministry of Finance may permit a taxpayer to compute their taxable income using the accrual method of accounting. This provision shall not apply to corporations and limited liability companies.

Deductions for depreciation shall be allowed in accordance with the Income Tax Manual.

Article 39     Form and content of records (repealed – see note<sup>6</sup>)

Article 40     Inventory at the close of year     Inventories of goods, products, and materials used in business shall be taken at the close of each tax year and priced at cost or market value, whichever is lower. All taxpayers engaged in manufacturing, trade, or other businesses shall be required to take inventories on such basis as the Ministry of Finance may prescribe.

Article 41     Determination of taxable income of two or more businesses     Where two or more organizations or businesses are owned or controlled, directly or indirectly, by the same natural or legal person, the Ministry of Finance may apportion or allocate receipts, deductions or credits between or among such organizations or businesses to accurately reflect taxable income and prevent evasion of taxes.

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<sup>6</sup> Note: This Article was repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed Article is as follows:

Article 39     Form and content of records     For better management of income tax, identifying the actual income and presenting accurate reports, Ministry of Finance shall prescribe the form and content of taxpayers books and records.



**CHAPTER 6**  
**SPECIAL PROVISIONS FOR CORPORATIONS**  
**AND LIMITED LIABILITY COMPANIES**

Article 42     Deduction of operating loss           (1) A corporation or limited liability company incurring a net operating loss in a tax year shall be entitled to deduct the loss from its taxable income of the three succeeding years, deducting each year one-third of the loss. Paragraph 4 of Article 47 of this Law shall be an exception to this provision.

(2) Where a resident company carries on activities to generate income from a source outside Afghanistan, the company shall separately compute its taxable income as defined in Article 12 of this Law or its net operating loss as defined in paragraph (1) of this Article in respect of the activities to generate income from a source in Afghanistan and its activities to generate income from a source outside Afghanistan. A net operating loss from activities to generate income from a source outside Afghanistan may only be carried forward and deducted from taxable income from such activities and may not be deducted from taxable income from a source in Afghanistan.

Article 43     Distribution of assets to shareholders       The distribution of the assets of a corporation or limited liability company to its shareholders or partners shall be treated as a reduction in the cost of stocks or capital. The payment of dividends or distribution by a corporation or a limited liability company on liquidation shall be excluded from the provisions of this Article.

Article 44     Distribution of assets on liquidation of a company   A distribution of assets among shareholders or partners on liquidation of a corporation or a limited liability company shall be treated by the shareholders or partners as proceeds from sale or exchange of assets as provided in Chapter 3 of this Law. The amount distributed in money plus the market value of any other assets distributed less the shareholder's cost of the stock or the amount of partner's capital on which distribution is made shall be taxable income of the shareholder or partner. No gain or loss shall be recognized to the corporation or limited liability company on the distribution of its assets in partial or total liquidation.

Article 45     Distribution of money or other assets       A dividend is any distribution of money or assets made by a corporation or a limited liability company to its shareholders or partners out of its earnings and shall be subject to the following:

1.     Dividends paid in cash by a corporation or limited liability company established under the laws of Afghanistan shall be deductible from the income of the company which makes the payment except where sub-paragraph 2 of paragraph (2) of Article 18 applies.

2. Dividends paid in the form of securities for shares or loan or of similar nature shall not be deductible from income of the corporation or limited liability company.
3. Dividends paid in cash shall be taxable income of the recipient at the time of receipt, but dividends in the form of securities for shares or loan or of similar nature shall not be considered as taxable income of the recipient at the time received.

Article 46      Withholding tax      (1) Profit or non-profit legal persons formed under the laws of Afghanistan shall be required to withhold income tax as follows:

1. in the case of wages and salaries, in accordance with the provisions of this Law;
2. twenty percent tax from interest, dividends, royalties, prizes, rewards, lotteries, bakhshishis (gratuities), bonuses, and service charges according to the provisions of this Law.

(2) Tax withheld under this Article shall be paid to the State not later than 10 days after the end of the month in which the tax was withheld.

(3) Legal persons withholding tax from payments of salaries and wages under the provisions of this Law shall provide to each person receiving such payment details of payments and tax withheld, in the manner prescribed by the Ministry of Finance, within one month of the end of the tax year in which tax was withheld.

(4) A person making payments subject to withholding tax shall report details of payments and withholding tax to the Ministry of Finance in the prescribed manner not later than ten days after the end of each month.

(5) Where the correct amount of tax has been withheld from an amount in accordance with the provisions of this Law, it shall be deemed that the income tax on this source of income has been fully satisfied.

(6) Natural persons who have more than one source of income shall be required to file a tax return and income tax shall be computed under the provisions of this Law. Any amount of tax which has been withheld on payment of the income will be allowed as a credit against income tax payable.

Article 47      Deduction of depreciation and losses      (1) Enterprises registered under the Law on Domestic and Foreign Private Investment in Afghanistan shall, from June 21 2004 and as an exception to sub-paragraph 7 of paragraph (1) of Article 18, be entitled to a deduction for the depreciation of buildings and other depreciable assets as follows:

- four years for buildings; and
- two years for other depreciable assets.

(2) The allowable depreciation deduction for buildings and other depreciable assets shall be an equal deduction for each tax year of depreciation. If a

depreciable asset is held by the enterprise for less than half of the year, depreciation shall be calculated and deducted for half of the year. If a depreciable asset is held for more than half of the year, depreciation shall be calculated and allowed for one year.

(3) Approved enterprises incurring a net operating loss in a tax year based on legal and accounting records may, from June 21 2004 and as an exception to Article 42, carry forward this loss as a deduction from taxable income in each subsequent year until the loss is fully set off. The loss incurred by such approved enterprises shall be calculated in accordance with Article 42 of this Law. Depreciation and expenditure which relate to a period covered by a tax exemption or to a period before an enterprise first became an approved enterprise shall not be allowable in the calculation of a net operating loss.

## CHAPTER 7

### TAXATION OF INSURANCE COMPANIES

Article 48 Provisions applicable to insurance companies The Articles of this Chapter shall apply to an insurance company provided it meets the following conditions:

1. It has been established as a corporation under the laws of Afghanistan;
2. The company is engaged in more than one field of insurance, such as casualty-risk insurance, life insurance, or any other type of insurance activity; and
3. The company must have separate accounting and reserves for each of its fields of insurance and other activities.

Article 49 Taxable income of insurance companies The following receipts of insurance companies shall be subject to income tax:

1. interest, dividends, rent, and other income from investments and property;
2. receipts from activities other than insurance;
3. premiums for insurance against fire, theft, accident, sickness, casualty, or risk, the insurance of which is for a specified term, and the insured person has no money claim after the term has expired; and
4. income from capital transactions.

Article 50 Exemption of certain policy holders All insurance premiums received for written contracts that require ultimate payment of specified benefits to the policyholder or their beneficiaries are exempt from income tax.

Article 51 Non-deductible expenses of insurance companies The following expenses and payments made in connection with insurance for which premium income is tax exempt under Article 50 shall not be deductible:

1. Commission expense and other costs of writing insurance; and
2. Payments of benefits to the policyholders or their beneficiaries.

Article 52 Deductible expenses of insurance companies (1) The following expenses and payments of insurance companies are deductible from their income:

1. amounts paid (claims) on insurance for which premium income is taxable;
2. commission and other expenses incurred on writing insurance for which premium income is taxable;
3. reinsurance expenses incurred on insurance for which premium income is taxable;
4. additions to reserves for compensation of claims, provided such reserves do not exceed 100 percent of premiums for transport insurance and 50 percent of premiums for any other risk insurance received during the tax year;
5. additions to reserves for losses in operations in the field of insurance for which premium income is taxable, provided such reserves do not exceed twice the amount of invested capital for such field of insurance;
6. other necessary expenses of doing business as provided in Chapter II of this Law except those stated in Article 51.

(2) Any transfers or payments from reserves referred to in sub-paragraphs (4) and (5) of paragraph 1 of this Article, except for actual claims and losses or for dividend payments in money, are taxable income in the tax year during which the transfer or payment was made.

Article 53      Determination of taxable income of foreign insurance companies Any foreign insurance company or reinsurance company receiving premium income of any kind from within Afghanistan is subject to income tax as follows:

1. the premiums received by the company from within Afghanistan in the tax year shall be determined;
2. the total premiums received world-wide by the company in the same period shall be determined;
3. the net income before income tax and dividend payments by the company from its world-wide business shall be determined;
4. the amount determined in sub-paragraph (1) divided by the amount determined in sub-paragraph (2) multiplied by the amount determined in sub-paragraph (3) of this Article shall be taxable income.

**CHAPTER 8**  
**TAXATION OF BANKS, LOAN AND**  
**INVESTMENT CORPORATIONS**

- Article 54     Profits and gains subject to tax     Income of banks, loan and investment corporations shall be subject to income tax on all income from dividends, interest, discounts, rents, service charges, fees, commissions, and on gains from capital transactions.
- Article 55     Deduction of necessary expenses     Necessary business expenses shall be deductible from the income described in Article 54 of this Law. Losses from capital transactions, dividends paid in money and additions to a reserve against losses on loans shall also be deductible.
- Article 56     Additions to reserves     Additions to reserves against losses on loans shall be deductible only if such reserve does not exceed 25 percent of loans outstanding at the end of the tax year. Any transfers or payments from such reserve, except in accordance with the purpose of the reserve, shall be taxable income in the year the transfer or payment was made.
- Article 57     Increase or decrease in value of securities     An increase or decrease in value of securities owned, loans and similar items shall not be recognized for the purposes of this Law until realized through sale or exchange of the securities. When gain or loss is realized through sale or exchange of the securities, such gain or loss shall be income or loss in the year in which the sale or exchange took place.

## CHAPTER 9

### WITHHOLDING TAXES ON SOURCES OF INCOME

Article 58     Withholding and payment of tax     All natural or legal profit and non profit persons, ministries, state enterprises, municipalities and other State departments employing two or more employees in any month of a year shall be required to withhold taxes as provided in Article 4 of this Law from payment of salaries and wages and pay the amount withheld to the Government account.

Article 59     Rent withholding tax on buildings and houses     (1) Payments of rent for buildings and houses which are rented to legal or natural persons and are used for business purposes or offices are subject to withholding tax as follows:

1.     Where the monthly rent is from Afs 10,000 to Afs.100,000 - ten (10) percent.
2.     Where the monthly rent is more than Afs.100,000 – fifteen (15) percent.

(2) Tenants of buildings and houses mentioned in paragraph (1) of this Article shall be required to pay taxes according to the rulings issued by the Ministry of Finance.

(3) Tax collected under paragraph (1) of this Article shall be paid by the tenant in respect of the income tax liability of the landlord under this Law. This tax shall be treated as a prepayment of the tax liability of the landlord and shall be credited at the time of annual tax payment. In the event of a dispute about the amount of rent owed by a tenant, the tenant will be treated as having paid to the landlord as rent any tax that was paid to the relevant authorities under this Article.

(4) Payments of rent include:

- any money, goods or services or any other benefit received by a person or persons as rent; and
- the cost of any repairs, renovations or improvements to the property carried out by the tenant.

(5) If the rental payment of a property is less than the actual rental value of the property, the Ministry of Finance by an authorized panel shall determine the rent according to the market value.

(6) Property dealers shall be required to send a copy of the agreement to the Ministry of Finance as soon as it is signed. If a property dealer makes a

false agreement or delays the sending of the agreement, the Ministry of Finance will officially notify the Ministry of Justice to take necessary action.

(7) Repealed (see note<sup>7</sup>)

(8) Repealed (see note 7)

Article 60      Remittance of tax payments      Any employer required to withhold tax under Article 58 of this Law shall remit to the State the amount withheld not later than 10 days after the end of the month in which the amounts were withheld. The employer shall be required to submit with this remittance a Tax Withholding Report to the relevant tax office in the format prescribed in the Income Tax Manual.

Article 61      Preparation of statements      (1) As prescribed by the Ministry of Finance, each employer required to withhold tax from salaries or wages shall prepare a salary and tax statement for each employee and submit the statement to the Ministry of Finance or relevant tax office and employees concerned not later than the end of the first month of the following year.

(2) Every employer prescribed in paragraph (1) of this Article shall be required to file an annual consolidated report of taxes withheld from salaries and wages in the format prescribed by the Ministry of Finance.

Article 62      Time for submission of statements      (1) Every taxpayer shall be required to submit their annual salary and tax statement to the relevant tax office within one and half months after the end of the tax year.

(2) The income tax liability for a tax year shall be discharged by a taxpayer by filing their salary and tax statement, certified by their employer, within one and half months after the end of the tax year, provided the taxpayer meets the following conditions:

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<sup>7</sup> Note: Subsections (7) and (8) were repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed subsections is as follows:

(7) Where it is established that the rent in a rent agreement is more than 20 percent lower than the market value of rent, paragraph (5) of this Article shall apply. In the case of a dispute regarding the market value of the rent, the onus is on the landlord to prove that the rate fixed by the Ministry of Finance is not correct. This provision applies where the Ministry of Finance finds evidence and documents which show that the rent specified in the rent agreement is less than that which is paid. In this case, the Ministry of Finance may require the landlord to pay penalty of twice the amount of the understatement of the tax amount.

(8) If the tax has not been paid within 15 days of the due date, the following action shall be taken:

1. Subject to a notice in writing by the Ministry of Finance, 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 Ministry of Finance as representative of the Government of Afghanistan;
2. If the tenant has not paid the tax due within 30 days after receiving notice from the Ministry of Finance 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 Ministry of Finance as representative of the Government of Afghanistan;

This arrangement will remain in place until the Ministry of Finance receives the rental tax due and any additional income tax payable in accordance with Chapter 16 of this law.

1. The taxpayer has no taxable income in the tax year other than the salary or wage from which taxes were withheld;
2. The taxpayer was not employed during the tax year by more than one employer; and
3. The taxes withheld were in accordance with income tax rates prescribed in paragraph (3) of Article 4 of this Law.

Article 63      Filing of returns      (1) Any taxpayer with income from salaries or wages subject to tax withholding from more than one employer or has income from sources other than salaries or wages shall file an income tax return as required by the provisions of this Law. The taxes withheld shall be allowed as a credit against the taxpayer's tax liability.

## CHAPTER 10

### BUSINESS RECEIPTS TAX

Article 64 Business receipts tax Business receipts tax is a tax which is imposed on total gross income (sales) before any deduction according to the rates prescribed by Article 66 of this Law.

(1) A legal person who provides goods or services in exchange for consideration shall be required to pay business receipts tax.

(2) A natural person who provides goods or services in exchange for consideration and whose revenue from such sales is Afs. 750,000 or more per quarter of the year shall be required to pay business receipts tax. Persons referred to in paragraphs (2), (3), (4), (5) and (6) of Article 66 shall be excluded from the threshold amount in this provision.<sup>8</sup>

(3) Persons who import goods shall be subject to four<sup>9</sup> percent business receipts tax on the cost price of the imported goods including custom duty. The business receipts tax will be treated as an advance payment for business receipts tax payable.

(4) The business receipts tax provided in paragraph 3 of this Article shall be collected by the Customs Office where the custom duty is paid.

(5) Total gross income of a business entity shall not be severable.

(6) If the consideration for provision of goods or services includes cash, goods or services, the value of goods or services shall be calculated according to market value of the goods or services received.

Article 65 Business receipts tax exemptions The following income shall be exempt from the business receipts tax.

1- Income received from interest;

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<sup>8</sup> Note: Subsection (2) of this Article was amended by Official Gazette number 1103 dated 14 April 2013 with effect from that date. The provision was formerly:

(2) A natural person who provides goods or services in exchange for consideration and whose revenue from such sales is Afs. 750,000 or more per quarter of the year shall be required to pay business receipts tax. Persons referred to in paragraphs (2), (3), (4), and (5) of Article 66 shall be excluded from the threshold amount in this provision.

<sup>9</sup> Presidential Decree No. 58 dated 26/05/1394 on amendment of BRT under Article 64 (3) and Article 66 (1) in effect from 01/06/1394 was initially rejected by Parliament. The same Presidential Decree was published in Official Gazette number 01181 dated 25.06.1394 (16.09.2015). Subsequently Presidential Decree No. 149 dated 24/11/1394 (13.02.2016) with the same content was published in Official Gazette number 01206 dated 25.12.1394 (15.03.2016). The amendment comes into effect from the date it is signed. The provision was formerly:

(3) Persons who import goods shall be subject to two percent business receipts tax on the cost price of the imported goods including custom duty. The business receipts tax will be treated as an advance payment for business receipts tax payable.

- 2- Fees earned from exchange of currency, operation of savings or other bank accounts, deposits and withdrawal transactions, issuance of cheques or letters of credit, internet banking, provision of mortgages or loans, and provision of lines of credit;
- 3- Issuance of cash settled futures contracts;
- 4- Issuance of futures contracts settled by physical delivery of the goods of the contract;
- 5- Premiums from the provision of any insurance or re- insurance;
- 6- Distributions received by a shareholder from a corporation, limited liability company or partnership with respect to shareholder's stocks or partnership interest;
- 7- Income from export of goods and services;
- 8- Income from provision of services specified in the Articles 17 or 46 of this Law.
- 9- Income received from rent or lease of residential property to a natural person provided that the tenant uses the property for residential purposes for more than six months of the tax year; and
- 10- Income from sale of property by a natural person outside the ordinary course of the natural person's business. A sale shall be considered to be outside the course of the natural person's business when such sales are not regular and continuous.

Article 66 Business receipts tax rates

- (1) Four<sup>10</sup> percent of income received (before any deductions) from any profit activities of the persons mentioned in Article 64 (1) and (2) of this Law. The person mentioned in paragraph (2), paragraph (3) and paragraph (4), the amended paragraph (5) and additional paragraph (6) of this Article is excluded from this provision.
- (2) Two percent of income received (before any deductions) from hotels or guest houses and restaurants the monthly income of which is less than the threshold amount in Article 64 (2).

[Note: Reference to monthly income is intended to be quarterly income.]

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<sup>10</sup> Presidential Decree No. 58 dated 26/05/1394 on amendment of BRT under Article 64 (3) and Article 66 (1) in effect from 01/06/1394 was initially rejected by Parliament. The same Presidential Decree was published in Official Gazette number 01181 dated 25.06.1394 (16.09.2015). Subsequently Presidential Decree No. 149 dated 24/11/1394 (13.02.2016) with the same content was published in Official Gazette number 01206 dated 25.12.1394 (15.03.2016). The amendment comes into effect from the date it is signed. The provision was formerly:

(1) Two percent of income received (before any deductions) from any profit activities of the persons mentioned in Article 64 (1) and (2) of this Law.

- (3) Five percent of income received (before any deductions) from hotels or guest houses and restaurants income of which is more than the threshold amount in Article 64 (2).
- (4) Five percent of income received (before any deductions) from services provided by clubs and halls where events are held.
- (5) Ten percent of income received (before any deductions) from telecommunication, hotels and restaurants providing superior services. Telecommunication services in this Law means providing any type of telephone, internet and fax services.
- (6) Five percent of income (before any deductions) received from air transport services.
- (7) A taxpayer referred to in paragraphs (3), (4) and (5) of this Article who claims not to have income from the provision of taxable services according to these paragraphs for one or more months shall be required to inform the Ministry of Finance in writing and attach a completed tax return. If the claim is confirmed, the taxpayer will not be subject to tax under the above mentioned paragraphs. If the claim is proved to be incorrect, besides the payment of tax according to paragraphs (3), (4) and (5), the taxpayer shall be required to pay additional tax according to the provisions of Article 98 (2) of this Law.
- (8) The Ministry of Finance may specify criteria and procedures for the better application of this Article.<sup>11</sup>

### **Definitions:**

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<sup>11</sup> Note: Amendments to this Article were published in Official Gazette number 1103 dated 14 April 2013 and with effect from that date. The Article (excluding definitions, which were not amended) formerly read in full:

- (1) Two percent of income received (before any deductions) from any profit activities of the persons mentioned in Article 64 (1) and (2), excluding the persons mentioned in paragraph (2) to (5) of this Article.
- (2) Two percent of income received (before any deductions) from hotels or guest houses and restaurants the monthly income of which is less than the threshold amount in Article 64 (2).
- (3) Five percent of income received (before any deductions) from hotels or guest houses and restaurants income of which is more than the threshold amount in Article 64 (2).
- (4) Five percent of income received (before any deductions) from services provided by clubs and halls where events are held.
- (5) Ten percent of income received (before any deductions) from telecommunication, airline services, and hotel and restaurants providing superior services.
- (6) A taxpayer referred to in paragraphs (3), (4) and (5) of this Article who claims not to have income from the provision of taxable services according to these paragraphs for one or more months shall be required to inform the Ministry of Finance in writing and attach a completed tax return. If the claim is confirmed, the taxpayer will not be subject to tax under the above mentioned paragraphs. If the claim is proved to be incorrect, besides the payment of tax according to paragraphs (3), (4) and (5), the taxpayer shall be required to pay additional tax according to the provisions of Article 98 (2) of this Law.
- (7) The Ministry of Finance may specify criteria and procedures for the better application of this Article.

Hotel or Guest House Services: For the purpose of this Law means the provision of sleeping accommodation and related services (including meals, beverages, laundry, and telecommunication services) to persons who occupy such accommodation temporarily as a traveler;

Restaurant services: For the purpose of this Law means the provision of food or beverages by an establishment that provides facilities for immediate consumption at that establishment, or catering services of prepared food, or sale of cooked foods that were prepared on the premises.

Telecommunication Services: For the purpose of this Law means the provision of any type of telephone, internet and fax service; and,

Airline Services: For the purpose of this Law means passenger air services where the origin of the flight is in Afghanistan.

- Article 67     Application of business receipts tax (1) Business receipts tax shall be payable on total receipts and shall not be affected by whether the taxpayer has a profit or loss during the current or previous years.
- (2)     Business receipts tax paid shall be a deductible expense in computing taxable income for the same tax year.
- (3)     The tax imposed under Article 64 (3) of this Law is allowable as a credit in calculation of business receipts tax liabilities. If the amount paid is more than the business receipts tax payable for that year, the excess amount is not allowable as a credit in subsequent periods.

## CHAPTER 11

### FIXED TAXES

Article 68 Business activities subject to fixed tax Persons engaged in commercial activities specified by the provisions of this Chapter shall be subject to fixed tax in lieu of income tax and business receipts tax.

Article 69 Payment of fixed tax Fixed taxes shall be payable during the tax year unless otherwise provided in this Law.

Article 70 Fixed tax on imports (1) Persons who import goods and have a business license shall be subject to two percent fixed tax on the total cost, including custom duties, of the goods imported. The tax paid shall be allowed as a credit in the calculation of the person's annual income tax assessment in accordance with the provisions of this Law.

(2) Persons who import goods without having a business license shall be subject to three percent fixed tax on the total cost, including customs duties, of the goods imported in lieu of income tax.

(3) Persons who import goods and have an interim business license but do not file their returns of income to the Ministry of Finance shall be subject to three percent fixed tax on the total cost, including customs duties, of goods imported in lieu of income tax.

(4) The tax mentioned in this Article shall be paid at the customs house where customs duties on the goods are paid.

Article 71 Fixed tax on transport Persons who transport passengers or goods for business purposes shall be required to pay an annual tax before renewal of their vehicle registration as follows:

No	TYPE OF VEHICLE	TAX
<b>1</b>	<b>Vehicles based on tonnes</b>	
1	From 1 up to 2 tonnes	2600 afs
2	Over 2 up to 3 tonnes	3400 afs
3	Over 3 up to 4 tonnes	4200 afs
4	Over 4 up to 5 tonnes	5000 afs
5	Over 5 up to 6 tonnes	6000 afs
6	Over 6 up to 8 tonnes	7500 afs
7	Over 8 up to 10 tonnes	9000 afs
8	Over 10 up to 12 tonnes	10500 afs
9	Over 12 up to 14 tonnes	12000 afs
10	Over 14 up to 16 tonnes	13500 afs
11	Over 16 up to 18 tonnes	15000 afs
12	Over 18 up to 20 tonnes	16500 afs
13	Over 20 up to 25 tonnes	18500 afs
14	More than 25 tonnes	18500 afs and 500 afs per additional tonne

15	More than the total allowable tons on the axle of a trailer	Over 500kg then 200 afs per tonne
<b>2</b>	<b>Passenger vehicles</b>	
1	Taxi with capacity of 3 to 5 passengers	2000 afs
2	Taxi with capacity of more than 5 passengers	2000 afs and 200 afs per additional seat
3	Microbus with up to 14 seats	2600 afs
4	Other buses from 15 up to 21 seats	4000 afs
5	Other buses from 22 up to 29 seats	6000 afs
6	Other buses from 30 up to 39 seats	7000 afs
7	Other buses from 40 up to 49 seats	7500 afs
8	Other buses from 50 up to 60 seats	8000 afs
9	Other buses with more than 60 seats	8000 afs and 200afs per additional seat
<b>3</b>	<b>Vehicles according to their cylinders</b>	
1	4 cylinders	1500 afs per vehicle
2	6 cylinders	2000 afs per vehicle
3	8 cylinders	3000 afs per vehicle
4	More than 8 cylinders	3000 afs and 500afs per additional cylinder
<b>4</b>	<b>Rickshaw</b>	
1	Motorbike rickshaw	500 afs
2	Rickshaw	1000 afs

Article 72 Withholding tax on contractors (1) Persons who, without a business license provide supplies, materials, construction and services under contract to government agencies, municipalities, state entities, private entities and other persons shall be subject to 7 percent fixed tax in lieu of income tax. This tax is withheld from the gross amount payable to the contractor.<sup>12</sup>

(2) Persons who have a business license and provide the services and other activities mentioned in paragraph (1) of this Article to the specified entities shall be subject to 2 percent contractor tax. The tax levied by this paragraph is creditable against subsequent tax liabilities.

(3) The tax mentioned in paragraph (1) and (2) of this Article shall be withheld by the payer from payment and shall be transferred to the relevant account within ten days. Contractors subject to this Article shall be required to, upon signing the contract, send a copy thereof to the relevant tax administration. Natural persons who, according to provision of paragraph

<sup>12</sup> Note: Subsection (1) of this Article was amended by Official Gazette number 1118 dated 20 October 2013 with effect from that date. Subsection (1) formerly read:

(1) Persons who, without a business license or contrary to approved by-law provide supplies, materials, construction and services under contract to government agencies, municipalities, state entities, private entities and other persons shall be subject to 7 percent fixed tax in lieu of income tax. This tax is withheld from the gross amount payable to the contractor.

(1) of Article 17 of this Law, earn taxable salaries shall be excluded from this provision.

Article 73 Fixed tax of exhibition income (1) Fixed tax shall be applied to natural persons who are residents of Afghanistan and to natural and legal persons who are non-residents of Afghanistan.

(2) Persons mentioned in paragraph (1) of this Article who provide entertainment such as theatre, exhibition of films, radio, television, music, or sports competition in Afghanistan shall be subject to a fixed tax of ten percent of receipts from sale of admission or tickets. The fixed tax shall be imposed in lieu of income tax and business receipts tax. This tax is payable in accordance with paragraph (9) of Article 88 of this Law. The tax shall be paid at the tax office of the district in which the service is provided.

Other persons who provide entertainment services shall be subject to income tax and business receipts tax according to the provisions of this Law.

Article 74 Fixed tax on small business (all types)<sup>13</sup> (1) Natural persons, who are engaged in small business activities and are not subject to withholding tax or exemptions stated in this law, shall pay fixed tax according to the provisions of Article 75 of this law.

(2) Natural persons mentioned in paragraph (1) of this Article shall be required to file a tax return according to the provisions of this law.

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<sup>13</sup> Note: Article 74 was amended by Official Gazette number 01209 dated 13 April 2016 with effect from that date. Article 74 formerly read:

Fixed tax on small business (all types)

(1) Natural persons who are engaged in business activities and meet the following conditions shall be subject to fixed tax in accordance with Article 75:

1. Natural persons who have income which is neither exempt nor subject to withholding tax in accordance with the provisions of this Law.
2. The total gross annual income of the natural persons is less than Afs. 3,000,000 for a tax year.

(2) Natural persons who meet the requirements of paragraph (1) of this Article shall be required to file an income tax return under paragraph (6) of Article 88 of this Law. The fixed tax payable shall be computed according to the provisions of Article 75 of this Law.

- Article 75 Determining fixed tax on small business activities (All Types)<sup>14</sup> (1) Where natural persons mentioned in paragraph (1) of Article 74 of this law have income (sales) of up to Afs.150,000 from sources subject to tax within a tax year they shall be exempt from tax.
- (2) Where persons mentioned in paragraph (1) of this Article have income (sales) of more than Afs.150,000 up to Afs.10,000,000 for a tax year, they shall be required to pay 1.5 % fixed tax from their total annual sales after excluding exempt income set forth in paragraph (1) of this Article.
- (3) Where natural persons mentioned in paragraph (1) of this Article have income (sales) of more than Afs.10,000,000 for a tax year they shall be required to pay 1.5% fixed tax from their total annual sales after excluding exempt income set forth in paragraph (1) of this Article or can pay tax in accordance with the provision of paragraph (3) of Article 4 and amended provision of paragraph (2) of Article 64 of this law.
- (4) If natural persons mentioned in paragraph (1) of Article 74 of this law have not paid their tax for the years 1393 and 1394, their tax shall be determined in accordance with the provisions of this article and they are required to pay their tax.
- (5) If natural persons mentioned in paragraph (1) of Article 74 of this law pay their tax liability for the year 1393 and previous years within 90 days of the publication of this amendment, they shall be exempt from the additional tax (penalty).
- (6) If natural persons mentioned in this article have paid their due tax for the years 1393 and 1394 according to the provisions of paragraph (4) of Article 75 of this law, they shall be re-assessed according to paragraphs (2)

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<sup>14</sup> Note: Article 75 was amended by Official Gazette number 01209 dated 13 April 2016 with effect from that date. Article 75 formerly read:

Determining fixed tax on small business activities (All Types)

(1) Natural persons who receive income for a tax year of not more than Afs.60,000 from sources which are subject to withholding tax in accordance with the provisions of this Law and any other sources shall be exempt from tax.

(2) The persons mentioned in paragraph (1) of this Article who have income of more than Afs.60,000 and up to Afs.150,000 for a tax year, excluding exempt income and income subject to withholding tax provided under this Law, shall be required to pay a fixed tax of Afs. 500 for each quarter of the year.

(3) The persons mentioned in paragraph (1) of this Article who have income of more than Afs.150,000 and up to Afs.500,000 for a tax year, excluding exempt income and income subject to withholding tax provided under this Law, shall be required to pay a fixed tax of Afs.1,500 plus the fixed amount mentioned in paragraph (2) of this Article for each quarter of the year.

(4) The persons who have income of more than Afs.500,000 and up to Afs.3,000,000 for a tax year, excluding exempt income and income subject to withholding tax provided under this Law, shall be subject to three percent fixed tax on gross income received or the person may elect to pay business receipts tax and income tax on their taxable income in accordance with paragraph (3) of Article 4 of this Law. The election to pay income tax and business receipts tax or fixed tax shall not be for a period of less than three years.

and (3) of this Article and the excess amount paid shall be credited against future tax liabilities.

Article 76      Amendments to exemptions      (1) Amendments to exemptions and tax rates of this Law shall be proposed by the Ministry of Finance and approved by the authorized officials.

(2) Tax imposition and exemptions shall not be valid without the approval of the Ministry of Finance.

## CHAPTER 12

### TAXATION RULES FOR QUALIFYING EXTRACTIVE INDUSTRY TAXPAYERS

- Article 77      Definitions      (1) In this Chapter:
1.      a “hydrocarbons Contract” means an Exploration Contract or Service Contract described in any applicable law affecting hydrocarbons in Afghanistan. Hydrocarbons are petroleum, gas, and other derivatives therefrom;
  2.      a “Mining Authorization” is a permission letter that is issued by Ministry of Mines in accordance with the Mines Law, for exploration of quarries, constant utilization of quarries, utilization of previously explored idle materials, professional utilization, business, process, transfer, and processing of minerals;
  3.      a “Mining License” is a document issued in accordance with the Mines Law for exploration or utilization of mines;
  4.      "QEIT" means a Qualifying Extractive Industries Taxpayer and refers to a person that holds a mining License or mining Authorization or is party to a hydrocarbons Contract;
  5.      a "QEIT asset" is an asset that –
    - has an effective life of more than 12 months; and
    - is constructed or acquired to be used directly in the business stated in the mining License, mining Authorization or hydrocarbons Contract.
- (2) A well that is drilled by a QEIT for the purpose of exploring for, developing, or producing hydrocarbons shall be deemed to be a QEIT asset and all costs incurred in the course of drilling the well, contracting with another person to drill the well for the QEIT, or closing a well shall be treated as the cost of acquiring the well. Where the drilling or contracting costs for drilling are incurred over more than one tax year, the QEIT shall be treated as acquiring separate QEIT assets in each year with a cost for each asset equal to the drilling or contracting costs for drilling incurred in that year.
- Article 78      Precedence of Chapter 12      The Articles in the Chapters of this Law apart from this Chapter apply to a QEIT in the same manner they apply to a taxpayer that is not a QEIT unless they are changed by an Article in this Chapter.

Article 79 Tax obligations of QEIT (1) A QEIT shall be treated as a separate taxpayer in respect of each mining Authorization, mining License, or Contract for hydrocarbons.

(2) If a QEIT is party to more than one hydrocarbon Contract or holds more than one mining License, or mining Authorization, or any combination of these, the person shall be treated as if it were a separate person in respect of the business operations related to each hydrocarbon Contract, mining License, or mining Authorization.

(3) If a hydrocarbon Contract, mining License, or mining Authorization is renewed, the renewal shall be treated as part of the original hydrocarbon Contract, mining License, or mining Authorization for the purpose of this Article.

(4) If a QEIT is party to more than one hydrocarbon Contract or holds more than one mining License, or mining Authorization, or any combination of these and incurs expenditure in relation to more than one hydrocarbon Contract, mining License, or mining Authorization, the expenditure shall be apportioned between the different parts of the business on the basis of the application of the expenditure.

Article 80 Business receipts tax The business receipts tax imposed under Chapter 10 of this Law shall not apply to:

1. receipts of a QEIT from the sale of mineral substances (as defined in the Minerals Law, 2005) that are subject to a mining License or mining Authorization;
2. receipts of a QEIT from the sale of hydrocarbons that are subject to a hydrocarbons Contract; or
3. receipts of a QEIT from the sale or transfer of a mining License or mining Authorization or a hydrocarbons Contract.

Article 81 Depreciation deductions (1) Contrary to sub-paragraph 7 of paragraph (1) of Article 18 of this Law, a person that is a QEIT and that incurs an expense to acquire a QEIT asset other than a building or rights to occupy a building may deduct the cost of acquiring the asset for a year on a straight-line basis over the lesser of:

1. the effective life of the asset; and
2. five years

commencing with a deduction in the year in which the asset is acquired.

(2) Contrary to sub-paragraph 7 of paragraph (1) of Article 18 of this Law, a person that is a QEIT and that incurs an expense other than annual rent to construct or acquire a QEIT asset that is a building or to acquire rights to occupy a building may deduct the expense on a straight-line basis over 15

years, commencing with a deduction in the year in which the expense is incurred.

(3) A person that is a QEIT that incurs an expense to acquire a mining Authorization or mining License or hydrocarbons Contract may deduct the cost of acquiring the Authorization, License or Contract on a straight-line basis over the period to which the Authorization, License or Contract applies.

(4) The depreciated value of a QEIT asset at any time shall be the original cost less any deductions for the cost of constructing or acquiring the asset that were allowed under this Article. Where a person that is a QEIT disposes of a QEIT asset for more than its depreciated value, the excess of sale proceeds over depreciated value shall be included in the person's income for tax purposes. Where a person that is a QEIT disposes of a QEIT asset for less than its depreciated value, the excess of depreciated value over sale proceeds shall be deductible in the year of sale.

Article 82      Cost of constructing roads      (1) This Article applies to a person that is a QEIT and that incurs an expense to construct a road that will be used to carry on a business that is subject to a mining License or mining Authorization or a hydrocarbons Contract.

(2) A person described in paragraph (1) of this Article may deduct the cost of constructing the road described in paragraph (1) of this Article over a period of fifteen years commencing with a deduction in the year in which the road is completed.

(3) This paragraph applies where a person that is a QEIT sells its rights under a mining License or mining Authorization or hydrocarbons Contract to another person and as a result of that transfer the person making the sale will no longer use a road described in paragraph (1) of this Article and the person acquiring the mining License, mining Authorization or hydrocarbons Contract will use the road. In this situation, the person acquiring the mining License, mining Authorization or hydrocarbons Contract asset shall be entitled to deduct the undeducted cost of constructing the road over the remaining deduction years. For this purpose, the remaining deduction years for the road shall be calculated as 15 minus the number of years during which the previous owner or owners were entitled to deductions under this Article.

(4) Where paragraph (3) of this Article applies to a road described in paragraph (1) of this Article, the person who sells its rights under a mining License, mining Authorization or hydrocarbons Contract shall not be entitled to any deductions under this Article for the cost of constructing the road the year in which the rights under the mining License, mining Authorization or hydrocarbons Contract are sold or in any later year.

Article 83      Pre-production costs      (1) Notwithstanding Article 18 of this Law, a person that is a QEIT may only deduct an expenditure that is a pre-production cost on a straight-line basis over the pre-production cost recovery period where --

1. a "pre-production cost" is any expenditure that is incurred by a QEIT prior to commencing commercial production of minerals in the course of business related to a mining License or mining Authorization or a hydrocarbons Contract. However, a pre-production cost does not include the cost of acquiring a QEIT asset or the cost of constructing a road;
2. the "pre-production cost recovery period" for a mining business carried on by a QEIT in an area defined in a mining License or mining Authorization shall be the lesser of –
  - 15 years; and
  - the number of years remaining in the License or Authorization.
3. the "pre-production cost recovery period" for a hydrocarbon business is the number of years remaining in the Contract.

(2) A QEIT shall be treated as commencing commercial production of minerals or hydrocarbons in the earlier of:

1. the year in which the Ministry of Finance and the Minister of Mines and Industries issue to the QEIT a written notification that the Ministries jointly accept a written submission by a QEIT that it has commenced commercial production, and
2. in the case of a QEIT that holds a mining Authorization, the year in which the proceeds from the sale of minerals exceeds 6 percent of the pre-production costs incurred by the QEIT prior to that year,
3. in the case of a QEIT that holds a hydrocarbons Contract, the year in which the proceeds from the sale of hydrocarbons exceeds the threshold percentage of the pre-production costs incurred by the QEIT prior to that year where the number in the threshold percentage is determined by dividing 100 by the number of years of the hydrocarbons Contract.

(3) Where a person that is a QEIT sells its rights in a mining License or mining Authorization or hydrocarbon Contract to another QEIT, the first QEIT may add to the cost of acquiring its rights in the License, Authorization or Contract any pre-production expenses it incurred that have not been previously deducted under paragraph (1).

#### Article 84

#### Deduction for contributions to a fund for environmental and social obligations

A person that is a QEIT may deduct any amount that is required to be paid in respect of environmental and social obligations under Article 82 of the Minerals Law, 2005 or pursuant to a plan required by any applicable law affecting hydrocarbons provided –

1. the amount is paid to an entity that has no direct or indirect connection to the person claiming a deduction under this Article;
2. the person provides, through a financial institution approved for this purpose by the Da Afghanistan Bank, a bank guarantee for payment to the Ministry of Finance of the deductible amount in the event the entity holding the amount deposited does not apply the funds as specified in the governing Minerals Regulations or pursuant to a plan required by any applicable law affecting hydrocarbons.

Article 85 Loss carry-forward and stability agreements (1) Article 42 of this Law, which imposes a limit on the recognition of net operating losses, shall not apply to a QEIT. Where a QEIT incurs a net operating loss as defined in Article 47, the loss may be treated as a deductible expense in the following year.

(2) Subject to paragraph (3) of this Article, the Ministry of Finance shall apply to a QEIT the provisions of this Law as they stood at the time the QEIT became party to a mining Authorization, mining License, or hydrocarbons Contract for a period of:

1. 5 years, in the case of a QEIT holding a mining Authorization, commencing with the year in which the QEIT begins to hold the Authorization;
2. 8 years, in the case of a QEIT holding a mining License, commencing with the year in which the QEIT begins to hold the License; or
3. the period of the hydrocarbons Contract, in the case of a QEIT that is party to a hydrocarbons Contract.

(3) The Ministry of Finance shall only apply the provisions of this Law to a QEIT as set out in paragraph (2) where the QEIT has agreed in writing that taxable income of the QEIT shall be subject to an income tax rate of 30 per cent for the years in which the provisions of this Law are applied by the Ministry of Finance on the basis of this Article without regard to subsequent changes.

## CHAPTER 13

### ASSESSMENTS, RETURNS, OBJECTIONS AND PAYMENT OF TAX

Article 86 Taxpayer Identification Numbers (1) Individuals, companies and organizations which are, according to the Income Tax Law or the Customs Law, required to pay taxes or customs duties; social, non-profit and welfare organizations which are required to withhold taxes from the salaries or wages of their employees; persons who have an account or open an account with a bank or other financial institution; and employees whose income is subject to income tax withholding under provisions of this Law shall be required to have a Taxpayer Identification Number.

(2) Repealed (see note<sup>15</sup>)

(3) Ministries, government agencies and other government organizations shall not issue or renew business licenses for natural or legal persons who are required to have a Taxpayer Identification Number but fail to provide it.

Article 87 Assessments and amended assessments (1) Legal persons who have a license and natural persons who are subject to income tax under the provisions of this Law shall be required to file a detailed tax return and balance sheet to report income, tax withholding, and other necessary information required by the provisions of this Law and the Income Tax Manual and submit it to the relevant tax office.

(2) An individual who derives wage income that is subject to income tax withholding in accordance with the provisions of this Law shall not file a tax return unless the person receives wages from two or more employers or has other income in addition to their wage income. The tax withheld from wages or salaries under the provisions of the Law shall not be refundable.

(3) Where a person has filed a tax return required under the provisions of this Law, the tax due according to the tax return shall be treated as an assessment of tax payable and the tax return shall be treated as a notice of assessment.

(4) Repealed (see note<sup>16</sup>)

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<sup>15</sup> Note: This subsection was repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed subsection is as follows:

(2) Procedures for the issue and use of Taxpayer Identification Numbers shall be prescribed by the Ministry of Finance.

<sup>16</sup> Note: Subsections (4) through (7) were repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed subsections is as follows:

(4) Where the Ministry of Finance believes that the information provided on a tax return does not correctly disclose the tax due, the Ministry of Finance may determine the amount of the tax due and issue to the person liable for payment of the tax an amended assessment notice for the amount due. This notice may also be amended if the Ministry of Finance believes it does not correctly show the tax due. The amended notice shall be treated as a notice of assessment.

(continued)

(5) Repealed (see note 14)

(6) Repealed (see note 14)

(7) Repealed (see note 14)

Article 88 Filing returns and payment of tax (1) A person who is required to complete a tax return and balance sheet (other than a business receipts tax return) must file their tax return by the end of the third month of the next year at the relevant tax office.<sup>17</sup>

(2) Tax specified in an assessment notice shall be payable on the date specified in the assessment notice.

(3) Resident and non-resident persons who intend to leave Afghanistan before the due date for payment of their tax shall be required to file their tax returns and pay the tax due two weeks before leaving Afghanistan.

(4) Income tax payable by persons required to file a tax return according to the provisions of this Law that is not subject to other payment regulations under this Law must be paid when the tax return is filed.

(5) A person required to complete a business receipts tax return shall complete a tax return for each quarter of the year and file the return with evidence of the tax paid for the quarter not later than the fifteenth day of the next month after each quarter of the tax year to the relevant tax office.

(6) Unless a different time is provided in this Law, persons who carry on business from fixed business establishments shall be required to pay their due tax quarterly and the payment for each quarter shall be made not later than the fifteenth day of the month following each quarter.

(7) Persons who own moveable and immovable property shall pay tax due at the time of transfer of ownership of such property.

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(5) Where a person has not prepared and filed a tax return required under the provisions of this Law, the Ministry of Finance may determine the amount of tax due and issue the person a notice of assessment for the amount due. This notice may be amended if the Ministry of Finance believes it does not correctly show the tax due. The amended notice shall be treated as a notice of assessment.

(6) The Ministry of Finance may issue an assessment notice or amend an assessment notice only within five years of the date on which the tax return to which the notice relates was due. However, the Ministry of Finance may make or amend an assessment at any time where a person failed to file a tax return or filed an incorrect tax return (with the intent of evading tax).

(7) Where the Ministry of Finance believes that the collection of tax that will become due is in jeopardy because a person is about to depart from Afghanistan, to cease business, or to transfer property, or for other reasons, the Ministry of Finance may at any time issue an assessment notice for any period in the current or preceding tax year.

<sup>17</sup> Note: Subsection (1) of this Article was amended by Official Gazette number 1103 dated 14 April 2013. The provision was formerly:

(1) A person who is required to complete a tax return and balance sheet (other than a business receipts tax return) must file their tax return by the end of Jawza (third month) of the next year at the relevant tax office.

(8) Tax on contracts signed with government agencies shall, according to Article 72 of this Law, be withheld at the time payment is made by the relevant government agency.

(9) Income tax on shows, exhibitions, theaters, cinemas, concerts, sports and similar events shall be paid not later than the fifteenth day of the next month. If activities of the mentioned shows are not continuous, tax thereon shall be paid after the end of each show.

Article 89

Objections and appeals (1) Where a taxpayer has filed a tax return required under this Law or has received an assessment notice and that taxpayer believes that the tax return or assessment is incorrect, the taxpayer may request an amendment of the assessment notice within five years of the date on which the tax return was due to be filed.

(2) The Ministry of Finance may amend or affirm the assessment notice mentioned in paragraph (1) of this Article within 60 days after the date on which the taxpayer lodged the request for amendment and shall advise the taxpayer of its decision. If the Ministry of Finance has not amended an assessment notice as requested within this period, the earlier assessment notice will be treated as affirmed.

If the taxpayer liable to pay the tax assessed in the amended assessment notice or affirmed assessment notice believes that the amended assessment notice or affirmed assessment notice is incorrect, the taxpayer may submit to the Ministry of Finance an objection within 30 days after receiving the amended assessment notice or the assessment notice being otherwise affirmed.

The objection will be considered by the Objection Review Panel which may affirm or amend the assessment notice in whole or in part.

Where a taxpayer does not accept the decision of the Objection Review Panel or the Objection Review Panel has not made a decision within 60 days after receiving the objection, the taxpayer may appeal to a court within 30 days after receiving the decision or the assessment notice being otherwise affirmed.

The decision of the court will be final.

Article 90 Refunds (repealed – see note<sup>18</sup>)

Article 91 Collection of information (repealed – see note 16)

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<sup>18</sup> Note: Articles 90 and 91 were repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed Articles is as follows:

Article 90 Refunds If the Ministry of Finance finds, upon examination of a tax return, claim, or judgment of the Court, that the tax paid is in excess of the amount due, it shall first apply the overpayment against any other taxes or custom duties of the person then due and, with the person's agreement, to another person's tax liability and then refund the excess following procedures set out in the Income Tax Manual.

Article 91 Collection of information (1) For the purpose of proper application of this Law, the Ministry of Finance is authorized to review a taxpayer's documents and may obtain financial and trade information from the taxpayer or other persons.

(2) Information received regarding an income tax return and information obtained according to paragraph (1) of this Article is confidential and shall not be disclosed by the officials of the Ministry of Finance unless authorized by law.

(3) The procedure for examination of a taxpayer's documents shall be provided in the Income Tax Manual.

(4) Any person who, without reasonable cause, fails to provide documents or information to officials of the Ministry of Finance within twenty days of such request shall pay the following additional tax for each day from the date the documents or information was requested:

1- Natural Person      Afs 100

2- Legal Person      Afs 200

Holidays are excluded from this provision.

## CHAPTER 14

### ENFORCEMENT PROVISIONS<sup>19</sup>

- Article 92 Collection of unpaid tax from third parties (repealed - see note 17)
- Article 93 Liability of directors, shareholders and other persons (repealed - see note 17)
- Article 94 Persons not allowed to leave Afghanistan (repealed - see note 17)
- Article 95 Business closure (repealed - see note 17)
- Article 96 Restriction on disposal of property by a taxpayer (repealed - see note 17)

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<sup>19</sup> Note: Articles 92 through 96 of this Chapter were repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed Articles is as follows:

Article 92 Collection of unpaid tax from third parties (1) For the purpose of recovering any tax due from a taxpayer, the Ministry of Finance may, without the consent of the taxpayer, by notice in writing, require payment from any person: –

1. owing money to the taxpayer; or
2. holding money for the taxpayer; or
3. holding money on behalf of some other person for payment to the taxpayer; or
4. having authority of some other person to pay money to the taxpayer, or
5. who is liable to make payments of salary or wages or other similar payments to a taxpayer.

Article 93 Liability of directors, shareholders and other persons Where a company has failed to pay income tax as required under this Law, the Ministry of Finance may collect the tax due from the following persons: –

- (1) any or all of the directors of the company who has failed to exercise care in ensuring the company met its tax liability;
- (2) a shareholder of the company with ten percent or greater ownership interest in the company, but only to the extent that the shareholder received dividends from the company.
- (3) a person who has obtained one or more assets from the company for less than market value in the course of a transaction that took place within the three years preceding the date on which the unpaid tax was due.

Article 94 Persons not allowed to leave Afghanistan (1) A person who has tax due of more than Afs. 20,000 may be prevented from departing Afghanistan if the tax due has not been paid to the relevant tax offices. An authorized officer of the Ministry of Finance may issue a written notice to the relevant security authorities requesting them to prevent the person from departing Afghanistan.

Article 95 Business closure (1) Where a person has failed to file a tax return, failed to pay tax on the due date or failed to withhold and pay tax as required under the provisions of this Law, the Ministry of Finance may notify the person in writing of its intention to close down part or the whole of the person's business. The Ministry of Finance may issue an order to close down part or the whole of the person's business seven days after the person receives the notice. The order shall be signed by an authorized person of the Ministry of Finance and will continue in effect until the person pays the tax due. The Ministry of Interior shall assist with the implementation of this order.

Article 96 Restriction on disposal of property by a taxpayer (1) Where a person has failed to file a tax return, failed to pay tax on the due date or failed to withhold and pay tax as required by the provisions of this Law, the Ministry of Finance may request an order of a court of competent jurisdiction imposing restrictions on disposal of the person's movable and immovable property until the person pays the tax due.

(2) Where a person does not pay the tax due within 30 days of the order of the court, the Ministry of Finance may request the court to order the sale of the person's property. Where the person pays tax due under paragraph (1) of this Article before an order of the court for sale of property is issued, the order imposing restrictions on the person's property shall be withdrawn.

(3) Where paragraph (1) of this Article applies, the court may issue an order to sell the person's property by public auction.

(4) The Ministry of Finance shall apply the proceeds of the sale of property to the payment of the tax due and excess of the proceeds, if any, shall be paid to the person.

CHAPTER 15  
ANTI-AVOIDANCE<sup>20</sup>

Article 97 Transactions between connected persons (repealed - see note 18)

Article 98 Anti-avoidance (repealed - see note 18)

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<sup>20</sup> Note: Articles 97 through 98 of this Chapter were repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrah 1394), effective as of the date of its publication in OG. The full text of the repealed Articles is as follows:

Article 97 Transactions between connected persons Where any amount paid or payable in a transaction between connected persons is different than the amount that would be paid or payable had the transaction taken place between unconnected persons, when determining the tax liabilities of the connected persons, the Ministry of Finance may substitute the amount that would be paid or payable had the transaction taken place between unconnected persons.

Article 98 Anti-avoidance (1) Where any person enters into any transaction or arrangement with the intent to cause reduction of liability to pay tax, the Ministry of Finance may disregard such transaction or arrangement and assess all persons affected by the transaction or arrangement as if the disregarded transaction or arrangement had not taken place.

(2) Any person who evades income tax shall be required to pay the income tax due and additional tax as follows:

- in the first instance, additional tax of double the evaded tax, and
- in the second instance, additional tax of double the evaded tax and the business activity of the person shall be ceased by order of the court.

## CHAPTER 16

### ADDITIONAL TAX AND TAX PENALTIES<sup>21</sup>

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<sup>21</sup> Note: Articles 99 through 107 of this Chapter were repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed Articles is as follows:

Article 99 Offenses and penalties (1) Where a person has not complied with tax obligations under the provisions of this Law, the person shall incur additional income tax liability and penalties under this Chapter in addition to payment of tax due. The provisions of this Law shall apply to the assessment and collection of additional income tax in the same manner as for other taxes under this Law.

(2) Additional income tax shall be payable in the following cases:

1. failure to pay the due tax by the due date prescribed by the provisions of this Law,
2. failure to maintain or provide access to books and records of business transactions,
3. failure to file a tax return and balance sheet,
4. failure to withhold tax,
5. failure to pay tax,
6. failure to obtain a Taxpayer Identification Number.

Article 100 Additional income tax where tax paid late Where a person has failed to pay tax due by the due date, the person is liable to pay additional income tax of 0.10 per cent of the tax due per day.

Article 101 Additional income tax where records not maintained (1) A person who, without reasonable cause, fails to prepare and maintain records required by the provisions of this Law or fails to provide the officers of the Ministry of Finance access to the records shall pay additional income tax of Afs. 5,000 if the person is a natural person or Afs. 20,000 if the person is a legal person.

(2) A person who fails to prepare and maintain records as required by the provisions of this Law with the intent of evading payment of tax shall, in addition to the payment of an additional tax under paragraph (1) of this Article, be referred to the office of the Attorney-General.

Article 102 Additional income tax where tax return not filed (1) All legal and natural persons who, without reasonable cause, fail to file a tax return by the last day of the third month of the following fiscal year to the relevant tax office, if a legal person shall pay the amount of Afn. 100 per day and if a natural person shall pay the amount of Afn. 30 per day. Holidays are to be excluded.

(2) A person who fails to file a tax return by the due date with the intent of evading payment of tax shall, in addition to the payment of additional tax under paragraph (1) of this Article, be referred to the office of the Attorney-General.

(3) Those legal or natural persons who did not file their balance sheets and tax returns with the tax administration for the years 1384 – 1389, if a legal person shall pay the amount of Afn. 10,000 for each fiscal year and if a natural person shall pay the amount of Afn. 2,000 for each fiscal year. The balance sheet and tax returns of mentioned years shall be filed to the relevant tax office and the amount payable for the delay collected according to the provisions of this subsection.

(4) Those legal and natural persons who are required to file their balance sheets and tax returns according to the Law but do not have business activity in the course of the fiscal year, or their revenues are less than the taxable amount, shall complete balance sheets and tax returns according to the provisions of the Law and submit them to the relevant tax offices by the due date. If the relevant tax office approves them, the person will not be required to pay tax and the amount mentioned in subsection (1) of this Article.<sup>21</sup>

Article 103 Additional income tax where tax not withheld (1) A person who, without reasonable cause, fails to withhold tax from salary and wages, interest income, dividends, rent, commissions, royalties, and similar income in accordance with the provisions of this Law shall be subject to additional tax of ten percent.

(2) A person who fails to withhold tax with the intent of evading payment of tax under paragraph (1) of this Article shall, in addition to the payment of additional tax under paragraph (1) of this Article, be referred to the office of the Attorney-General.

Article 104 Additional income tax where tax not paid (1) A person who, without reasonable cause, fails to pay tax imposed under the provisions of this Law shall, in addition to the payment of additional tax under the Article 100 of this Law, be liable to additional tax of ten percent.

(2) A person who, with the intent of evading payment of tax, fails to pay tax imposed according to the provisions of this Law shall, in addition to the payment of additional tax under paragraph (1) of this Article, be referred to the office of the Attorney-General.

(continued)

- Article 99 Offenses and penalties (repealed - see note 19)
- Article 100 Additional income tax where tax paid late (repealed - see note 19)
- Article 101 Additional income tax where records not maintained (repealed - see note 19)
- Article 102 Additional income tax where tax return not filed (repealed - see note 19)
- Article 103 Additional income tax where tax not withheld (repealed - see note 19)
- Article 104 Additional income tax where tax not paid (repealed - see note 19)
- Article 105 Additional income tax related to taxpayer identification numbers (repealed - see note 19)
- Article 106 Offenses committed by taxation officers (repealed - see note 19)
- Article 107 Authority for collection of additional tax (repealed - see note 19)

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Article 105 Additional income tax related to taxpayer identification numbers A person who is required to have a Taxpayer Identification Number under Article 86 of this Law and who, without reasonable cause, fails to apply for a Taxpayer Identification Number shall pay additional income tax of Afs. 5,000 if the person is a natural person or Afs. 20,000 if the person is a legal person.

Article 106 Offenses committed by taxation officers (1) A taxation officer who discloses information that is confidential under this Law with the intent of any direct or indirect benefit from the disclosure, or other persons who assist a taxation officer to disclose confidential information shall be referred to the office of the Attorney-General.

(2) A taxation officer who misuses their position in any unauthorized way for the purpose of direct or indirect financial or other benefits shall be referred to the office of the Attorney-General.

Article 107 Authority for collection of additional tax Additional tax imposed under the provisions of this Chapter shall be collected by Ministry of Finance tax offices.

## CHAPTER 17

### FINAL ARTICLES

Article 108 Provision of forms and rulings (1) The Ministry of Finance shall provide forms that are necessary for the purpose of determination and collection of tax according to this Law.

(2) The Ministry of Finance may issue an income tax manual and separate public and private rulings regarding income tax for the better administration of the provisions of this Law.

Article 109 Non issuance of licenses (repealed- see note <sup>23</sup>)

(2) 1- License issuing agencies are required to provide government agencies with a list and details, by electronic copy, of the natural and legal persons who have valid licenses.

2- While signing contracts, all government entities and agencies shall be required to ensure that licenses are valid and current.

(3) Persons mentioned in Article (2) of the Government Authorities Salary Law shall be required to complete the Ministry of Finance tax clearance forms before election or appointment to a government position.

Article 110 Requirements for entitlement to exemption (1) Approved businesses (enterprises) which have not met the requirements of the provisions of the Law on Domestic and Foreign Private Investment in Afghanistan published in official gazette number (803) dated 1381/6/20 and other related laws shall no longer be entitled to income tax exemption under the provisions of that Law from 21 June 2004 (1 Saratan 1383).

(2) Approved businesses (enterprises) according to the provisions of the Law on Domestic and Foreign Private Investment in Afghanistan mentioned in paragraph (1) of this Article which have commenced business activities prior to 22 November 2003 (I Kawos 1382) may benefit from the income tax exemptions mentioned in the investment law only if they have complied with and continue to comply with the provisions of that law and other related laws.

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<sup>23</sup> Note: This subsection was repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed subsection is as follows:

(1) Where natural or legal persons have not paid their tax due by the due date according to the provisions of this Law, the Ministry of Finance may officially inform those government agencies and departments which have the authority to issue licenses not to renew their licenses. The licenses of the persons shall only be issued when they present their tax clearance documents from Ministry of Finance to the relevant agency. Also, the license issuing agencies cannot issue another license for individuals and directors of corporations and limited liability companies who have not fulfilled their own or their company's tax responsibilities.

(3) If an approved business (enterprise) granted tax exemption under the provisions of the Law on Domestic and Foreign Private Investment in Afghanistan holds capital assets on the date the exemption ends as a result of paragraph (1) of this Article or the date the tax exemption expires, the remaining undepreciated value of the capital assets on that date will be treated as the cost of those capital assets.

Article 111 Primacy of Income Tax Law (repealed – see note <sup>24</sup>)

Article 112 Tax due and responsibilities (1) All legal and natural persons are exempt from payment of tax and other tax obligations for the years before 1381.

(2) Legal and natural persons shall be exempt from tax penalties and late filing of balance sheet (tax return) for the years 1381 to 1385 (including the year 1385) if they pay the actual tax due within three months from the date this Law is published in the Official Gazette.

(3) Persons who have paid their taxes before this Law comes into effect are excluded from the privileges of paragraphs (1) and (2) of this Article.

Article 113 Enforcement date (1) This Law shall be effective from the date of approval and shall be published in the Official Gazette.

(2) The provisions of paragraph (3) of Article 4, Articles 59, 64, 65, 66, 67, 72, 74, 75 and paragraphs (5) and (6) of Article 88 of this Law shall be applicable from 1 Hamal 1388.

(3) With this Law coming into effect, the following laws are cancelled from 1 Hamal 1388:

- 1 The Income Tax Law published in Official Gazette number 867 of 1384 and its other amendments, annexes and contrary provisions.
- 2 The Law on Depreciable Materials Tax published in Official Gazette number 453 dated 31 Saur 1359 with its annex 1 on the amendment of Articles 10 and 11 of this Law published in Official Gazette number 517 dated 15 Mizan 1361.
- 3 The Sukook Law published in Official Gazette number 514 dated 31 Asad 1361.

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<sup>24</sup> Note: Article 111 was repealed by Article 65 of TAL, OG 01198/18 November 2015 (27 Aqrab 1394), effective as of the date of its publication in OG. The full text of the repealed Articles is as follows:

Article 111 Primacy of Income Tax Law (1) In the event of any conflict between contracts, agreements, and provisions of other laws with the provisions of this Law, the Income Tax Law shall prevail.

(2) International contracts and agreements entered into by the Islamic Republic of Afghanistan with foreign countries or United Nations agencies are excluded from the provisions of the paragraph (1) of this Article.

**Decree of  
President of Islamic Republic of Afghanistan  
On the Enactment of Income Tax Law**

*No. 171*

*Date: 17 March 2009*

**Article 1:**

Based on the provision of paragraph (16) of Article 64 of the Constitution of Afghanistan, I endorse (sign) the Income Tax Law which has been approved in 17 chapters and 113 articles by decision No. 117 dated 11/12/1387 (1 March 2009) of the joint delegation of the Houses of National Council.

**Article 2:**

This decree comes into effect from the date it is signed and shall be published in the Official Gazette with the Income Tax Law.

(signed)

Hamid Karzai

President of Islamic Republic of Afghanistan

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