



## Additional Tax and Penalties

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## Introduction

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Chapter 16 of the Income Tax Law 2009 provides for additional taxes and tax penalties when taxpayers fail to meet their obligations under the tax law. These additions to tax are for failure to file a tax return on time, failure to pay the tax on time, failure to maintain adequate books and records, failure to withhold tax when required, and failure to obtain a Taxpayer Identification Number (TIN).

Additional tax and penalties may be imposed and collected according to the same provisions as apply to regular taxes. That is, additional tax and penalty may be charged according to the provisions of Chapter 13 of the Income Tax Law regarding assessment and payment of taxes and collected according to the provisions of Chapter 14 of the Income Tax Law regarding the enforcement of tax payments.

## Late payment of tax

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Article 100 of the Income Tax Law imposes an additional tax of 0.10 percent per day of any amount of tax that is not paid by its due date.

This additional tax applies even if the tax return is filed on time. The additional tax applies to any unpaid tax liability, including the business receipts tax, withholding taxes, and fixed taxes imposed in lieu of income taxes.

*Example 1: Adib owns all of the issued stock of Company A. Company A is an Afghan corporation. Company A is required to file its income tax return for the 1388 year by the last day of Jowza, 1389. Company A is required to pay the tax that is due with the return. Company A does not file its income tax return until 10 days after the end of Jowza. The income tax liability shown on the return is AFN 100,000. If Company A pays the AFN 100,000 on the*

### Note

Note There are no fees or charges payable to the Ministry of Finance or its Revenue Department for any Tax Guides or Forms or at any stage of the tax assessment, collection or enforcement processes.

*date that is 10 days after the end of Jowza, the company will owe penalties of AFN 1,000 [AFN 100,000 x 0.001 (= 0.1 per cent) x 10 days].*

*Example 2: The facts are the same as in Example 1, except that Company A files its tax return on the last day of Jowza, but does not pay until 10 days later. As the tax was not paid until 10 days after the end of Jowza, the additional tax for late payment of tax is the same as in Example 1. The fact that Company A filed its tax return on time is not relevant.*

The Afghanistan Revenue Department may refrain from applying the 0.10 per cent per day additional tax if the additional tax is less than AFN 250. The AFN 250 threshold may be applied separately to different tax types.

*Example: Haroon runs a restaurant in Herat. During the 1388 tax year, the restaurant has gross receipts of AFN 2,000,000 and makes a profit after deducting expenses of AFN 160,000. Haroon is required to pay income tax (by the last day of Jowza 1389) and business receipts tax (by the 15th day following the end of each quarter). Haroon inadvertently misses making these tax payments by their due dates but only by a few days. If the 0.01 per cent additional tax calculated under this Article would be AFN 200 for income tax and AFN 100 for business receipts tax, the Ministry of Finance can refrain from applying both amounts, despite their total being above the AFN 250 threshold.*

In the event of an additional tax assessment being issued by the Afghanistan Revenue Department (as the result of an audit or other correction of a taxpayer's return), the tax authority may refrain from applying the 0.01 per cent per day additional tax for amounts up to AFN 500,000

additional tax if it can be proved that the taxpayer attempted to comply with the Income Tax Law in good faith.

You must provide proof, in writing, when requesting a waiver of the additional tax. The request must be agreed to by the Director General of Revenue or a Deputy Director of Revenue, who will forward a written request to the Deputy Minister for Revenue and Customs. The final decision rests with the Deputy Minister, who must agree that the additional tax should not be applied.

### **Failure to maintain adequate books and records**

If you are required to prepare and maintain adequate records under any provision of the Income Tax Law and fail to do so, or if you *fail to provide access to records by Ministry of Finance officers*, you may be subject to additional income tax. If you can show reasonable cause for not establishing or maintaining the records, then the additional tax will not be imposed.

#### ***Natural Persons***

The additional tax for failure to maintain books and records for a natural person is AFN 5,000.

#### ***Legal Persons***

The additional tax for failure to maintain books and records for legal persons is AFN 20,000.

*Example 1: Company A operates a large business in Kabul province as a legal person. Company A keeps a record of its revenues, but it does not keep a record of its expenses. Company A files an income tax return that shows AFN 1,000,000 of revenue and AFN 800,000 of expenses. Company A is required to maintain records under Article 36*

*of the Income Tax Law. When the Afghanistan Revenue Department asks Company A why it failed to keep records of its expenses, the management of Company A said that it was not aware of the requirement. Even if Company A had never been audited or contacted by the Afghanistan Revenue Department before, Company A does not have a justifiable reason for failing to keep the appropriate records. Company A is expected to be aware of the requirements of the Income Tax Law (including those relating to record-keeping) as would any reasonable business person. Company A is subject to the AFN 20,000 additional tax.*

*Example 2: Aziz owns a warehouse in Kabul. During 1388, Aziz's warehouse is destroyed by a fire. Aziz takes a deduction for the cost of his warehouse under Article 18 (1) 9 during 1388. Article 18 (1) 9 provides that in order to claim the deduction Aziz is required to have proper records, including records that show how much Aziz's warehouse cost. When Aziz is asked for the documentation that supports the cost of his warehouse, Aziz replies that he does not have any records.*

*Aziz says that the reason that he does not have any records is that all of his records were in the warehouse that was destroyed by the fire. Aziz has a justifiable reason for failing to keep the appropriate records. Aziz is not subject to the additional tax.*

*Example 3: Officers from the Afghanistan Revenue Department visit the business premises of Company A and request to inspect contract documents which are known to be held in Company A's office. The officers show the manager a copy of Article 101 of the Income Tax Law which authorizes the officers to take this action. The manager denies the officers access to the documents on the basis that, in his opinion, only a court can compel*

*him to allow access to Company A's business records and that Company A's confidential information may be given to its competitors. The manager's belief is unreasonable since the Income Tax Law, a validly enacted law of Afghanistan, clearly allows access to records without a court order. Furthermore, the Income Tax Law treats information collected by revenue officers as confidential and prevents disclosure of such information to anyone outside the Ministry of Finance unless authorized by law. The manager does not have reasonable cause to deny access to Company A's records. Company A may be assessed an additional tax of AFN 20,000.*

### **Commonly accepted terms**

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The terms 'tax avoidance' and 'tax evasion' have different meanings, and it is important to differentiate between the two.

Tax avoidance refers to *legal* means available within a tax regime used to reduce taxes while remaining compliant, paying only correct amounts when due. There is no penalty for tax avoidance which is also sometimes referred to as 'tax mitigation.' Tax avoidance is based on taxpayer knowledge of tax law correctly applied to his/her individual situation.

Tax evasion refers to *illegal* means used to deprive the government of payment of legitimate taxes due, establishing the basis for non-compliance, and leading to collection actions and legal prosecution when recommended by the tax authority. Tax evasion involves deliberate deception and fraud and generally is thought of as a criminal activity.

#### ***Intent to evade tax***

If you *fail to prepare and maintain records* as required by the Income Tax Law with the intent of evading payment



of tax, in addition to the payment of an additional tax as described above, you will be referred to the Attorney General's office for prosecution and may be subject to fines and/or imprisonment.

#### *Failure to file a tax return*

If you do not file a required tax return, or do not file it on time, you will be subject to additional income tax if you do not have reasonable justification for the failure to file the tax return in a timely manner.

#### *Natural persons*

The additional tax for failure to file a tax return for a natural person is AFN 100 for each day, other than holidays, that the return is overdue.

#### *Legal persons*

The additional tax for failure to file a tax return for legal persons is AFN 500 for each day other than holidays that the return is overdue.

*Example 1: Company A is an Afghan corporation. Company A is required to file its income tax return by the last day of Jowza, 1389. Company A does not file its tax return for the 1388 year until 10 days after the last day of Jowza 1389. When the Afghanistan Revenue Department asks Company A why it failed to file its tax return on time, Company A personnel respond that they had trouble completing their financial statements. Company A does not have a reasonable excuse for not preparing and filing its tax return on time. Company A should be subject to the AFN 500 per day additional tax.*

*Example 2: Company B is an Afghan corporation. Company B is required to file its tax return for the 1388 year on the last day of Jowza, 1389. Company B fails to*

*file its tax return until the first day of Hamal, 1390. The reason Company B did not file its tax return on time is that its office burned down and all of its financial records were destroyed. Company B filed its tax return as soon as it was able to do so after the fire. Company B should not be subject to the AFN 500 per day additional tax.*

### ***Intent to evade tax***

If you *fail to file a tax return* with the intent of evading payment of tax, in addition to the payment of an additional tax as described above, you will be referred to the Attorney General's office for prosecution and may be subject to fines and/or imprisonment.

### ***Failure to withhold tax***

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If you *fail to withhold tax* as required under the provisions of the Income Tax Law as they apply to payments of dividends, interest, royalties, wages, salaries, rents, commissions, contract payments and similar incomes without reasonable cause, you will have to pay additional income tax of 10 per cent of the tax that should have been withheld.

*Example: Company A is an Afghan corporation that employs three individuals, namely, Raziq, Adib and Aziz. Because Company A employs three individuals, it is required to withhold tax from the wages of the employees. The person at the company who is responsible for making sure that the proper amounts are withheld is Feroz. Raziq started working for Company A on the first day of Saratan, in the year 1388. Feroz fails to withhold tax from the wages of Raziq during 1388 because Feroz believed that Raziq was an independent contractor. Feroz based his belief on the fact that Raziq had a written contract with Company A, but Adib and Aziz did not.*



*When the Afghanistan Revenue Department investigates Company A, they conclude that Raziq is an employee, and not an independent contractor. If Feroz's belief was reasonable, then the 10 percent additional tax will not apply.*

### ***Intent to evade tax***

If you *fail to withhold tax* as required by the Income Tax Law with the intent of evading payment of tax, in addition to the payment of an additional tax as described above, you will be referred to the Attorney General's office for prosecution and may be subject to fines and/or imprisonment.

### ***Failure to pay***

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If you *fail to pay taxes due* as determined under the provisions of the Income Tax Law without reasonable cause, you will be subject to 10 percent additional tax. This is in addition to any additional tax that may be due for the late payment of tax under Article 100 as described above.

*Example 1: Aziz is an individual who earned AFN 1,200,000 in wages during the year 1388. Aziz's employer withheld the appropriate amount (AFN 8,900) from Aziz's wages. Aziz does not owe any additional income tax as a result of his wages. Aziz also earns AFN 100,000 (after expenses) of rental income from some property that he owns. Aziz owes AFN 20,000 in tax on this rental income (AFN 100,000 x 20%). Aziz fails to pay the AFN 20,000 by the last day of Jowza. Aziz does not have any justification for his failure to pay the tax due. Aziz is subject to a AFN 2,000 additional tax (AFN 10,000 x 10%).*

*Aziz must pay AFN 22,000 (AFN 20,000 unpaid tax plus AFN 2,000 additional tax for failure to pay) plus the additional tax computed under Article 100 (late payment) for each day that the tax is late. If Aziz pays the tax and additional tax 10 days after the last day of Jowza, Aziz will*

owe additional tax under Article 100 of AFN 220 (10 days x 0.001 x AFN 22,000).

*Example 2: The facts are the same as in Example 1, except that Aziz failed to file his tax return and pay his tax because he was in the hospital recovering from a car accident. In this case, Aziz has a reasonable excuse for not paying his tax on time. Aziz should not be subject to the 10 percent additional tax.*

### ***Intent to evade tax***

If you fail to pay tax as required by the Income Tax Law with the intent of evading payment of tax, in addition to the payment of an additional tax as described above, you will be referred to the Attorney General's office for prosecution and may be subject to fines and/or imprisonment.

### **Failure to obtain a Taxpayer Identification Number**

If you are required to have a Tax Identification Number (TIN) under Article 86 of the Income Tax Law, but *fail to apply for a Tax Identification Number without reasonable cause*, you will have to pay additional income tax of AFN 5,000 if you are a natural person or AFN 20,000 if you are a legal person.

*Example 1: Asiyeh lives in Badakhshan province. Asiyeh is employed by an international non-governmental organization as a mid-wife. Asiyeh's employer withholds a portion of her wages as it is required under the law for the tax year 1389. Under Article 86, Asiyeh is required to have a taxpayer identification number in the tax year 1389. Asiyeh is illiterate and has failed to obtain and fill out the proper forms to obtain a taxpayer identification number. Her employer has not provided her with any information about obtaining a taxpayer identification number. Moreover, Asiyeh would be required to travel for days to find the*

## Note

Afghanistan Revenue Department tax offices and Mustufiats provide forms, guides, and instructions to taxpayers free of charge, available both as printed and as downloadable versions from a new website <http://www.ard.gov.af>. The website also provides locations, contact numbers and hours of operation for Afghanistan Revenue Department tax offices and Mustufiats. Taxpayers also can download other useful information including various public announcements and rulings, questions & answers regarding wage withholding tax, the Income Tax Law 2009, and an Income Tax Manual. The manual discusses separately each article of the law, along with relevant regulations, often with helpful examples.

*office that has the forms that will enable her to obtain a taxpayer identification number. When the Afghanistan Revenue Department investigates and informs Asiyeh that she needs a taxpayer identification number, Asiyeh agrees to sign the correct forms and obtain her number. Asiyeh has a 'reasonable cause' for failing to obtain a taxpayer identification number.*

*Example 2: Sarika lives in Kabul province. Sarika is employed by an international non-governmental organization as a mid-wife. Sarika's employer withholds tax from Sarika's wages during the tax year 1389. Sarika asks her employer why the employer is withholding tax. The employer informs Sarika that she is subject to income tax and that she needs to obtain a taxpayer identification number. In Kabul province, Sarika has access to the Internet from which she can obtain tax forms. She is also able to travel to the Afghanistan Revenue Department offices in Kabul from which she can obtain tax forms. Sarika does not obtain a tax identification number; because it will cost money either to use the Internet or to travel by taxi to the tax office. Sarika does not have a reasonable justification for not obtaining a taxpayer identification number. Sarika is subject to the AFN 5,000 additional tax.*

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