

CHAPTER IX

WITHHOLDING TAXES ON INCOME SOURCES

Article 58 - Article 63

Withhold and payment of tax

Article 58 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 are required to withhold taxes as provided in Article 4 of this Law from all salary and wage payments and pay the amount withheld to the Government account.

58.1 Individuals and legal persons who employ other persons are required to withhold taxes from salaries and wages paid.

Example 1: *An individual is in the business of building houses. He has from five to twenty workmen in his employ who earn taxable income. This individual is required to withhold taxes from salaries and wages paid to his employees.*

Example 2: *The same individual enters into a partnership with another person in order to raise capital and take on bigger construction projects. The partnership is required to withhold taxes from the wages of any workman whose wages are high enough to be taxable.*

58.2 Persons who are not on the payroll, but are hired to perform some service for remuneration that is not wages or salary, are not employees. The remuneration of such persons is not subject to tax withholding.

Example 1: *A company hires an electrician to repair the electric wiring in its warehouse. The electrician agrees to do the work for Afs. 2,000 plus cost of materials used. Since this workman is not an employee on the payroll of the company but an independent contractor, the company is not required to withhold taxes from the amount paid to him.*

Example 2: *A company hires a plumber to install plumbing in its offices. This plumber is hired with the understanding that he will be paid the retail price for all fixtures, fittings, and pipe installed, plus labor costs, and a specified percentage of profit. The company pays the plumber on this basis as billed by the plumber. The company is not required to withhold taxes since the plumber is an independent contractor.*

Example 3: *A company hires a workman to build a brick wall around its storage yard. The workmen and their supervisors are paid daily wages by the company. Even though these workmen are only temporarily on its payroll, the company is required to withhold taxes.*

Rent withholding tax on buildings and houses

- Article 59.
- (1) Payments of rent for buildings and houses which are rented to legal persons or natural persons and are used for business purposes or offices where the monthly rent is more than 15,000 afghanis are subject to a 20 percent income tax.
 - (2) Tenants of buildings and houses mentioned in paragraph (1) of this Article are required to pay taxes according to the rulings issued by the Ministry of Finance.
 - (3) Tax collected under paragraph (1) of this Article is 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 for rental services include:
 - any money, goods or services or any other benefit received by a person or persons for rental services; 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 its authorized panel will calculate the rent according to the market value.
 - (6) Property dealers are 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 sending the agreement, the Ministry of Finance will officially notify the Ministry of Justice to take necessary action.
 - (7) Where it is proven that the rent in a lease agreement is more than 20 percent lower than the market value rent, paragraph (5) of this Article will be applied. In the case of a dispute on 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 mentioned in the contract is less than what is paid. In this case, the Ministry of Finance may require the landlord to lease the property to the Ministry of Finance at the end of the current lease for a period twice the period set out in the current lease for the rental price set out in the current lease.
 - (8) If the tax has not been paid within 15 days of the due date, the following rules will apply:

(1) Subject to a notice in writing by the Ministry of Finance, the right of the landlord in a lease 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 of the amount overdue, the right of the landlord in a lease 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 XVI of this law.

59.1 Legal or natural persons that pay rent for the use of buildings for business purposes or office space must withhold 20 percent of the total rental payment if the rent exceeds 15,000 Afghanis per month. Where the total rental payment is 15,000 Afghanis or less per month, then no withholding tax is payable. In both cases, the rental income will be subject to annual income tax under Article 4 of the Income Tax Law.

Example 1: Najibullah rents some office space in the Wazir Akbar Khan area of Kabul. Najibullah pays Afs. 20,000 per month. Najibullah must withhold Afs. 4,000 per month.

Example 2: Azziz rents an apartment in the Shar-e-naw area of Kabul. Azziz pays Afs. 30,000 per month. Because the payments are made for personal accommodation that is not used in a business, Azziz is not required to withhold any tax from the rental payment.

Remark: While Azziz is not required to withhold tax from the payments, the owner of the apartment is liable to pay income tax on the rental income that the owner receives.

59.2 Natural and legal persons required to withhold tax from their rental payments must transfer the tax over to an authorized bank within 15 days of the month following the month in which the rental payment is made.

Example: Najibullah rents some office space for use in a business. The rent is Afs. 20,000 per month. The first payment is due on the first of Jawza. Najibullah will pay Afs. 16,000 to the landlord and will withhold Afs. 4,000. The Afs. 4,000 should be remitted to the bank by the 15th day of Saratan.

- 59.3 The amount withheld by the tenant is treated as a prepayment of the landlord's income tax liability with respect to the rental income. To claim the withheld amount as a credit, the landlord must file an income tax return.

Example: *An Afghan corporation rents office space from Wais, an Afghan resident and landlord. The Afghan corporation is obligated to pay Afs. 300,000 of rent during the year. Of this amount, only Afs. 240,000 is actually paid by the Afghan corporation to Wais. The remaining Afs. 60,000 is withheld and paid over to the government. Wais files his income tax return for the year and records Afs. 300,000 of rental income. Wais does not have any other income. Wais has Afs. 20,000 of deductible expenses. Thus, Wais's taxable income is Afs. 280,000. Wais does not have to pay any tax on the first Afs. 150,000 he earns, under Article 4 of the Income Tax Law. On the remaining Afs. 130,000 of income, he needs to pay 10% or Afs. 13,000. Because Wais has already had Afs. 60,000 withheld from his rental income, Wais is entitled to a refund of Afs. 47,000. To obtain this refund, Wais must file an income tax return.*

- 59.4 Payments for rental services include any benefit that the tenant confers on the landlord's property including repairs paid for by the tenant.

Example: *An Afghan corporation rents warehouse space from Wais. The Afghan corporation makes monthly rental payments to Wais. Each month's rent is Afs. 200,000. The corporation pays to have the heating system repaired in the warehouse for Afs. 500,000 in the month of Saratan. The cost is not reimbursed by Wais. The Afs. 500,000 payment is considered additional rent paid from the corporation to Wais and is therefore subject to withholding. Rather than pay Afs. 200,000 to Wais during the month of Saratan, the corporation should withhold Afs. 40,000 in the normal course and should withhold an additional Afs. 100,000 to reflect withholding on the repair payment. Only Afs. 60,000 should be paid over to Wais.*

- 59.5 The Ministry of Finance has the power under Article 102 to increase the rental value of property if the rates charged are lower than market value rates.

Example: *Azziz rents some office space to his son, Najibullah, for Afs. 20,000 per month. Azziz rents similar space in the same area to unrelated parties for Afs. 50,000 per month. The Ministry of Finance has the right to cause Najibullah to withhold Afs. 10,000 per month (20% x Afs. 50,000), even though Najibullah is only paying Afs. 20,000 per month. This is because the rents that were charged were not arm's length and so the Ministry of Finance has the right to increase the rental payments.*

- 59.6 Legal or natural persons that are in the business of renting land and buildings for profit are required to forward each rental agreement they execute to the Ministry of Finance (attention Afghanistan Revenue Department) or the tax office in the district in which the landlord resides or is based.

59.7 In the event that the rent withholding tax is not paid within 15 days of the day it is due, the following events may occur:

- 1) The Ministry of Finance may, at its discretion, provide a notice in writing to the tenant that the landlord's right to receive payment has been transferred to the Ministry of Finance, as representative for the Government of Afghanistan.
- 2) The tenant has 30 days from the date that it receives the notice referred to in paragraph (1) to pay over the appropriate amount of tax. If the tenant fails to pay over the correct amount of tax, the landlord's right to evict tenants for non-payment of tax shall be transferred to the Ministry of Finance as representative of the Government of Afghanistan.

Remittance of tax payments

Article 60 Any employer required to withhold taxes by Article 58 of this Law is required to remit to the State the amount withheld no later than 10 days after the end of the month in which the amounts were withheld. The employer shall submit with this remittance a Tax Withholding Report in such form as is prescribed in the Income Tax Manual of the Ministry of Finance.

60.1 An employer must withhold tax from the wages paid to its employees. An employer does not need to withhold tax from the payments made to independent contractors.

60.2 An employer must withhold tax from the wages that it pays to its employees pursuant to the tables set forth below:

Monthly Payrolls

Income more than	Income not more than	Tax
Afs. 0	Afs. 12,500	Afs. 0
Afs. 12,500	Afs. 100,000	10% of amount over Afs. 12,500
Afs. 100,000		Afs. 8,750 + 20% of the amount over Afs. 100,000

Semi-Monthly Payrolls

Income more than	Income not more than	Tax
Afs. 0	Afs. 6,250	Afs. 0
Afs. 6,250	Afs. 50,000	10% of amount over Afs. 6,250
Afs. 50,000		Afs. 4,375 + 20% of the amount over Afs. 50,000

Weekly Payrolls

Income more than	Income not more than	Tax
Afs. 0	Afs. 2,885	Afs. 0
Afs. 2,885	Afs. 23,077	10% of amount over Afs. 2,885
Afs. 23,077		Afs. 2,019 + 20% of the amount over Afs. 23,077

For daily payrolls

Income more than	Income not more than	Tax
Afs. 0	Afs. 411	Afs. 0
Afs. 411	Afs. 3,288	10% of amount over Afs. 411
Afs. 3,288		Afs. 288 + 20% of the amount over Afs. 3,288

Example: Aziz employs two individuals, Najib and Wahid, in his construction business. Najib and Wahid are employees and not independent contractors. Najib and Wahid are paid every week. Najib earns Afs. 3,600 per week. Wahid earns Afs. 24,000 per day and works six days a week. Aziz must withhold Afs. 72 from Najib's pay every week. Aziz must withhold Afs. 22,204 from Wahid's pay every week.

- 60.3 The employer must deposit the amounts withheld with an authorized bank no later than 10 days after the end of the month in which the amounts were withheld. Each deposit should be accompanied by a "Report of Tax Withholding and Bank Deposit Form for Employers." This form can be obtained from the Ministry of Finance.

An electronic funds transfer option is also available. Please refer to Guide 06 which can be found on the Ministry of Finance website.

Preparation of Statements

Article 61 (1) 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 no later than the end of the first month of the following year as prescribed by the Ministry of Finance.

(2) Every employer prescribed in paragraph (1) of this Article is required to file an annual summary report of taxes withheld from salaries and wages in the form and at the time and place prescribed by the Ministry of Finance.

61.1 The employer and employee have certain reporting obligations with respect to wage withholding that have to be complied with.

- a) Every year, the employer must prepare an Annual Salary and Tax Statement for each employee subject to wage withholding. At any time that an employee ceases employment, the employer should provide the Annual Salary and Tax Statement at the time of cessation of employment.
- b) In addition, the employer must prepare an Annual Summary Report of Taxes Withheld and Wage and Tax Statement Transmittal Form. The purpose of this form is to provide the Ministry of Finance with a summary of all of the amounts that the employer has withheld from all of its employees during the year.

Time for submission of statements

- Article 62
- (1) Every taxpayer is required to present his annual salary and tax statement to the relevant tax office within one and half months after the end of the fiscal year.
 - (2) The income tax liability for a taxable year is discharged by a person filing his salary and tax statement, certified by his employer, within one and half months after the end of the taxable year, provided the taxpayer meets the following conditions:
 1. The taxpayer has no taxable income in the taxable year other than the salary or wage from which taxes were withheld;
 2. The taxpayer was not employed during the taxable 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.

- 62.1 Every taxpayer that is an employee subject to wage withholding should receive a white copy and a green copy of a wage withholding statement from his or her employer.
- 62.2 If the following requirements are met, the taxpayer does not have to file a tax return. Instead, the taxpayer must simply file the white copy of his or her wage withholding statement with the local tax office.
- a) The taxpayer has no taxable income in the taxable year other than the salary or wage from which taxes were withheld.
 - b) The taxpayer was not employed during the taxable year by more than one employer.
 - c) The taxes withheld were in accordance with income tax rates prescribed in paragraph 3 of Article 4 of this Income Tax Law.
- 62.3 If any of the requirements set forth in Article 62.2 are not satisfied, then the taxpayer must file a return in accordance with Article 63.
- 62.4 If all of the requirements set forth in Article 62.2 are satisfied, but the taxpayer has deductions to claim (e.g., the losses described in Article 18(1)9), the taxpayer may, at its option, file a tax return in accordance with Article 63.

Submission of Return

Article 63 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 provided by the provisions of this Law. The taxes withheld shall be allowed as a credit against the taxpayer's tax liability.

- 63.1 A person meeting the conditions of Article 62 of the Income Tax Law, who has paid his income tax through the withholding of taxes from his salary, is not required to file an income tax return. He must, however, file a copy of the Annual Salary and Tax Statement received from his employer. He must also be prepared to show that he has met the conditions of Article 62 of the Income Tax Law.
- 63.2 The amount of withholding shown on the wage withholding form is an advance payment of tax due, not the employee's final tax liability. The taxpayer's income tax return shows the taxpayer's final tax liability. If the amount withheld exceeds the amount shown as due on the taxpayer's tax return, the taxpayer is entitled to a refund. If the amount withheld is less than the amount shown as due on the taxpayer's return, the taxpayer must remit additional funds to pay those taxes.

Example: An Afghan corporation employs Wahid. The Afghan corporation pays Wahid Afs. 150,000 per month, or Afs. 1,800,000 per year. The Afghan corporation withholds Afs. 225,000 of tax. In addition to his wages, Wahid receives investment income from a note receivable of Afs. 20,000. Wahid's tax liability is as follows:

Wages	Afs. 1,800,000
Investment Income	<u>Afs. 20,000</u>
SubTotal	Afs. 1,820,000
Income Tax Payable	Afs. 229,000
Taxes Withheld	(Afs. <u>225,000</u>)
Net Tax Payable	Afs. <u>4,000</u>