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AFGHANISTAN

INCOME TAX LAW

2005

An unofficial translation of the Income Tax Law 2005

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This translation has been prepared by the Department of Revenue, 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 Gazette. 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 Gazette.

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CHAPTER I

GENERAL PROVISIONS

- Article 1 Authority This Law is imposed under the authority of Article 42 of the Constitution of Afghanistan for the purpose of tax determination and tax payment.
- Article 2 Tax implementation (1) A tax is imposed on the income from Afghan sources of all natural persons, corporations, limited liability companies, and other legal entities whether in Afghanistan or abroad, and on the foreign income of residents of Afghanistan in accordance with the provisions of this Law.
- (2) A natural or legal person is considered a resident of Afghanistan if:
1. The person has his or her principal home in Afghanistan at any time during the fiscal year; or
 2. The person is present in Afghanistan for a period or periods amounting to one hundred eighty-three days in the fiscal year; or
 3. The person is an employee or official of the Government of Afghanistan assigned abroad at any time during the fiscal year.
 4. Any other entity is resident in Afghanistan for a fiscal year if it was established in Afghanistan or has the centre of its administrative management in Afghanistan at any time during the fiscal year.
- Article 3 Tax (fiscal) Year (1) The income tax is imposed for each taxable year on the taxable income of each person, corporation, limited liability company, or other entity. The taxable year is the solar year which starts from the first day of Hamal (21 March) and ends on the last day of Hoot (20 March).
- (2) A legal person wishing to use a different taxable year than that mentioned 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 taxable 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 taxable year under paragraph (2) of this Article takes 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 prescribed in paragraph (3) of this Article when required.

Article 4 Tax calculation (1) The income tax of legal persons is 20 percent of its taxable income in the fiscal year.

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

(3) The income tax of a natural person is the amount calculated in accordance with the following schedule:

TAXABLE INCOME			INCOME TAX	
From	1 afghani	up to afs	12,500 per month	0%
From	afs12,501	up to afs	100,000 per month	10%
From	afs100,001per month	in addition to afs 8,750 20%

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

1. In accordance with taxable income including income from sources outside Afghanistan.
2. Any income tax paid to the government of a foreign country by a resident natural person of Afghanistan may be taken as credit only against that part of his annual income tax attributable to his foreign income.
3. If the income of a resident natural person is derived from more than one foreign country, the income tax credit shall be applied in proportion to the income from each country as provided in the Income Tax Manual established by the Ministry of Finance.

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

Article 6 Non-residents tax exemptions Non-resident persons are exempt from income tax provided that the foreign country grants a similar exemption to residents of Afghanistan.

Article 7 Non-residents and allowable deductions (1) Individuals, companies and other non-resident persons not engaged in trade or business in Afghanistan are subject to income tax on the amount received from sources within Afghanistan as interest, dividends, rents, royalties, and gain or profit of any kind according to the provisions of this Law.

(2) Deductions allowed under this Law are only allowed in respect of

income other than interest, dividends, rents and royalties to those non-resident legal persons which file a true and accurate 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 persons, companies and other organizations engaged in economic, service or business activities in Afghanistan are subject to income tax on all taxable income from sources within Afghanistan.

(2) Deductions are allowable only if and to the extent that 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 are exempt from taxation provided that the foreign country grants a similar exemption to aircraft and its staff under the flag of Afghanistan.

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

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

1. payments or amounts incurred to another part of the non-resident person are deemed to be dividends under paragraph (3) of Article 13 of this Law,
2. no deduction is allowed for payments or amounts incurred to another part of the non-resident person according to paragraph (2) of Article 18 of this Law, and
3. expenses incurred by the branch or another part of the non-resident person that related directly to the earning of gross income by the branch are treated as expenses incurred by the branch as a separate legal person.

Article 9 Tax on foreign governments and international organizations
The taxability of income in Afghanistan of foreign governments, international organizations, and of their employees not residents of 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 received and income from the necessary operations of organizations that meet the following conditions are exempt from taxation:

1. The organization must be established under the laws of Afghanistan.

2. The organization must be organized 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 process of exemption from income tax for organizations prescribed 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 is exempt from taxation. Government enterprises are excluded from the provisions of this Article.

CHAPTER II

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 person less those exemptions and deductions authorized in 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 Chapter, 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 and industry,
3. receipts from sale of movable and immovable property,
4. interest, dividends, rents, royalties, awards, prizes, winning, bakhshishis (gratuities, bonus payments),
5. distributive shares of partnership gross income,
6. any other return 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
- (5) the use of any company property.

(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 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 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 property in connection with mergers of domestic corporations and other legal entities;
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 deposits of individuals from State banks;
13. interest on bonds issued by the State and by municipalities; and
14. 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 his household is excluded from income tax.

Article 16 Taxes on rent and lease of immovable properties Rent received in money or otherwise from renting and leasing 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 or wages (1) Ministries, agencies and other government organizations, enterprises, companies and charitable institutions are required to withhold taxes from the salary or 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 the production, collection, and preservation of income of natural and legal persons is allowed and deductible as follows, provided that these expenses have been incurred during the taxable year, or one of three previous years, in accordance with the provisions of this Law.

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 ordinary and necessary expenses used in the production of income, or in a trade or business;
3. Wages, salaries, commissions, and fees paid for services rendered by employees in trade or business;
4. Interest paid on business loans;
5. Rent paid on property necessary to and used in 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 moveable and immovable property (except agricultural land) used in a 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 any item of property over a period of years shall not exceed its cost to the taxpayer;
8. Any tax or charge that is necessary expense of doing business, holding property for income, or of producing income, if paid or accrued during the taxable year. Taxes imposed by this Law and taxes not qualifying as necessary business expense are not deductible, except as otherwise provided by this Law;
9. Damages to movable or immovable property caused by fire, earthquake, and by casualty or disaster of any kind, over a three year period, to the extent that the cost is determined

and substantiated by records and the loss was not recovered 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 entity organized 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 are allowed for the following expenses:

1. Expenses incurred to provide entertainment or advertising that are not connected to economical or commercial activities;
2. Dividends, interests, royalties, rents, commissions, wages, salaries and similar expenses from which legal persons are required under provisions of this Law to withhold tax 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 are not deductible:

1. payments made to persons for his or his family's benefit and enjoyment;
2. expenses and costs of maintenance, repair, construction, improvement, furnishing, and other expenses of the taxpayer's or his family's house or residence or any property devoted to his own personal or family's 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 his family; and
6. cost of insurance of any kind for the protection of property used for personal purposes.

(2) The following expenses are not 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 1 (7) of Article 18 and the provisions of Chapter 3 of this Law are excepted from 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 domestic sources (1) Income from sources within Afghanistan is as follows:

1. Interest from loans, deposits, investments, etc.;
2. Dividends received from resident companies doing business in Afghanistan;
3. Salaries, wages, self-employment income, etc. for services performed;
4. Rentals and royalties from any property (movable and immovable);
5. Gain from sale of immovable and movable property;
6. Commissions on sales of any kind including insurance;
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, a management fee, an annuity, or a commission paid by a resident of Afghanistan;
10. Income from exploitation of any interest in a right to explore for, or exploit, any mineral, petroleum, or any other resources; and
11. Income from other sources in 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" in subparagraph (5) of paragraph (1) of this Article includes any benefit in a company or other entity where the value of the 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 XII.

(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 III
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 a capital asset or investment in a trade or business is subject to income tax.
- Article 22 Taxable gain of fiscal year The gain from the sale or exchange of any asset of a corporation or limited liability company is taxable income in the taxable year the asset was transferred.
- Article 23 Tax on transfer of property (1) Gain from the sale, exchange, or transfer of the following assets is 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 property; 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 is 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. Expenses of sale including sales commissions, advertising expenses, legal expenses, transaction and document taxes, and other expenses of selling and 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 no effect on tax liability The form or nature of the transfer of movable or immovable assets shall not affect taxability of the gain from the transfer, except by inheritance, which is not taxable.
- Article 27 Deduction of loss incurred from taxable income Losses from the sale or exchange of capital assets used in trade or business are deductible from the taxable income of the taxpayer in the taxable 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 is not 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 is not deductible.
- Article 29 Computing tax on capital gains The method of determining and computing tax on capital gains is 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 is subject to the provisions of this Article if one or more of the following criteria and conditions is met:
 - the transfer (except by inheritance) of property was not a sale;
 - the asset transferred was a capital asset;
 - the asset was transferred in the sale or liquidation of a business.
 - (2) The income tax of any person in any taxable 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 obtained, divided by the amount of taxable income for which it was computed, is the special rate. If the resulting rate is less than ten percent the applicable rate shall be ten percent.

Article 30 Tax on sale of movable or immovable property (1) Except by inheritance and as mentioned in Article (23) of this Law, the price of sale or transfer of immovable property is subject to a fixed tax of one percent at the time of transfer of ownership in lieu of income tax.

(2) The price of sale or transfer of movable property or a vehicle is subject to a fixed tax of two percent at the time of transfer of ownership in lieu of income tax.

CHAPTER IV

PARTNERSHIPS

Article 31 Definitions

1. A partnership is an association of two or more persons joining under an agreement, in accordance with the provisions of the relevant laws, to carry on business and share the profit or loss.
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 partnership in which the partners are not individually liable for debts of the company but each partner has liability limited to his shares of capital in the company.
7. A corporation (Sherkat-Sahami) is a partnership which has its capital determined and divided by shares and liability of each partner is limited to his shares.

Article 32 Limited liability company and special partnership (1) A limited liability company is subject to the same provisions of this Law as corporations (Sherkat-Sahami). Partners in such companies are considered shareholders and distributions of earnings are considered dividends for purposes of this Law.

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

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

Article 34 Determination of net income Every general partnership is 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 is required to report separately for each partner his share of the following items:

1. the net income or net loss;
2. the gains or losses 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 earnings 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 V

RULES FOR ACCOUNTING

- Article 36 Maintenance and preservation of records All natural or legal persons with taxable income in a taxable year shall keep records of all transactions, of all movable and immovable property, and of all income. Such records shall be preserved by the owner and be 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 his taxable income using the cash method of accounting at the time of income receipt and expense payment. The Ministry of Finance may permit a taxpayer to compute his taxable income using the accrual method of accounting. Corporations and limited liability companies are excluded from this provision.
- Deductions for depreciation are allowable in accordance with the Income Tax Manual.
- Article 39 Form and content of records The Ministry of Finance is authorized to prescribe the records that shall be kept by any taxpayer or class of taxpayers to reflect income clearly and to require such reports as it deems necessary to administer the income tax.
- 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 taxable year and priced at cost or market value, whichever is lower. All taxpayers engaged in manufacturing, trade, or other businesses are required to take inventories on such basis as the Ministry of Finance may prescribe.
- Article 41 Tax determination of two or more businesses In the case two or more organizations, trades or businesses are owned or controlled directly or indirectly by the same natural or legal person, the Ministry of Finance may distribute, apportion or allocate receipts, deductions or credits between or among such organizations, trades or businesses to reflect accurately the taxable income and prevent evasion of taxes.

CHAPTER VI
SPECIAL PROVISIONS RELATING TO
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 taxable year shall be entitled to deduct this loss from its taxable income of three succeeding years, deducting each year one-third of the loss. Paragraph 4 of Article 47 of this Law is an exception to this provision.
- (2) Where a resident company carries on activities that are intended to generate income from a source outside of Afghanistan, the company shall determine its taxable income as defined in Article (12) of this Law or its net operating loss as defined in paragraph (1) of this Article separately in respect of the activities that are intended to generate income from a source in Afghanistan and its activities that are intended to generate income from a source outside of Afghanistan. A net operating loss from activities that are intended to generate income from a source outside of 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 Except payments of dividends, and except when made in connection with liquidation of a corporation or a limited liability company, the distribution of the assets of the corporation or limited liability company to its shareholders or partners shall be treated by the shareholder or partner as a reduction in the cost of his stock or capital share.
- Article 44 Distribution of assets at the time of liquidation of company A distribution of assets among shareholders or partners in connection with the liquidation of a corporation or a limited liability company shall be treated by the shareholder or partner as proceeds from sale or exchange of assets as provided in Chapter III 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 is 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 earnings. Dividends are subject to the following provisions:
1. Dividends paid in cash by a corporation or limited liability company which is organized under the laws of Afghanistan are deductible from the income of the company which makes the payment except where paragraph 2(2) of Article 18 applies.

2. Dividends paid in the form of securities of any kind are not deductible from income of the corporation or limited liability company.
3. Dividends paid in money are taxable income of the recipient at the time received, but dividends in the form of securities of any kind are not considered taxable income of the recipient at the time received.

Article 46 Withholding tax (1) A profit or non-profit legal person organized under the laws of Afghanistan is required to withhold income tax as follows:

1. in the case of wages and salaries, in accordance with the provisions of this Law;
2. 20%, in the case of interest, dividends, royalties, or similar income subject to provisions of this Law

(2) Tax withheld under this Article is to be paid to the State no later than 10 days after the end of the month in which the tax was withheld.

(3) No later than the last day of Hamal, a legal person making payments subject to withholding tax under the provisions of the Law shall provide each person receiving amounts that have been subject to withholding tax with details of payments and withholding tax in the manner prescribed by the Ministry of Finance.

(4) No later than 10 days after the end of each month, a person making payments subject to withholding tax shall provide details of payments and withholding tax to the Ministry of Finance in the manner prescribed by the Ministry of Finance.

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

(6) A natural person who has income from more than one source is required to file a tax return and income tax shall be computed based on provisions of this Law. Any amount of tax which has been withheld on payment of the income will be allowed as a credit deductible against income tax otherwise payable.

Article 47 Deduction of depreciation and losses (1) From 21 June 2004 and as an exception to paragraph 1 (7) of Article 18 of this Law, an approved enterprise registered under the Law on Domestic and Foreign Private Investment in Afghanistan shall be entitled to a deduction for the depreciation of capital assets as follows:

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

(2) The depreciation deduction for buildings and other capital assets shall be an equal deduction for each fiscal year of depreciation. If a capital asset is owned by the enterprise for less than one half of the year, a deduction for half the annual amount will be allowed in that year.

(3) The depreciation deduction shall only apply to capital assets acquired and first used in the year in which the enterprise became an approved enterprise or registered enterprise (whichever is earlier) or in the following two years.

(4) From 21 June 2004 and as an exception to Article 42 of this Law, an approved enterprise that incurs a net operating loss in a fiscal year based on legal records and accounting records may carry this loss forward as a deduction from taxable income in each subsequent year until the loss is fully extinguished. The loss incurred by such approved enterprise 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 cannot be used in the calculation of a net operating loss.

CHAPTER VII

TAXATION OF INSURANCE COMPANIES

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

1. It shall have been organized 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,
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 are subject to income tax:

1. Interest, dividends, rent, and other income from investments and property;
2. all receipts from activities other than insurance;
3. all 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 his 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 are not 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. claims paid on insurance for which premium income is taxable;
2. commissions and other costs of writing insurance for which premium income is taxable;
3. reinsurance costs of 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 taxable 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. all necessary expenses of doing business as provided in Chapter II of this Law except those cited 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 taxable year during which the transfer or payment was made.

Article 53

Determination of taxable income of foreign insurance companies Any foreign insurance company or underwriter 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 taxable 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 amount before income tax and dividend payments of such 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) shall be taxable income.

CHAPTER VIII
TAXATION OF BANKS, LOAN AND
INVESTMENT CORPORATIONS

- Article 54 Gains subject to tax Income of banks, loan and investment corporations are 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 and ordinary business expenses are 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 are also deductible.
- Article 56 Additions to reserves Additions to reserves against losses on loans are deductible only if such reserve does not exceed 25 percent of loans outstanding at the end of the taxable year. Any transfers or payments from such reserve, except in accordance with the purpose of the reserve, is 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 is not 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 IX

WITHHOLDING TAXES ON INCOME SOURCES

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 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.

Article 59 Rent withholding tax on buildings and houses (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.

Article 60 Remittance of tax payments 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.

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 no later than the end of the first month of the following year.

(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.

Article 62 Time for submission of statements (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 taxpayer 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.

Article 63 Submission of return (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 X

BUSINESS RECEIPTS TAX

Article 64 Business receipts tax (1) The business receipts tax is imposed on the business activities of limited liability companies, corporations, general partnerships and organizations.

(2) Natural and legal persons deriving 100,000 afghanis or more income per month from providing taxable services mentioned in paragraph (2) of Article 65 of this Law are subject to tax mentioned in sub-paragraph 1 (6) of Article 65 of this Law.

Article 65 Rates of business receipts tax (1) The business receipts tax is collected from limited liability companies, corporations, general partnerships and organizations as follows:

1. Five percent of the gross receipts (before any deductions) during the fiscal year of commissions, fees, interest, dividends, rent, royalties, and similar income. However, the business receipts tax does not apply to the rental income of a natural person from which tax has been withheld under Article 59 of this Law.
2. Two percent of the gross receipts (before any deductions) during the fiscal year for materials, equipment, services, transportation, and construction of buildings provided under terms of a contract.
3. Two percent of the gross receipts (before any deductions) during the fiscal year from premium income for insurance.
4. Two percent of the gross receipts (before any deductions) during the fiscal year from sale of admissions to public entertainment including cinema shows, plays, concerts, exhibitions, sports and others of the same kind.
5. Two percent of the gross receipts (before any deductions) during the fiscal year from sales of products, goods, assets, and other services.
6. Ten percent of the income derived from the services provided by a legal or natural person which is 100,000 afghanis or more per month in accordance with rulings issued by the Ministry of Finance.

(2) Taxable services mentioned in sub-paragraph (1) 6 of this Article are guest house and hotel services, restaurant services, telecommunications services, and airline services:

“guest house and hotel services” means the provision of sleeping accommodation and related services, including the provision of

meals, beverages, laundry and communications services, to persons who occupy such accommodation as transient guests;

“*restaurant services*” 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 sales of cooked foods that were prepared on the premises;

“*telecommunications services*” means the provision of telephonic services or internet services by a telecommunications service provider or internet service provider, including digital or analogue telephone, facsimile or data transfer communications, and internet access by any means;

“*airline services*” means passenger air services where the flight originates in Afghanistan.

(3) Total income of a business entity is not severable.

(4) The monthly receipts of a person for the provision of taxable services include money, goods and services. The cost of goods and services are computed in afghanis according to market value.

(5) Where a taxpayer referred to in paragraph 1 (6) of this Article claims that it does not have income from taxable services for one or more months, the person is required to inform the Ministry of Finance in writing and attach with a completed tax return. Where the claim is true, the person will not be subject to business receipts tax under the paragraph 1(6) of this Article. If the claim is not true then, in addition to the business receipts tax payable under paragraph 1(6) of this Article, the person will be required to pay the additional tax provided in paragraph 2 of Article 103 of this Law.

Article 66 No effect of profit or loss on business receipts tax Business receipts tax is payable on total receipts and is not affected whether the taxpayer has a profit or loss during the current or previous years.

Article 67 Deductible amount The business receipts tax paid or payable shall be a deductible expense in computing taxable income for the same taxable year.

CHAPTER XI

FIXED TAXES

- Article 68 Fixed tax on commercial activities Persons who are engaged in commercial activities or who own the properties described in this Chapter are subject to fixed tax.
- Article 69 Payment of fixed tax Fixed taxes are due and payable during the taxable year unless otherwise provided in this Law.
- Article 70 Fixed tax on imports (1) Persons who import goods and have a business license are subject to two percent fixed tax on the total cost (including custom duties) of the goods imported. The tax paid will 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 are subject to three percent fixed tax on the total cost (including customs duties) of the goods imported in lieu of income tax on such activities.
- (3) Persons who import goods and have an interim business license but do not provide their business declaration form to the Ministry of Finance are subject to three percent fixed tax on the total cost (including customs duties) of goods imported in lieu of income tax on such activities.
- (4) The tax mentioned in the paragraphs of this Article shall be paid at the customs house where customs duties of the goods are paid.
- Article 71 Fixed tax on exports (1) Persons who export goods and have a business license are subject to two percent fixed tax on the total cost (including custom duties) of the goods exported. The tax paid will 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 export goods without having a business license are subject to two percent fixed tax on the total cost (including customs duties) of the goods exported in lieu of income tax on such activities.
- (3) Persons who export goods and have an interim business license but do not provide their business declaration form to the Ministry of Finance are subject to two percent fixed tax on the total cost (including customs duties) of the goods in lieu of income tax on such activities.
- (4) The tax mentioned in the paragraphs of this Article shall be paid at the customs house where customs duties of the goods are paid.

Article 72 Fixed tax on transport Persons who transport passengers or goods for business purposes are required to pay an annual tax as follows, before renewal of their vehicle registration:

No	TYPE OF VEHICLE	TAX
1 Vehicles based on tons		
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 of a trailer	Over 500kg then 200 afs per tonne
2 Passenger vehicles		
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
3 Vehicles according to their cylinders		
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
4 Rickshaw		
1	Motorbike rickshaw	500 afs
2	Rickshaw	1000 afs

Article 73 Fixed tax of government contractors Persons who provide supplies, materials, services or construction under contract to the State or its agencies without a business license are subject to a seven percent fixed tax in lieu of taxes on income from such activities. Fixed tax is to be withheld from the amount to be paid.

- Article 74 Fixed tax of exhibitions Legal persons not subject to taxation under Chapter X of this Law or persons who are the owners of cinemas, theaters, exhibitions, or other places of entertainment and who at the same time operate such places, are subject to a fixed tax of ten percent of receipts from sale of admissions. This fixed tax is in lieu of income tax for such business. The fixed tax on admissions sold during each month is to be paid before the sixth day of the following month at the tax office of the district in which the showing took place.
- Article 75 Fixed tax of grain and processing mills, cane and seed oil machinery
(1) Owners of mills grinding grains or processing rice, cane or seed oil extracting machines are subject to a fixed tax in lieu of taxes on income from such property. This tax shall be ten percent of the estimated gross income per year from such mills or machines. The estimated gross income per year shall be determined in accordance with Income Tax Manual of the Ministry of Finance and the tax shall be paid by the owner at the tax office of the district in which the mill or machine is located.

(2) Owners of mills and saw mills with machines which operate by electric or diesel or similar power are subject to a fixed tax in lieu of income tax on the income from such mills. The fixed tax is equal to 400 afghanis per year per horse power of the motors or machines providing power for the mill. The tax shall be paid by the owner of the mill at the tax office of the district in which the mill is located.
- Article 76 Fixed tax of place of business All persons selling goods and services from established places of business are subject to taxes specified under the provision of the Article 77 of this Law. These taxes are in lieu of income taxes. This tax shall be paid by the owner or owners of the business at the tax office of the district in which the business establishment is located.
- Article 77 Determination of fixed tax on place of business (1) The fixed tax of business establishments is to be set by a committee considering the following factors and is to be approved by the Minister of Finance every three years:
1. The kind of goods and services offered;
 2. The estimated volume of business;
 3. The size and rental value of the establishment;
 4. The economic advantages of its location in relation to the population;
 5. Demand for goods and services offered;
 6. Estimation of turnover, cost of goods and sales of goods;
 7. Classification between domestic and foreign products;

8. Classification between consumable and non-consumable goods;
9. Estimation of daily, monthly and annual net income of the business establishment.

(2) A fixed tax is imposed on business establishments which do not have complete accounting documents, and is computed according to the following categories:

1. The fixed tax of business establishments which have reliable purchase documents is three percent of the total annual purchases.
2. The fixed tax of business establishments which have reliable sales documents is two percent of the total annual sales.
3. The fixed tax of business establishments which are not covered by sub-paragraphs (1) and (2) of this paragraph is 2.5 percent of the estimated total annual sales.
4. The fixed tax of business establishments whose calculation of annual net income is not possible is six percent of the market value of current stock on hand.

Article 78 Fixed tax of physicians (1) Physicians or medical practitioners who treat patients outside of State hospitals are required to pay an annual fixed tax in lieu of income tax as follows:

1. 6,000 afghanis for physicians or medical practitioners who have up to 10 years of experience,
2. 10,000 afghanis for physicians or medical practitioners who have more than 10 years and up to 20 years of experience,
3. 15,000 afghanis for physicians or medical practitioners who have more than 20 years of experience.

(2) The fixed taxes mentioned in paragraph (1) of this Article are collected by the relevant section of the Ministry of Public Health while issuing or renewing medical treatment licenses.

(3) Where a person does not pay the tax due under paragraph (1) of this Article, the person's clinic or office will be closed by officials of the Ministry of Finance until the tax due has been paid.

Article 79 Amendments to exemptions (1) Amendments to exemptions and tax rates of this Law must be proposed by the Ministry of Finance and approved by the authorized officials.

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

Article 80 Fixed tax on persons without fixed place of business Persons with no fixed place of business and not otherwise taxed under the provisions of this Law are subject to fixed occupational tax in accordance with the provisions of Article 81. Fixed occupational tax is payable to the nearest tax office of the district in which the person resides.

Article 81 Fixed tax of brokers and commission agents Persons who are brokers, commission agents, or sellers of goods and similar businesses without a fixed place of business shall pay tax according to the rates determined by the Ministry of Finance.

CHAPTER XII

TAXATION RULES FOR QUALIFYING EXTRACTIVE INDUSTRY TAXPAYERS

- Article 82 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;
 2. a "mining Authorization" means an Authorization described in Article 18 of the Minerals Law, 2005;
 3. a "mining License" means a License described in Article 18 of the Minerals Law, 2005;
 4. a "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 greater than 12 months; and
 - is constructed or acquired to be used directly in the business subject to a mining License or mining Authorization or a hydrocarbons Contract.
- (2) A well that is drilled by a QEIT for the purpose of exploring for, developing, or producing hydrocarbons is 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 are treated as the cost of acquiring the well. Where the drilling or contracting costs for drilling are incurred over more than one fiscal year, the QEIT is 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 83 Precedence of Chapter XII 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 84 QEIT is treated as a separate taxpayer in respect of each Authorization, License, or Contract
(1) 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 is treated as if it were a separate person in respect of the business operations related to each hydrocarbon Contract, mining License, or mining Authorization.

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

(3) 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 is apportioned between the different parts of the business on the basis of the application of the expenditure.

Article 85 Business Receipts Tax The Business Receipts Tax imposed under Chapter X of this Law does 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 86 Depreciation deductions (1) Contrary to paragraph 1 (7) 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 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 paragraph 1 (7) 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 is 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 is 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 is deductible in the year of sale.

Article 87 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 will use the road. In this situation, the person acquiring the mining License, mining Authorization or hydrocarbons Contract asset is 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 is 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 is not 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 88 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 is 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 is 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 89

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 90

Loss carry-forward and stability agreements (1) Article 42 of this Law, which imposes a limit on the recognition of net operating losses, does 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 in 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 in 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% 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 XIII

ASSESSMENT, RETURNS, OBJECTIONS AND PAYMENT OF TAX

- Article 91 Tax Identification Number (1) Individuals, companies and organizations which are, according to the Income Tax Law and 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 incomes are subject to income tax withholding under provisions of this Law are required to have a Tax Identification Number.
- (2) Procedures for the issue and use of Taxpayer Identification Numbers will be prepared by the Ministry of Finance.
- (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 Tax Identification Number but fail to provide it.
- Article 92 Assessments and amended assessments (1) Persons who are subject to income tax under the provisions of this Law are required to file a detailed return to report income, deductions, 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 make a return unless the person receives wages from two or more employers or the person has other income in addition to his wage income. The withheld tax from wages and salaries under the provision of the Law is not refundable.
- (3) Where a person has delivered a tax return form required under the provisions of this Law, the tax due if any according to the tax return shall be treated as an assessment of tax payable and the return shall be treated as a notice of assessment.
- (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 is treated as a notice of assessment.
- (5) Where a person has not prepared and delivered a tax return required under provisions of this Law, the Ministry of Finance may determine the amount of tax due and issue to the person liable for payment of the tax 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 is 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 deliver a tax return or delivered 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.

Article 93

Submitting returns and payment of tax (1) A person who is required to complete a tax return other than a business receipts tax form must submit their tax return by the end of Jawza (third month) of the next year to the relevant tax office.

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

(3) Residents and non-residents who intend to leave the country before the due date for payment of their tax are required to submit their return form and pay the tax due two weeks before leaving the country.

(4) Income tax payable by persons required to submit 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 submitted.

(5) A person required to complete a business receipts tax form must complete a tax form for each quarter year. The person must deliver the form and the tax payable for the quarter no later than the fifteenth day of the next month after each quarter year. A business receipts tax form must be delivered by each person who operates a business, regardless of whether or not in one or more months of the fiscal year the person has derived income below the threshold provided in paragraph 1 (6) of Article 65 of this Law.

(6) Unless a different time is provided in this Law, persons who carry on business from fixed business establishments are required to pay their due tax quarterly and the payment for each quarter shall be made no 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 ownership of such property is transferred.

(8) Tax on contracts signed with government agencies, according to Article 73 of this Law, shall be withheld at the time payment is made by the relevant government agency.

(9) Income tax on the gains by brokers shall be paid no later than five days after the end of the tax year.

(10) The income tax on shows, exhibitions, theaters, cinemas, concerts, sports and similar events shall be paid no later than the fifteenth day of the

next month. If the mentioned shows are not continuous, tax shall be paid after the end of each show.

Article 94 Objections and appeals (1) Where a person has delivered a tax return required under this Law or has received an assessment notice and that person believes that the tax return or assessment is incorrect, the person can request an amendment of the assessment notice within five years of the date on which the tax return was due.

(2) The Ministry of Finance may amend or affirm an assessment notice and will advise the person of its decision.

If the Ministry of Finance has not amended an assessment notice as requested within 60 days after the date on which a person delivered a request for amendment, the earlier assessment notice will be treated as being affirmed.

If the person 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 person 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 person does not accept the decision of the Objection Review Panel or the Objection Review Panel has not made a decision with 60 days after receiving the objection, the person 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 95 Refunds If the Ministry of Finance finds, upon examination of a 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 96 Information collection (1) In order to ascertain the correctness of any return or make an estimate of the income of any person, the Ministry of Finance shall have the power to –

1. examine the books, papers, or records of the person through designated employees of the Ministry of Finance; and
2. require information on the income, expenses, or assets of the person from other persons.

(2) The Ministry of Finance may specify the procedures for examination of a person's books, papers, or records in the Income Tax Manual.

(3) All information collected by the Ministry of Finance on an income tax return and in exercise of the power provided in paragraph (1) of this Article is confidential and may not be disclosed by the Ministry of Finance to anyone outside the Ministry of Finance unless authorized by law.

CHAPTER XIV

ENFORCEMENT PROVISIONS

- Article 97 Collection of unpaid tax from third parties (1) For the purpose of recovering any tax due by a taxpayer, the Ministry of Finance may, without the agreement 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 98 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 a 10 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 its 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 99 Persons not allowed to leave Afghanistan (1) A person who has tax due of more than 20,000 afghanis may be prevented from departing Afghanistan if the tax due has not been paid to the relevant tax offices. An authorized person of the Ministry of Finance may issue a notice to the relevant authorities requesting that those authorities prevent the person from departing Afghanistan.
- Article 100 Business closure (1) Where a person has failed to deliver a tax return, failed to pay tax on the due date or failed to withhold and pay tax as set out in the provisions of this Law, the Ministry of Finance may notify the person in writing of the intention of the Ministry of Finance 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 must 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 101 Restriction on disposal of property by a taxpayer (1) Where a person has failed to deliver 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 an appropriate court placing restrictions on a 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 an order of the court, the Ministry of Finance may request the appropriate court to order the sale of the person's property. Where a person pays tax due under paragraph (1) of this Article before an order of the court for sale of property is issued, the order placing restrictions on the person's property will be withdrawn.
- (3) Where paragraph (1) of this Article applies, a court may issue an order to sell a person's property through a public auction.
- (4) The Ministry of Finance shall apply the proceeds of the sale of property to the payment of the tax due and any excess of the proceeds shall be paid to the person.

CHAPTER XV

ANTI-AVOIDANCE

Article 102 Transactions between connected persons If 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 103 Anti-avoidance (1) Where any person enters into any transaction or arrangement or series of transactions or arrangements that have as the main object or main effect a reduction of liability to pay income 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 will be required to pay the income tax due and:

- 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 XVI

ADDITIONAL TAX AND TAX PENALTIES

Article 104 Offenses and penalties (1) A taxpayer may incur an additional income tax liability and penalties under this Chapter in addition to tax due if the taxpayer has not complied with tax obligations set out in the provisions of this Law. The provisions of this Law apply to the assessment and collection of additional income tax in the same manner as for other tax under this Law.

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

1. failure to pay the due tax by the due date,
2. failure to maintain or provide access to records of business transactions,
3. failure to deliver a tax return,
4. failure to withhold tax,
5. failure to pay tax,
6. failure to obtain a Tax Identification Number.

Article 105 Additional income tax where tax is 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 106 Additional income tax where records were not maintained (1) A person who fails without reasonable cause to establish and maintain records required by the provisions of this Law or fails to provide access to records by Ministry of Finance officers, shall pay additional income tax of 5,000 afghanis if the person is a natural person or 20,000 afghanis if the person is a legal person.

(2) A person who fails to establish and maintain records required as a result of gross negligence or disregard shall pay additional income tax of 10,000 afghanis if the person is a natural person or 40,000 afghanis if the person is a legal person.

(3) A person who deliberately fails to establish and maintain records or fails to provide access to records by Ministry of Finance officers shall pay additional income tax of 30,000 afghanis if the person is a natural person or 120,000 afghanis if the person is a legal person.

(4) A person who fails to establish and maintain records as required by the provisions of this Law with the intent of evading payment of tax, in addition to the payment of an additional tax under paragraph (3) of this Article, shall be guilty of an offence and is liable upon conviction by a court to a fine not exceeding 250,000 afghanis or imprisonment for a term not exceeding two years or both.

- Article 107 Additional income tax where a tax return was not filed (1) A person who fails without reasonable cause to file a tax return by the due date shall pay additional income tax of 200 afghanis for each day other than holidays that the return is overdue if the person is a natural person or 1,000 afghanis for each day other than holidays that the return is overdue if the person is a legal person.
- (2) A person who fails to file a tax return by the due date as a result of gross negligence or disregard shall pay additional income tax of 400 afghanis for each day other than holidays that the return is overdue if the person is a natural person or 2,000 afghanis for each day other than holidays that the return is overdue if the person is a legal person.
- (3) A person who deliberately fails to file a tax return by the due date shall pay additional income tax of 800 afghanis for each day other than holidays that the return is overdue if the person is a natural person or 4,000 afghanis for each day other than holidays that the return is overdue if the person is a legal person.
- (4) A person who fails to file a tax return by the due date with the intent of evading payment of tax, in addition to the payment of an additional tax under paragraph (3) of this Article, shall be guilty of an offence and is liable upon conviction by a court to a fine not exceeding 250,000 afghanis or imprisonment for a term not exceeding two years or both.
- Article 108 Additional income tax where tax was not withheld (1) A person who fails to withhold tax as required under the provisions of this Law which apply to payments of dividends, interest, royalties, wages, salaries, rents, commissions, and similar incomes without reasonable cause shall pay additional income tax of 20 per cent of the tax that should have been withheld.
- (2) A person who fails to withhold tax as required under paragraph (1) of this Article as a result of gross negligence or disregard shall pay additional income tax of 40 per cent of the tax that should have been withheld.
- (3) A person who deliberately fails to withhold tax as required under paragraph (1) of this Article shall pay additional income tax of 100 per cent of the tax that should have been withheld.
- (4) A person who fails to withhold tax with the intent of evading payment of tax under paragraph (1) of this Article, in addition to the payment of an additional tax under paragraph (3) of this Article, shall be guilty of an offence and is liable upon conviction by a court to a fine not exceeding 125,000 afghanis or imprisonment for a term not exceeding one year or both.
- Article 109 Additional income tax where tax was not paid (1) A person who fails to pay tax due under the provisions of this Law without reasonable cause shall pay additional income tax of 20 percent of the tax that should have been paid in addition to the tax payment under the Article 105 of this Law.

(2) A person who fails to pay tax due under the provisions of this Law as a result of gross negligence or disregard shall pay additional income tax of 40 per cent of the tax that should have been paid in addition to the tax payment under the Article 105 of this Law.

(3) A person who deliberately fails to pay tax due under the provisions of this Law shall pay additional income tax of 100 per cent of the tax that should have been paid in addition to the tax payment under Article 105 of this Law.

(4) A person who fails to pay tax due under the provisions of this Law with the intent of evading payment of tax, in addition to the payment of an additional tax under paragraph (3) of this Article, shall be guilty of an offence and is liable upon conviction by a court to a fine not exceeding 250,000 afghanis or imprisonment for a term not exceeding two years or both.

Article 110 Additional income tax related to Tax Identification Numbers (1) A person required to have a Tax Identification Number under Article 91 of this Law who fails to apply for a Tax Identification Number without reasonable cause shall pay additional income tax of 5,000 afghanis if the person is a natural person or 20,000 afghanis if the person is a legal person.

(2) A person required to have a Tax Identification Number under Article 91 of this Law who fails to apply for a Tax Identification Number as a result of gross negligence shall pay additional income tax of 15,000 afghanis if the person is a natural person or 50,000 afghanis if the person is a legal person.

(3) A person required to have a Tax Identification Number under Article 91 of this Law who deliberately fails to apply for a Tax Identification Number shall pay additional income tax of 30,000 afghanis if the person is a natural person or 100,000 afghanis if the person is a legal person.

Article 111 Offenses committed by taxation officers (1) A taxation officer who discloses confidential information with the intent of any direct or indirect benefit from the disclosure, or any person who assists a taxation officer to disclose confidential information, is guilty of an offence and is liable upon conviction by a court to a fine not exceeding 125,000 afghanis or imprisonment for a term of up to one year, or both.

(2) A taxation officer who misuses their position in any unauthorized way for the purpose of direct or indirect financial or other benefits is guilty of an offence and is liable upon conviction by a court to a fine not exceeding 225,000 afghanis or imprisonment for a term not exceeding three years, or both.

Article 112 Authority for collection of additional tax Additional tax imposed under the provisions of this Chapter will be collected by Ministry of Finance tax offices.

CHAPTER XVII

FINAL ARTICLES

- Article 113 Provision of forms and rulings (1) The Ministry of Finance is required to provide forms that are necessary for the purpose of determining and collecting tax according to the 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 114 Non issuance of licenses 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 to not renew their licenses. The licenses of such persons may be issued only when they have such documents from the Ministry of Finance to indicate they have fulfilled their tax obligations and submitted them to the relevant office.
- Article 115 Requirements for entitlement to exemption (1) Approved 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 no (803) dated 1381/6/20 and other related laws are no longer entitled to income tax exemption under the provisions of that Law from 21 June 2004 (1 Saratan 1383).
- (2) Approved 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.
- (3) If an approved 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 116 Primacy of Income Tax Law (1) In the event of any conflict between contracts, agreements, and provisions of other laws with the provisions of the Income Tax 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.

Article 117 Enforcement date This Law shall come into force from the date that it is signed and shall be published in the Official Gazette. After its enforcement, the Income Tax Law published in Official Gazette number 25 dated 29 Saor 1344 (1965), amendments mentioned in decree number (52) dated 27 Hoot 1383 (17 March 2005) and other amendments, attachments and provisions contrary to this Law are cancelled.

Note: The Income Tax Law was signed by the President on 14 November 2005 (23 Agrab 1384) and the law commenced with effect from that date.

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

No. 95

Date: 14 November 2005

Article 1:

I endorse (sign) the Income Tax Law containing 17 chapters and 117 articles which has been approved by Ministerial Council.

Article 2:

The provisions set forth in the following articles of the Income Tax Law apply from the following dates:

1. Article 8 (5), article 13 (2 and 3), article 18 (2) 3, article 42 (2), and article 93 (5) from 1 Hamal 1385 (21 March 2006)
2. Article 58 and 60 from 1 Mizan 1384 (23 September 2005)
3. Article 70 (1) and article 71(1) from 1 Hamal 1384 (21 March 2005)

Article 3:

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