

The Concept, Types, and Penalties of Tax Violations: A Study of Afghan Laws Perspective



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Abstract

Aim: The main purpose of this study was to clarify the concept, types, and penalties of tax violations according to the laws of Afghanistan, and propose necessary solutions to prevent tax violations in Afghanistan.

Methods: Descriptive and explanatory methods were used in the research of the relevant content. The topic of the research was guided by the Afghanistan Income Tax Law, the Law on Taxation Affairs Administration, the guidelines and manuals of the Ministry of Finance, and the Penal Code of Afghanistan.

Results: The findings of the research show that according to the laws of Afghanistan, some actions are considered tax violations. These are late payment of taxes, the imposition of withholding taxes, failure to submit financial statements on time, failure to protect financial documents, submitting an incorrect identification number, providing false information to employees of financial institutions and obstructing the activities of taxation employees.

Conclusion: The financial laws of Afghanistan have provided some penalties to prevent tax violations, and these punishments play an important role in preventing tax contraventions. However, tax violations still occur due to the lack of professional capabilities of tax agency employees and the weakness of the financial system.

Recommendations: The Afghan government should make some amendments to the income tax law and the law on taxation affairs administration, taking into account the economic conditions of the society and the state of taxpayers. The Ministry of Finance of Afghanistan and Afghanistan Revenue Department (ARD) should design and implement the training courses and workshops about taxation, accounting and interpersonal skill to improve the professional skills and capacity of the employees of the tax agencies, also to undertake necessary measures for the motivation and awareness of taxpayers.

Keywords: *Additional tax, taxes, financial evasion, tax violations, penalties.*

INTRODUCTION

The state has the status of a common house for the people who live there. Governments become stronger and can perform their duties properly when the people stand by their governments. On the one hand, the government protects and serves its citizens, on the other hand, people obey the legitimate orders of the government and provide any help and defense when necessary. In this way, the citizens of the country are obliged to fully fulfill their obligations towards their society, and not to violate any kind of financial or non-financial laws of the government.

Governments need revenue and financial resources to carry out their affairs and implement their policies and laws. A major part of a government's income is obtained from direct and indirect taxes. Citizens of each country are obliged to pay a certain amount of taxes to the government according to the financial laws of that country. But often taxpayers resist paying taxes in various ways and do not fulfill their financial obligations properly. Therefore, it is very important to clarify the concept of tax violations and identify their types. Unfortunately, there are possibilities that some taxpayers in Afghanistan do not fulfill their financial obligations properly and try to avoid paying taxes¹; while the national budget of Afghanistan is mostly based on these taxes.

For the taxpayers not to violate the financial laws, a series of actions have been foreseen in the laws of the countries under the name of tax violations and certain penalties have been considered for them. In addition to Afghanistan, other countries such as Iran, Pakistan, Jordan, Vietnam, South Africa, Brazil, Switzerland, Germany, etc..., have taken necessary measures to prevent tax violations². In Afghanistan, the legislators have mentioned a series of tax violations in the relevant laws and have considered financial punishment for them. These tax violations and penalties are mentioned in the Income Tax Law, the Law on Taxation Affairs Administration, and other legal documents. Apart from this, Afghanistan's Penal Code has named a series of acts as financial crimes and has prescribed punishments for them³. There is need to understand what actions are called tax violations in the laws of Afghanistan and what kind of penalties have been considered for the violators. The main purpose of the study is to clarify the concept, types, and penalties of tax violations from the perspective of the laws of Afghanistan.

This study discusses what kind of punishments are provided for these kinds of violations. At the end of this study, it will be clear whether the existing laws and prescribed punishments are sufficient to prevent tax violations, or whether other necessary solutions should be considered in this regard.

Definition of Tax

Tax is the fixed amount of money that is paid to the state treasury according to the provisions of the law from all incomes of livestock, tree crops, land area, or horticulture and fixed and unfixed

¹- Latif, L (2019). The Tax Collection Capacity of Afghanistan; An Answer in the light of Rampant Tax Evasion Practice. Kardan Journal of Law, Volume 1, issue 1, p 151. Available at:

https://kardan.edu.af/Research/kardan_journal_of_law.aspx

²- Pragua, C (2010). Addressing tax evasion and tax avoidance in developing countries, International Tax Compact, Annual Report, p 16.

³- Articles 795 to 799 of the Afghan Penal Code stipulate financial crimes and their punishments.

Ministry of Justice (2019). Penal Code of Afghanistan, Official Gazette, Issue No 1260. Available at:

http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm

incomes of real and legal persons⁴. Tax is a payment of money that is taken by the government to finance public expenses directly and without any reciprocal⁵. Afghanistan's Income Tax Law defines tax as: "Tax is a compulsory payment collected from natural and legal persons per the provisions of this Law for the financing of government and social welfare without the taxpayer receiving any direct goods or services from the government"⁶.

The definition of income tax law is relatively complete and comprehensive. Because in this definition, tax is considered as an obligation for real and legal persons, which must be paid according to the provisions of the law. Also, the tax is taken to strengthen the financial base of the government and public welfare. In addition to this, it is mentioned in this definition that the tax is collected by the government under the provisions of the law, without directly providing reciprocal services or goods to the taxpayer.

Understanding the Concept of Tax Violation

Any illegal attempt by the taxpayer to avoid paying taxes is considered a tax violation. Examples include; concealing taxes, not providing information about income to financial institutions or providing incorrect information, not imposing or paying taxes on time, etc. are considered tax violations⁷.

Tax Agencies set a deadline for taxpayers to fulfill their financial obligations, and if they do not comply with their obligations within the specified period, the taxpayers commit tax violations⁸. According to the tax laws of Afghanistan, the perpetrators of tax violations are obliged to pay additional taxes or fines in various forms. Additional tax is an amount that is levied by the provisions of the law due to non-payment of tax at a certain time and a certain percentage. A financial penalty is an obligation on a person to pay a certain amount to compensate for the loss that has been caused to the state by the person's actions⁹.

Usually, there are two types of financial resistance by taxpayers to government regulations: One is criminal financial resistance and the other is legal financial resistance. In criminal financial resistance, people try to avoid paying taxes through fraud and other means. They may reduce their income or inflate their expenses to reduce the amount of taxes, or provide false information to financial institution employees, to reduce their financial obligations. Legal resistance to taxes means that sometimes the legislators consciously or unconsciously leave financial escape routes in the fiscal laws, due to which taxpayers use loopholes in the law and thus do not submit full taxes to the government¹⁰.

⁴- Stanikzai, N & other (2009). Legal Glossary, Afghanistan Rule of Law Project, Kabul, p 247.

⁵- Hashmi, S (2023). Financial Law, Goder Publication, Jalalabad, p 9.

⁶- Ministry of Justice (2009). Income Tax Law, Official Gazette, Issue No 976, Article No 1(2). Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

⁷- Kohistanay, M (2014). Financial Law, Qurtaba Publication, Kabul, p 136.

⁸- Noori, N (2023). Financial Law, Yar Publication, Jalalabad, p 148.

⁹- Ibid, Stanikzai, N & other (2009). Legal Glossary, p 212.

¹⁰- Arif, A (2022). The Principles of General Finance Affairs, Yousaf Zada Publication, Kabul, p 109-110.

Causes of Tax Violation and Tax Evasion

There are specific reasons for committing tax evasion and violations; such as: weakness of tax-paying culture in a society, lack of monitoring and follow-up system in tax collection, lack of effective financial laws considering the economic situation of the society, or the ambiguity and complexity of financial laws, weakness of executive guarantees on payment of taxes, Improper identification of taxpayers, lack of documentation to determine the taxpayers income , availability of various and extensive Tax exemptions, weakness of financial policies, absence of regular financial information system, lack of active and professional manpower in tax agencies ,lack of proper incentives to taxpayers, and not providing adequate information to taxpayers about their rights and obligations¹¹.

Types of Tax Violations and their Penalties: An Overview of Afghan Laws

Tax violations are of various types and the government uses the penalties of these violations against the taxpayers as a means of pressure so that the taxpayers fulfill their financial obligations¹². Tax violations and their penalties from the point of view of Afghan laws, are as mentioned;

Late Payment of Tax

If the real and legal person does not fulfill his financial obligations within the specified time, then this act is considered a crime according to the laws of all the countries and certain punishments have been taken into account. According to the tax laws of Afghanistan, if the taxpayer does not fulfill his financial obligations following the provisions of the law, then this action is considered a tax violation and is subject to punishment¹³. In this regard, Article (100) of the Income Tax Act states: “where a person has failed to pay the tax by the due date, the person is liable to pay additional income tax of 10 percent of the tax due per day¹⁴”. For example, Ahmed's company is obliged to pay fifty thousand (50,000) Afghanis tax on its income at the end of 2023, which must be transferred to the government account by the last date of the same year. But he submits his statement after the specified date, fifteen days pass in this period; In this case, Ahmed's company is obliged to pay an additional tax of 10 percent of the payable tax in addition to the main tax per day.

Also, the penal code of Afghanistan has considered the punishment for those who do not submit their financial statement at the specified time or do not pay the subject tax. In this regard, the Penal Code of Afghanistan says: “If the taxpayer does not submit his financial statement without valid reasons under the financial laws at the specified time or until the expiry of the extended period of

¹¹- Kohistanay, M (2014). Financial Law, Qurtaba Publication, Kabul, p 137.

¹²- Sahebe, A (2020). The Tax Evasion is a Serious Crime, and It Comes with Serious Consequences: A Study Based on Afghanistan. International Journal of Creative Research Thoughts, Volume 8, issue 3, p 2347.

¹³- Noori, N (2023). Financial Law, Yar Publication, Jalalabad, p 151.

¹⁴- Ministry of Justice (2009). Income Tax Law, Official Gazette, Issue No 976, Article 100. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

the tax administration, the real person is sentenced to a fine of 10 thousand Afghanis and the legal person is sentenced to a fine of 30 thousand Afghanis”¹⁵.

Failure to Maintain Adequate Documents and Records

If the taxpayer does not protect and maintain the financial documents related to his business activities and destroys them, then this act is considered a violation according to the financial laws and the perpetrator is liable to be punished; because, according to the law, “(1) A taxpayer shall prepare such books and records prescribed under any tax law and the relevant Manual. (2) The taxpayer shall maintain the books and records under subsection (1) of this Article for 5 years after the due date for lodgment of the tax return and if requested, he/she shall provide them to the taxation administration”¹⁶.

A person who, without reasonable cause, fails to prepare and maintain records required by the provisions of this Law or fails to provide the officers of the Ministry of Finance access to the records shall pay additional income tax of (5.000Af) if the person is a real person or (20.000Af) if the person is a legal one¹⁷. An additional tax is not imposed on a person when he proves that the documents and records were destroyed due to natural disasters or other such events that were beyond his control¹⁸.

Failure to Submit Financial Balance Sheet and Statement

Taxpayers are obliged to submit their financial balance sheet and statement to the financial institutions for payment and assessment of tax. The Income Tax Law says: “(1) A person who, without reasonable cause, fails to file a tax return by the due date shall pay additional income tax of (100Af) for each day other than holidays that the return was overdue if the person is a real person or (500Af) 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 with the intent of evading payment of tax shall, in addition to the payment of additional tax. Under paragraph (1) of this Article, be referred to the office of the Attorney General”¹⁹.

Failure to Withhold Tax or Non-imposition of Taxes

A person who, according to the tax laws, is obliged to impose taxes on other persons, but does not perform this duty, then this act is considered a violation and he is punished by paying additional taxes²⁰. In this regard, the Income Tax Law of Afghanistan says: “(1) A person who, without reasonable cause, fails to withhold tax from salary and wages, interest income, dividends, rent,

¹⁵- Ministry of Justice (2019). Penal Code of Afghanistan, Official Gazette, Issue No 1260, Article 795. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

¹⁶- Ministry of Justice (2015). Law on Taxation Affairs Administration, Official Gazette, Issue No 1198, Article 25. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

¹⁷- Ministry of Justice (2009). Income Tax Law, Official Gazette, Issue No 976, Article 101(1). Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

¹⁸- Ministry of Finance (2018). Guide 22: Additional Tax and Penalties, Kabul, the publication of Afghanistan Revenue Department, p 3. Available at: <https://mof.gov.af/dr/%D8%B1%D9%87%D9%86%D9%85%D9%88%D8%AF%D9%87%D8%A7>.

¹⁹- Ministry of Justice (2009). Income Tax Law, Official Gazette, Issue No 976, Article 102. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

²⁰- Hashmi, S (2023). Financial Law, Goder Publication, Jalalabad, p 173.

commissions, royalties, and similar income per the provisions of this Law shall be subject to an additional tax of ten percent. (2) A person who fails to withhold tax with the intent of evading payment of tax under paragraph (1) of this Article shall, in addition to the payment of additional tax under paragraph (1) of this Article, be referred to the office of the Attorney-General”²¹.

If a taxpayer fails to withhold tax as required by the Income Tax Law with the intent of evading payment of tax, in addition to the payment of an additional tax as described above, you will be referred to the Attorney General’s office for prosecution and may be subject to fines and/or imprisonment²².

Failure to Withhold or Pay Withholding Tax

In this regard, the law on Taxation Affairs Administration elaborates: “(1) Where a person fails to withhold or pay tax from payments subject to withholding tax, they shall be liable to pay an additional tax equal to 10 percent of the amount of tax-deductible from the payment. (2) The liability for the amount under subsection (1) of this Article shall be borne by the person who failed to withhold or pay the tax”²³.

Failure to Apply for a Taxpayer Identification Number

According to the provisions of the law, all taxpayers are obliged to obtain a tax identification number from the financial institutions. A person who under the provisions of the tax laws is required to have a Taxpayer Identification Number and who, without reasonable cause, fails to apply for it, a real person shall be liable to an additional tax of (5.000Af) and a legal person to (20.000Af)²⁴.

Using an Incorrect Taxpayer Identification Number

All taxpayers must use their identification number, and using an incorrect identification number is considered a crime. So if the taxpayer uses an incorrect identification number instead of his identification number, in this case, the real person shall be sentenced to a fine of twenty-five thousand (25,000) Afghanis or an alternative to imprisonment, and the legal person shall be sentenced to a fine of one hundred thousand (100,000) Afghanis²⁵.

Tax Evasion

Taxpayers are obliged to transparently calculate the income received from their economic and commercial activities and prepare a true financial balance. But if someone tries to reduce their financial liability by showing their income low and overstating their expenses. In this case, the

²¹- Ministry of Justice (2009). Income Tax Law, Official Gazette, Issue No 976, Article 103. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

²²- Ministry of Finance (2018). Guide 22: Additional Tax and Penalties, Kabul, the publication of Afghanistan Revenue Department, p 8. Available at: <https://mof.gov.af/dr/%D8%B1%D9%87%D9%86%D9%85%D9%88%D8%AF%D9%87%D8%A7>.

²³- Ministry of Justice (2015). Law on Taxation Affairs Administration, Official Gazette, Issue No 1198, Article 36. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

²⁴ Ministry of Justice (2015). Law on Taxation Affairs Administration, Official Gazette, Issue No 1198, Article 42. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

²⁵- Ministry of Justice (2019). Penal Code of Afghanistan, Official Gazette, Issue No 1260, Article 795(7). Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

person commits the crime of tax evasion and is liable to be punished according to the relevant laws²⁶.

In this regard, the law on Taxation Affairs Administration says: (1) A person who intentionally evades tax shall, in the first instance, besides the original tax be liable to an additional tax equal to double the evaded tax. (2) In a case mentioned under subsection (1) of this Article, for the second instance besides payment of the original tax and additional tax, their business activity may be ceased based on court order²⁷.

Failure to Provide Relevant Documents to Tax Employees or Not Attend at the Specific Time

The person who does not consider the following situations without valid reasons, the actual person is sentenced to 5,000 Afghanis in 5,000 Afghanis, and the legal person is sentenced to 40,000 Afghanis:

- 1- Providing those documents, records, information, or computer information during the notification, which is in the hands of the person.
- 2- Attendance at the specified time and place of notice, subject to the assessment of the person's financial affairs²⁸.

Providing False or Misleading Information and Statements

Taxpayers are obliged to provide the correct information to the financial institutions with full accuracy because the financial obligation of the taxpayers is determined by considering this information²⁹. "A person who makes a false or misleading statement or omits from such statement any material particular which lessens their tax shall be liable to an additional tax equal to 25 percent of the tax shortfall"³⁰.

Obstructions against Taxation Employees

A person who willfully obstructs a taxation employee in the performance of their duties under any tax law shall be liable upon conviction by an authorized court if a natural person to a monetary penalty of 40,000Af or to imprisonment for a term not exceeding six months, or both, and if a legal person to 160,000Af³¹.

FINDINGS AND DISCUSSION

Tax violation is any illegal attempt by taxpayers to avoid paying taxes. The financial laws of Afghanistan have considered some actions as tax violations and have provided some penalties to prevent these tax contraventions. It is quite necessary to discuss the following points regarding the

²⁶- Noori, N (2023). Financial Law, Yar Publication, Jalalabad, p 153.

²⁷- Ministry of Justice (2015). Law on Taxation Affairs Administration, Official Gazette, Issue No 1198, Article 41. Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

²⁸- Ministry of Justice (2019). Penal Code of Afghanistan, Official Gazette, Issue No 1260, Article 795(8). Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

²⁹- Noori, N (2023). Financial Law, Yar Publication, Jalalabad, p 154.

³⁰- Ministry of Justice (2015). Law on Taxation Affairs Administration, Official Gazette, Issue No 1198, Article 40(1). Available at: http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_P-header.htm.

³¹- Ibid, Ministry of Justice (2015). Law on Taxation Affairs Administration, Official Gazette, Issue No 1198, Article 46.

topic. According to the laws of Afghanistan, failure to pay taxes on time is a tax violation, which is punishable by paying an additional tax of ten percent in addition to the original tax. But here this amount of additional tax is very high. Because the taxpayer may be obliged to pay a very high tax amount and in case of non-payment of taxes, it will be difficult for him to pay another 10% amount. Therefore, in this case, the relevant provisions of the law are not applied in practice, so it is necessary to reduce this amount of additional tax in the tax laws for the better implementation of the relevant provisions so that the provision of the law is implemented in a good way.

Also, the failure to maintain documents related to taxes is another tax violation, due to which the real person is obliged to pay an additional tax of five thousand Afghanis, and a legal person is obliged to pay an additional tax of twenty thousand Afghanis. This type of penalty also has no special role in preventing tax violations. In this way, by accepting the above-mentioned punishments, they will not fully fulfill their financial obligations, so it is necessary to consider other appropriate punishments for this kind of violation.

Those taxpayers who create obstacles in front of the employees of the financial audit are obliged to pay additional taxes. It is worth noting that the mentioned violation is not clear, and it is not specific what kind of obstacles to the inspection of financial institutions employees are considered as tax violations. Also, there is a possibility that the employees of the financial institution may misuse the provision of this article against the taxpayers. Therefore, it is necessary to clarify the issue of obstacles to the work of employees of financial institutions. At the same time, the use of incorrect identification numbers by taxpayers is a tax violation, the perpetrator of which is obliged to pay additional tax. It should be said that the use of the wrong identification number is a kind of fraud and a crime, the perpetrator of which should be introduced to judicial bodies for legal prosecution in addition to financial punishment.

CONCLUSION

Taxes form the main part of the government's revenue, and the government runs the country's affairs with the money received from these taxes and finances the government's expenses. Tax violations lead to a decrease in the annual revenue of the government, in which case the state cannot perform its basic tasks and strategic activities, which hinders the development of the state as a whole. According to the laws of Afghanistan, there are different types of tax violations. For example, the imposition of withholding taxes, failure to submit financial statements on time, not protecting the financial documents and records, submitting an incorrect identification number, not cooperating with the employees of financial institutions in determining and collecting taxes, providing false information to the taxation employees, obstructing the activities of financial agencies and other such actions are considered tax violations. The laws of Afghanistan have provided some penalties and punishments for tax violations, and these penalties play an important role in preventing tax contraventions. However, tax violations still occur due to the lack of professional capacity of the employees of tax agencies and the weakness of the financial system, so the government must take necessary measures to prevent tax evasion.

RECOMMENDATIONS

1. The government should make some amendments to the tax laws taking into account the economic conditions of the society and the ability of the taxpayers so that individuals can fulfill their financial obligations according to the law and avoid tax violations.

2. The Ministry of Finance and other related bodies should design and implement the necessary programs to improve the professional skills and capacity of the employees of tax agencies to collect taxes properly.
3. Government institutions should conduct public awareness to encourage and aware people and taxpayers, to avoid tax violations.

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