

Guide 11 Disputing the amount of income tax payable in an income tax assessment



Introduction

The Income Tax Law 2009 provides a formal administrative dispute resolution process for any person who is dissatisfied with a tax assessment. (Article 89)

This process may involve three steps. First, a person may request an amendment to their tax assessment. Second, if a person is dissatisfied with the decision on their request for amendment, they may lodge an objection to the tax assessment. Third, a person who is dissatisfied with the decision on their objection may appeal to a court of competent jurisdiction.

The purpose of this guide is to inform taxpayers about the matters that may be the subject of a formal dispute resolution process, the process for requesting an amendment or lodging an objection to a tax assessment and the procedures and timeframes that the Ministry of Finance, Afghanistan Revenue Department is required to follow.

What matters may be the subject of an amendment request or objection

Where a person has delivered a tax return or received a notice of assessment and the person believes that the tax return or assessment is incorrect, the person can request an amendment of the tax return or assessment notice. A formal amendment request or objection can only be made in relation to a tax return or notice of assessment for example where:

- A person filed an income tax return or a business receipts tax form and discovers that there is an error in that tax form

- A person filed an income tax return or a business receipts tax form but the Ministry of Finance, Afghanistan Revenue Department revised the tax payable and/or imposed penalties and issued an assessment notice
- No tax return or form has been filed by a person and the Ministry of Finance, Afghanistan Revenue Department issued an assessment imposing income tax, business receipts tax or penalties; or
- A person pays a fixed tax that is a final tax which is imposed instead of annual income tax.

A formal request for amendment of assessment notice or objection cannot be made in relation to any other matter. For example, a formal amendment request or objection cannot be made regarding:

- The calculation and payment of withholding taxes such as wage withholding and rent withholding
- Fixed taxes imposed on imports or exports which are allowable as a credit for annual income tax purposes
- Any decisions made during a review of the person's tax affairs including correspondence which indicates proposed tax assessments
- Any enforcement or compliance actions taken by revenue officers or any other officers of Government
- Any interpretation of the law or decision provided in a public or private ruling
- Any correspondence issued or statements made by Ministry of Finance, Afghanistan Revenue Department officials or any other person; and
- Taxes or any other fees or charges that are not imposed under the Income Tax Law.

A person who is dissatisfied with a decision or action taken by revenue officials in a situation where a formal amendment or objection cannot be made is entitled to bring the matter to the attention of the management of the Revenue Department for alternative resolution.

How and when a matter of formal dispute may commence

The formal dispute resolution process must commence with a request for amendment of

assessment i.e. assessment notice or deemed assessment based on a return lodged under self assessment. The request must be in writing and must be made within five years of the date on which the relevant tax return was due to be filed. Notwithstanding the foregoing, if an assessment is not received by you within 30 days before the five year period expires, a request for amendment can be made within 30 days from the date the assessment is received.

Contesting an assessment to income tax does not avoid or delay the requirement that you pay the amount of tax assessed.

The process of formal dispute resolution

The process of formal dispute resolution involves the following steps. Each step must be taken in turn.

Step 1

Submit your amendment request in writing. You may use the Request for Amendment form provided by the Ministry of Finance, Afghanistan Revenue Department and available from the Ministry of Finance website. Your request for amendment must state clearly and completely the reasons you disagree with the tax return (deemed assessment) or assessment notice by the Revenue Department. You should attach a copy of the deemed assessment or assessment notice requested for amendment and relevant supporting information and copies of all relevant documents to support your request.

Your request for amendment is required to be in the Dari or Pashto language. A copy of the request in English will help expedite the process. Supporting documents need not be translated into Dari or Pashto if they are in English. Supporting documents in a language other than Dari, Pashto or English will need to be translated into any of these languages.

Your request for amendment and supporting documents must be submitted to the manager of the operational area responsible for the collection of the person's tax return or the issue of the assessment.

Step 2

The Ministry of Finance, Afghanistan Revenue

Department will review the tax return or notice of assessment taking into account your reasons for requesting the amendment and the supporting information you provide. If the Ministry of Finance, Afghanistan Revenue Department requires clarification of any matters you may be requested to provide further information. You may also be required to plead your request for amendment either in person or through an authorized representative and present further supporting documents if necessary.

The Ministry of Finance, Afghanistan Revenue Department will endeavor to issue its decision within 60 days from the date the request for amendment is delivered to the relevant tax office or to a reliable mail delivery or courier service. In the event that Afghanistan Revenue Department does not respond to the request for amendment, the Afghanistan Revenue Department will be deemed to have given a negative answer to the request on the 60th day after the request for amendment was filed.

Step 3

If you are dissatisfied with the decision made on your request for amendment or 60 days has elapsed since you submitted your request for amendment and you have not been provided with a decision, you may lodge a Notice of Objection.

Such notice of objection is required to be submitted within 30 days of either the receipt of the decision by the Ministry of Finance, Afghanistan Revenue Department regarding your request for amendment or the expiry of 60 days since your request for amendment was submitted.

Your Notice of Objection must be in writing. You may use the Notice of Objection form provided by the Ministry of Finance, Afghanistan Revenue Department and available from the Ministry of Finance website. Your Notice of Objection must state clearly and completely the reasons you disagree with the decision made on your request for amendment. You should attach any additional relevant supporting information and copies of relevant documents to support your notice of objection. Information or documents provided to support your previous request for amendment will not need to be provided again.

Your Notice of Objection is required to be in the Dari or Pashto language. A copy of the

Notice of Objection in English will help expedite the process. Supporting documents need not be translated into Dari or Pashto if they are in English. Supporting documents in a language other than Dari, Pashto or English will need to be translated into any of these languages.

Your Notice of Objection and supporting documents should be addressed as follows:

Attention: Director General
Appeals and Review Unit
Afghanistan Revenue Department,
Ministry of Finance,
Kabul, Afghanistan.

Step 4

The Ministry of Finance, Afghanistan Revenue Department will review the decision made regarding your amendment request, tax return or notice of assessment taking into account your reasons for objection and the supporting information you provide.

If the Ministry of Finance, Afghanistan Revenue Department requires clarification of any matters you may be requested to provide further information and attend in person or through an authorized representative for such clarification. Statements, oral or written, from you and the Afghanistan Revenue Department officials may be recorded if deemed necessary for determination of the case.

If additional documents would be helpful for resolving the case, it would be requested in writing from you or the Afghanistan Revenue Department officials.

The decision will be made by the Objection Review Panel, which is composed of three independent senior Revenue Department officials. The Objection Review Panel will endeavor to issue its decision within 60 days.

Step 5

If you are dissatisfied with the decision made on your objection or if no decision has been made within 60 days after submitting your Notice of Objection, you may refer the matter to a court of competent jurisdiction. The referral must be made within 30 days of either the decision on your objection or the expiration of the 60 days.

Payment of Disputed Income Tax

Whether or not a person has lodged a request for amendment or a notice of objection, the tax that is the subject of the disputed assessment remains due and payable. If the disputed tax is not paid by the due date, additional tax on the amount outstanding will accrue. Further, the Ministry of Finance, Afghanistan Revenue Department may take such enforcement action to collect the amount of unpaid tax as is considered appropriate in accordance with the Income Tax Law 2009.

Where a person is successful in their amendment request or objection review, the person will be entitled to a refund of the tax that they have paid.

Fees and charges

There are no fees or charges payable to the Ministry of Finance, Afghanistan Revenue Department at any stage of the formal dispute resolution process. There are no fees for the forms provided by the Ministry of Finance, Afghanistan Revenue Department. There may be fees or charges payable to the court if you decide to take any matter to that forum.

Customs duties and other taxes

The process set out in this guide is in accordance with the Income Tax Law 2009. Therefore, a formal dispute may only be made in relation to matters of tax imposed by that law. A formal dispute under the authority of the Income Tax Law 2009 cannot deal with other taxes such as customs duties. If a person wishes to dispute a matter regarding customs duties, then that person should contact the Afghanistan Customs Department, Ministry of Finance, Kabul. For other matters of taxation, the person should contact the relevant government department.

Enforcement provisions

Failure to comply with the requirements of the Income Tax Law 2009 may result in the Ministry of Finance, Afghanistan Revenue Department using administrative powers prescribed by the law to ensure compliance. These provisions are contained in Chapters 14 and 16 and include additional income tax and penalties. Where non-compliance is with the intent of evading tax a person shall be referred to the office

of the Attorney General for investigation and prosecution.



Tax information

The Taxpayer Information Page at www.mof.gov.af/tax makes it easy for taxpayers to find and download useful information to meet their needs. Here the taxpayer can find and download the Income Tax Law 2009, various public announcements and rulings, forms, along with instructions for completing same, guides, archived documents, Questions & Answers regarding wage withholding tax, and more. The page also includes an Income Tax Manual. The manual discusses separately each article of the law, along with relevant regulations, often with helpful examples. For tax forms, guides, other information and assistance, you can also visit the Ministry of Finance, Afghanistan Revenue Department, your local Mustufiat Office.

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Afghanistan Revenue Department



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