



Islamic Republic
of Afghanistan

Ministry

of

Finance

*General
Presidency
of
Revenue*

Income Tax: The Public and Private

Income Tax

Public Ruling 1384/1

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Relying on this Ruling

This is a public ruling within the meaning of Article 96 the Income Tax Law. Information in this ruling may be relied upon by taxpayers as the basis for determining their tax liability.

Introduction

1. Article 96 of the Income Tax Law authorises the Minister of Finance to issue public rulings that explain how the Ministry of Finance will interpret and apply the Income Tax Law.
2. A public ruling issued by the Ministry of Finance is “binding” on the Ministry. This means that the Ministry is not able to use a position that conflicts with a position it has taken in a public ruling as the basis for assessing a person for a liability to pay tax. (However, as explained below, the Ministry can repeal a public ruling and replace it with a new one that is based on a revised interpretation of the law.)
3. A person who adheres to a position taken by the Ministry of Finance in a public ruling will not be liable to additional tax or to any penalties even if that position is subsequently held by a court not to be a correct interpretation of the law.

Public rulings are not binding on taxpayers

4. A public ruling is not binding on a person liable to pay tax. If a person believes the Ministry of Finance’s interpretation of the law is incorrect, the person may appeal an assessment made on the basis of the position taken by the Ministry in a public ruling.
5. If a person takes a position contrary to a position taken by the Ministry in a public ruling and it is subsequently determined that the Ministry’s view is a correct interpretation of the law, the person will be liable for tax due under the Ministry’s interpretation. In addition, depending on the circumstances behind the person’s decision to adopt a position contrary to the Ministry’s interpretation of the law, the

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person may be liable to additional tax or penalties. Factors that will affect possible liability include:

- whether the taxpayer disclosed to the Ministry in his return that the taxpayer was taking a position that conflicted with the Ministry's interpretation of the law;
- whether the taxpayer's position was based on contrary interpretation in the law that a court would consider to be an arguable position;
- whether the taxpayer took a contrary position:
 - unaware of the Ministry's position through inadvertence;
 - unaware of the Ministry's position through negligence;
 - aware of the Ministry's position but having grounds to believe it may not have been correct; or
 - aware of the Ministry's position and having no reasonable grounds to believe it may not have been correct.

Replacement of a public ruling

6. The Ministry of Finance may repeal a public ruling at any time by issuing a new public ruling. Where a public ruling repeals or replaces a previous one, the latter ruling will explicitly indicate that taxpayers may rely on the new ruling and that the former ruling may no longer be relied upon by taxpayers.

7. A ruling that replaces another ruling will also provide transitional rules for taxpayers who had sought to rely upon the former ruling. A replaced ruling will continue to be valid and binding on the Ministry of Finance for all fiscal years that have concluded at the time of the new ruling. The replacement ruling will indicate under what circumstances if any taxpayers may rely on the replaced ruling for the year of assessment in which the replacement ruling is issued or for future years.

Private rulings

8. Article 96 of the Income Tax Law authorises the Ministry of Finance to issue a private ruling to a particular taxpayer based on that taxpayer's particular circumstances.

9. Like a public ruling, a private ruling is binding on the Ministry of Finance. This means that the Ministry is not able to use a position that conflicts with a position he has taken in a private ruling as the

basis for assessing the recipient of the private ruling for a liability to pay tax. However, a private ruling given by the Ministry will only be binding in respect of the particular transaction or arrangement or year of assessment for which a person requests a ruling unless there is an explicit indication to the contrary in the ruling.

10. Also, a private ruling is only binding on the Ministry of Finance if the person seeking the ruling has provided a full and true disclosure of all aspects of the planned transaction or arrangement relevant to the ruling.

11. Because a private ruling is binding on the Ministry of Finance only if the person seeking the ruling has provided a full and true disclosure of all aspects of the planned transaction or arrangement relevant to the ruling, a private ruling cannot be relied upon by any person other than the person to whom it was issued.

Minister of Finance

Dated April 2005 (Hamal 1384)

References to Articles in the Income Tax Law:

public rulings	Income Tax Law, Article 96
private rulings	Income Tax Law, Article 96

Appendix: Article 96 Income Tax Law

Article 96. (1) The Ministry of Finance shall have authority to prescribe such forms as it deems necessary for administration of this Law.

(2) The Ministry of Finance may issue public and private rulings that explain how it shall interpret and apply the provisions of the Income Tax Law.

Issued rulings are not binding on the taxpayer but departments of the Ministry of Finance are required to apply rulings. However, the Ministry of Finance is not required to provide a ruling if the person requesting the ruling does not provide complete and true information about his planned transaction.
