**INFORMATION PAPER – AFGHANISTAN TAXES**

1. **Purpose**: To summarize the tax exemptions for United States (US) Forces and North Atlantic Treaty Organization (NATO) contractors and subcontractors performing in Afghanistan on or after 1 January 2015 and provide templates for seeking exemptions.

2. **References**:

 a. Security and Defense Cooperation Agreement (SDCA) Between the United States of America and the Islamic Republic of Afghanistan (formerly known as the Bilateral Security Agreement, entered into between the US and Afghanistan on 30 September, 2014.

 b. Agreement Between NATO and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO personnel conducting mutually agreed NATO-Led Activities in Afghanistan (NATO SOFO), entered into between NATO and Afghanistan on 30 September, 2014.

3. **Summary**. Department of Defense (DoD) contracts performed in Afghanistan may be affected by the tax provisions in References 2.a and 2.b. Although the basis for tax provisions affecting DoD contracts are grounded in two separate agreements, the scope, privileges and tax provisions are identical. As a result, contracting officers should consult legal counsel to determine which agreement governs a specific contract and then notify the affected contractor to ensure its contract price complies with the relevant agreement. When requested, contracting officers should use the attached templates to assist contractors obtain the appropriate tax exemptions from the Government of Afghanistan. Counsel in Resolute Support, U.S. Forces – Afghanistan and C-JTSCC are available to assist with these issues.

 a. Under both the SDCA and the NATO SOFA, US and NATO contractors and subcontractors cannot include any Afghanistan taxes in their contract price. The contracting officer must determine which template to use.

4. **Discussion**.

1. **Overview**. DoD contracts above the simplified acquisition threshold that require contractors to furnish supplies, services or construction in Afghanistan must include the appropriate foreign tax clauses: mainly, FAR 52.229-6, Taxes – Foreign Fixed-Price Contracts, or 52.229-8, Taxes – Foreign Cost–Reimbursement Contracts, and if award is made to a foreign concern DFARS Clause 252.229-7000, Invoice Exclusive of Taxes or Duties. These clauses require contract prices to include “all applicable taxes and duties, except for those that the Government of the US and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the US.” These clauses obligate DoD contractor’s and subcontractor’s to determine which foreign taxes are applicable to their contracts and those they are exempt from paying by virtue of the international agreements reflected in paragraph 2.
2. In the case of both the SDCA and the SOFA, most taxes in Afghanistan are exempt from payment by contractors or subcontractors on contracts awarded by US or NATO military forces. One exception is corporate profits tax for Afghan legal entities.

1. **SDCA**. In general, the SDCA applies to contracts that obligate US appropriated funds and are awarded by US contracting activities in support of US Forces requirements for the training, support and defense of Afghanistan National Defense and Security Forces, and counterterrorism efforts. The SDCA applies to US contractors and defines US contractors as, “persons and legal entities who are supplying goods and services in Afghanistan to or on behalf of US Forces under a contract or subcontract with or in support of US Forces.” Examples of tax exemptions for DoD contractors include:

United States contractors may import into, export out of, re-export out of and transport and use in Afghanistan any equipment, supplies, materiel, technology, training, or services. The authorizations … do not cover the activities of United States contractors that are not related to the presence of United States forces in Afghanistan.

The importation, exportation, re-exportation, transportation, and use of any articles brought into Afghanistan … [by United States Contractors]…shall not be subject to restrictions, such as licensing, inspection, or verification, except as provided in this Article, or taxes and customs duties or other charges assessed by government authorities in Afghanistan within the territory of Afghanistan.

United States contractors shall not be liable to pay any tax or similar or related charges assessed by the Government of Afghanistan within the territory of Afghanistan on their activities, and associated income, relating to or on behalf of United States forces under a contract or subcontract with or in support of United States forces. However, United States contractors that are Afghan legal entities shall not be exempt from corporate profits tax that may be assessed by the Government of Afghanistan within the territory of Afghanistan on income received due to their status as United States contractors.

United States contractors are subject to Afghan requirements regarding employer withholding of personal income tax from United States contractor employees who normally reside in Afghanistan and from United States contractor employees who are Afghan nationals for payment to Afghanistan as required by the laws and regulations of Afghanistan.

United States contractor employees who do not normally reside in Afghanistan and United States contractor employees who are not Afghan nationals shall not be liable to pay any tax or similar or related charges assessed by the Government of Afghanistan within the territory of Afghanistan on their activities, and associated income, relating to a contract or subcontract with or in support of United States forces.

1. Although Afghan legal entities are not exempt from corporate profits tax, US contractors and subcontractors performing fixed price contracts governed by the SDCA cannot include any Afghanistan taxes in their contract prices.
2. Afghan citizens and residents employed by US contractors are subject to Afghan tax laws. DoD contractors and subcontractors are required to withhold taxes from the wages paid to these employees and remit these withholdings to the Afghanistan Revenue Department. These Afghan taxes cannot be included in their contract price.
3. The attached SDCA tax exemption letter template should be used for US DoD contracts awarded on or after 1 January 2015.
4. **SOFA**. The SOFA governs NATO forces, including the US as a troop contributing nation, in Afghanistan. The SOFA applies to NATO contractors. NATO contractors are defined in the SOFA as “persons and legal entities who are supplying goods and services in Afghanistan to or on behalf of NATO forces under a contract or subcontract with or in support of NATO, NATO Member States, or Operational Partners.”
5. As with firm fixed-price contracts under the SDCA, NATO contracts cannot include corporate profits tax. Additionally, Afghan citizens and residents employed by NATO contractors remain subject to Afghan tax laws. NATO contractors and subcontractors are required to withhold tax from these employees’ wages and to remit these amounts to the Afghanistan Revenue Department. These Afghan taxes cannot be included in their contract price.
6. The SOFA tax exemption letter template should be used for NATO contracts awarded on or after 1 January 2015.