



REPLY TO
ATTENTION OF

HEADQUARTERS
CENTCOM JOINT THEATER SUPPORT CONTRACTING COMMAND
CAMP PHOENIX, AFGHANISTAN
APO AE 09320



CJTSCC-CG

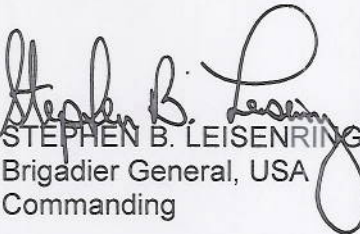
21 January 2013

MEMORANDUM FOR HEADS OF THE CONTRACTING ACTIVITIES (HCAs)

SUBJECT: Head of the Contracting Activity (HCA) Bulletin 13-02 Taxation of Department of Defense (DoD) Contractors Performing in Afghanistan

1. This HCA bulletin and the attached information paper summarize the tax exemptions for DoD contractors and subcontractors performing in Afghanistan and provide templates for seeking exemptions.
2. DoD contracts performed in Afghanistan may be affected by the entry and exit provisions in Diplomatic Note 202 between the United States and the Government of Afghanistan and/or the Military Technical Agreement (MTA) between the International Security Assistance Force (ISAF) and the Government of Afghanistan. In general, if a contract is governed exclusively by Diplomatic Note 202, DoD contractors and subcontractors cannot include any Afghanistan taxes in their contract price. The same principle applies to contracts governed exclusively by the MTA with one exception; specifically, "local contractors" are now subject to tax "for profits earned from NATO/ISAF contracts as of 21 March 2011." In addition, Afghan citizens and residents employed by DoD contractors, subcontractors or local contractors, under contracts governed by the Diplomatic Note or the MTA, are subject to Afghan tax laws. Contractors and subcontractors may be required to withhold tax from these employees' wages and to remit those amounts to the Afghanistan Revenue Department. The amounts withheld, however, cannot be included as a tax in the contract price.
3. The information paper identifies factors that should be considered in determining which agreement may govern a particular contract. When requested, contracting officers should use the attached templates to assist contractors obtain the appropriate tax exemptions from the Government of Afghanistan. The revised CENTCOM Joint Theater Support Contracting Command Acquisition Instruction, when published, will include foreign tax provisions for use in solicitations and contracts. I encourage you to share this information with your contracting officers and their supporting legal counsel.
4. My points of contact for this action are COL David Harney, Command Judge Advocate, at nkcscsco-alegal.org@afghan.swa.army.mil, Mr. Timothy Inman, Director of Policy, at centcom.as-sayliyah.c-jtscc.mbx.policy-group@mail.com.

Enclosures:
As stated


STEPHEN B. LEISENRING
Brigadier General, USA
Commanding

1. **Purpose:** To summarize the tax exemptions for Department of Defense (DoD) contractors and subcontractors performing in Afghanistan and provide templates for seeking exemptions.

2. **References:**

a. Diplomatic Note 202, Agreement regarding the Status of United States Military and Civilian Personnel of the U.S. Department of Defense Present in Afghanistan with Cooperative Efforts in Response to Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and other Activities, entered into between the United States and Afghanistan on 28 May 2003.

b. Military Technical Agreement (MTA) entered into between the International Security Assistance Forces (ISAF) and Interim Administration of Afghanistan in April 2002; the 2004 Exchange of Notes between NATO and Afghanistan, and the 2011 Letter of Interpretation issued by Commander ISAF on 9 March 2011.

3. **Summary.** DoD contracts performed in Afghanistan will be affected by the tax provisions in Reference 2.a and, depending upon the circumstances, may be affected by the provisions in Reference 2.b. Although both agreements overlap in some respects, their scope, privileges and tax provisions are not 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. The revised CENTCOM Joint Theater Support Contracting Command (C-JTSCC) Acquisition Instruction, when published, will include foreign tax provisions for use in solicitations and contracts. Counsel in C-JTSCC are available to assist with these issues.

a. If a contract is governed exclusively by Diplomatic Note 202, DoD contractors and subcontractors cannot include any Afghanistan taxes in their contract price.

b. If a contract is governed exclusively by the MTA, DoD contractors and subcontractors cannot include any Afghanistan taxes in their contract price, except for tax imposed on "local contractors" for profits earned from NATO/ISAF contracts as of 21 March 2011.

4. **Discussion.**

a. **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 DFARS Clause 252.225-7000, 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 United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States." These clauses obligate 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.

b. **Diplomatic Note 202.** The Diplomatic Note applies to contracts that obligate U.S. appropriated funds and that are awarded by DoD contracting activities to support DoD requiring

activities for the purposes stated in the note's title: "Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and other Activities." Some of these missions may overlap with those performed by ISAF; if a DoD contractor provides exclusive support to counterterrorism or detainee operations, that contract will be governed solely by the diplomatic note. The United States may choose to rely upon the MTA in addition to the Diplomatic Note with respect to DoD contractors performing other missions in support of ISAF.

c. The diplomatic note applies to DoD "contractors and contractor personnel" which are interpreted to include "subcontractor and subcontractor personnel" and contains broad tax exemptions for contractors:

[C]ontractors and contractor personnel shall not be liable to pay any tax or similar charge assessed within Afghanistan.

[C]ontractors and contractor personnel may import ..., export ..., and use in ... Afghanistan any personal property, equipment, supplies, materials, technology and training or services required to implement this agreement. Such [activities] shall be exempt from any ... customs, taxes or other charges assessed within Afghanistan.

[The] acquisition of articles and services in ... Afghanistan by or on behalf of the Government of the United States of America in implementing this agreement shall not be subject to any taxes, customs duties or similar charges in Afghanistan.

d. DoD contractors and subcontractors performing contracts governed by the diplomatic note cannot include any Afghanistan taxes in their contract prices. Afghan citizens and residents employed by DoD contractors and subcontractors remain subject to Afghan tax laws. Contractors and subcontractors may be required to withhold tax from these employees' wages and to remit those amounts to the Afghanistan Revenue Department, but cannot include those taxes in their contract price.

e. **Military Technical Agreement (MTA).** The MTA governs ISAF and NATO forces, including the United States as a troop contributing nation, which are present in Afghanistan to provide security, assist in reconstruction and identify and arrange training and assistance.¹ The DoD Office of General Counsel has opined that application of the MTA to DoD contractors should be considered on a case by case basis, rather than assumed as a general rule.

f. The MTA applies to "NATO/ISAF contractors" and "subcontractors" awarded by NATO member (i.e., U.S.) and non-NATO member States participating in ISAF by virtue of the 2004 Exchange of Notes and 2011 Letter of Interpretation. The term "NATO/ISAF contractor" does not include "local contractors."² The MTA contains broad tax exemptions: "ISAF will be allowed to contract direct with suppliers for services and supplies in Afghanistan without payment of tax or duties. Such services and supplies will not be subject to sales or other taxes." As a result, contractors cannot include taxes in their contract price with one exception. As of 21 March

¹ This list is illustrative, not exhaustive. The MTA, signed in 2002 before NATO's involvement in ISAF, recognizes the presence of the U.S. led international coalition prosecuting the War on Terrorism in Afghanistan and allows "additional protections, rights and exemptions other forces operating in connection with the ISAF may negotiate separately with [the Afghanistan Government]." Diplomatic Note 202 entered into force in 2003 before the 2004 exchange of notes which extended the MTA to NATO member states and troop contributing nations participating in ISAF.

² The Letter of Interpretation defines "local contractor" as any commercial enterprise "owned by an Afghan citizen or permanent resident", "that only conducts business within Afghanistan" or that is "headquartered in Afghanistan."

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2011, "local contractors" must pay tax "for profits earned from NATO/ISAF contracts"; NATO/ISAF contractors and subcontractors may include this tax in their contract price if they use a "local contractor." This is a narrow exception. Local contractors remain exempt from all tax or duties, sales or other taxes, import fees or fees of any kind on the goods, materials and supplies acquired and the services provided for the use of NATO/ISAF, NATO member States, and non-NATO member States participating in the ISAF.

g. As of 21 March 2011, Afghan citizens and citizen employed by NATO/ISAF contractors, subcontractors or local contractors are subject to Afghan tax laws. As a result, contractors and subcontractors may be required to withhold tax from these employees' wages and to remit those amounts to the Afghanistan Revenue Department, but cannot include those taxes in their contract price.

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Letter for Contracts Covered by Diplomatic Note 202

Place on Command Letterhead

Date

Ministry of Finance
Afghanistan Revenue Department
Government of the Islamic Republic of Afghanistan

SUBJECT: Name of Company:
Tax Exemption Status
Contract Number:
Contract Period:
Contract Value:
Contract Services Rendered:

Dear Sir:

The purpose of this letter is to request the assistance of the Afghanistan Revenue Department of the Ministry of Finance in issuing the appropriate tax clearance and exemption letters on behalf of Name of company, JCCS ID, AISA license, and TIN under the contracts identified above. Name of company will provide the Ministry of Finance, Rulings and Tax Exemption Office, and the Afghanistan Revenue Department with a copy of this Tax Exemption Letter and the relevant contract(s).

Our records indicate subject contract was performed by Name of Contractor for the United States Department of Defense. This contract was awarded by a Department of Defense (DoD) contracting office, using DoD appropriated funds, in support of the United States Forces in Afghanistan for the purposes and activities authorized in Diplomatic Note 202 which entered into effect on May 28, 2003.³ In accordance with this agreement, we request the Afghanistan Revenue Department issue a tax exemption certificate in favor of Name of Contractor for subject contract.

Paragraphs four, five and six of the Diplomatic Note contain provisions which apply to contractors and contractor personnel of the United States Government (USG). Paragraph six states that contracts governed by this agreement shall be awarded in accordance with the laws and regulations of the United States. As such, the terms "contractor" and "contractor personnel" are interpreted to include subcontractors and their employees. The term contract includes, but is not limited to any contracts for the acquisition of articles, services and construction, other implementing agreements executed by the USG, directly or indirectly, under this Agreement and encompass the above-referenced USG contract. The Agreement extends to all contracts subcontracts awarded by or entered into with companies and organizations from the United States, Afghanistan and other nations as well as their employees, whether from the United States, Afghanistan or other nations.

The Agreement contains broad tax exemptions:

³ Diplomatic Note 202, Agreement regarding the Status of United States Military and Civilian Personnel of the U.S. Department of Defense Present in Afghanistan with Cooperative Efforts in Response to Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and other Activities, entered into between the United States and Afghanistan on 28 May 2003.

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"The Government of the United States of America, its military and civilian personnel, contractors and contractor personnel shall not be liable to pay any tax or similar charge assessed with Afghanistan."

"The Government of the United States of America, its military and civilian personnel, contractors and contractor personnel may import into, export out of, and use in the Republic of Afghanistan any personal property, equipment, supplies, materials, technology, training or services required to implement this agreement. Such importation, exportation and use shall be exempt from any inspections, license, other restrictions, customs duties, taxes or any other charges assessed within Afghanistan."

"Acquisition of articles and services in the republic of Afghanistan by or on behalf of the Government of the United States of America in implementing this agreement shall not be subject to any taxes, customs duties or similar charges in Afghanistan."

Based on the foregoing, I respectfully request that the Afghanistan Revenue Department facilitate the prompt issuance of a tax exemption letter(s) or certificate(s) to **Name of Company** to help ensure the timely and successful implementation of the activities under the Agreement.

I thank you for your assistance in these matters.

Sincerely,

Name
Rank, Title
Senior Contracting Official

SUBJECT: Head of the Contracting Activity (HCA) Bulletin 13-02 Taxation of Department of Defense (DoD) Contractors Performing in Afghanistan

Letter for Contracts Covered by Military Technical Agreement

Place on Command Letterhead

Date

Ministry of Finance
Afghanistan Revenue Department
Government of the Islamic Republic of Afghanistan

SUBJECT: Name of Company:
Tax Exemption Status
Contract Number:
Contract Period:
Contract Value:
Contract Services Rendered:

Dear Sir:

The purpose of this letter is to request the assistance of the Afghanistan Revenue Department of the Ministry of Finance in issuing the appropriate tax clearance and exemption letters on behalf of Name of company, JCCS ID, AISA license, and TIN under the contracts identified above. Name of company will provide the Ministry of Finance, Rulings and Tax Exemption Office, and the Afghanistan Revenue Department with a copy of this Tax Exemption Letter and the relevant contract(s).

Our records indicate subject contract was performed by Name of Contractor for the United States Department of Defense. This contract was awarded by a Department of Defense (DoD) contracting office, using funds from Name funding organization, in support of the International Security Assistance Forces (ISAF) in Afghanistan for the purposes and activities authorized in the Military Technical Agreement (MTA) which entered into effect in April 2002 and the subsequent modifications to that agreement.⁴ In accordance with this agreement, we request the Afghanistan Revenue Department issue a tax exemption certificate in favor of Name of Contractor for subject contract.

The MTA, as modified, applies to North Atlantic Treaty Organization (NATO) and ISAF contractors and subcontractors, local contractors and subcontractors, and their employees. The term "contract" includes, but is not limited to any contracts for the acquisition of articles, services and construction, other implementing agreements executed by the NATO or ISAF, directly or indirectly, under this Agreement and encompasses the above-referenced contract. The MTA extends to all contracts subcontracts awarded by or entered into with companies and organizations from the United States, Afghanistan and other nations as well as their employees, whether from the United States, Afghanistan or other nations.

Paragraph 14, Section 4, Annex A of the MTA contains broad tax exemptions: "ISAF will be allowed to contract direct with suppliers for services and supplies in Afghanistan without payment of tax or duties. Such services and supplies will not be subject to sales or other taxes." The 2011 Letter of Interpretation (LOI) reaffirms these exemptions: "Any 'NATO/ISAF contractor' or sub-contractor is tax exempt under the MTA from all Afghan taxes, fees, duties, or other form of revenue generation when employed by NATO/ISAF, NATO member States, or non-NATO

⁴ Military Technical Agreement entered into between the International Security Assistance Forces (ISAF) and Interim Administration of Afghanistan in April 2002; the 2004 Exchange of Notes between NATO and Afghanistan, and the 2011 Letter of Interpretation issued by Commander ISAF on 9 March 2011.

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member States participating in the International Security Assistance Force.” The LOI also modified the tax exemptions that apply to “local contractors” and to Afghan citizens and residents employed by NATO/ISAF contractors, local contractors or their subcontractors.

“Local Contractor: Any commercial enterprise owned by an Afghan citizen or permanent resident; any commercial enterprise that only conducts business within Afghanistan; or any commercial enterprise headquartered in Afghanistan.”

“Local Contractor Tax Exempt Status: A local contractor is no longer tax exempt for profits earned from NATO/ISAF contracts as of 21 March 2011. A local contractor retains tax exemption status for tax or duties, sales or other taxes, import fees, or fees of any kind on the goods, materials, supplies acquired and services provided for the use of NATO/ISAF, NATO member States participating in the International Security Assistance Force.”

“Afghan Citizen: Any Afghan citizen employed by NATO/ISAF contractors or local contractors is no longer tax exempt and may be taxed according to Afghan Tax Law as of 21 March 2011.”

Contractors and subcontractors may be required to withhold tax from the wages of Afghan citizens and to remit those withholdings to the Afghanistan Revenue Department. These withholdings cannot be assessed as a tax against the contractor or subcontractor. The LOI states the revised tax exemptions will revert back to the prior interpretation under which no personnel or contractors are subject to tax if the Government of Afghanistan collects or attempts to collect any withholding tax against any NATO/ISAF contractor or subcontractors.

Based on the foregoing, I respectfully request that the Afghanistan Revenue Department facilitate the prompt issuance of a tax exemption letter(s) or certificate(s) to **Name of company** to help ensure the timely and successful implementation of the activities under the Agreement.

I thank you for your assistance in these matters.

Sincerely,

Name
Rank, Title
Senior Contracting Official