



Islamic Republic of Afghanistan
Ministry of Finance
Revenue Department
Legal and Policy Department
Tax Exemption Department

Date: 18/12/1395
Number: RS1-1812

Subject: Tax exemption ruling of the attached companies proposed by the Ministry of Finance, Resolute Support (RS), and the Embassy of United States of America.

To: Directorate of the Large Taxpayer's Office

Basis:

This group tax exemption ruling has been prepared according to Article 108 of the Income Tax Law and Article 62 of Tax Administration Law, for the implementation of recommendations of the Ministry of Finance, Resolute Support (RS), and the Embassy of United States of America which were approved under Decree 19 dated 17/9/1395.

Background:

From the beginning, the application of bilateral agreements between Government of Islamic Republic of Afghanistan (GoIRA) and Government of the United States of America (USG) through Diplomatic Note 202 dated 26 September 2002 & Letter 193 dated 28 May 2003 as well as the Military Technical Agreement (MTA) between Government of Islamic Republic of Afghanistan and North Atlantic Treaty Organization (NATO), contained some disputed issues in the interpretation of these agreements, such as taxation of contractors and subcontractors of USG and NATO. Therefore, to resolve these disputed issues, by the suggestion of the Minister of Finance and the Head of Combined Security Transition Command – Afghanistan (CSTC-A), the parties formed a Joint Committee representing Ministry of Finance, Resolute Support and the US Embassy in Afghanistan to agree a proper interpretation of these issues which was then presented to the Ministerial Cabinet of Afghanistan and approved through Decree 19 dated 17/09/1395.

The Decree states as follows: “The suggestions of the Joint Committee of Ministry of Finance, Resolute Support and the US Embassy in relation to the tax exemption of prime and subcontractors operating since the start of 2002 up to the end of 2004 under Diplomatic Note 202 and the MTA is hereby approved.”

The following are the approved suggestions of the Joint Committee:

1. Based on bilateral agreements which cover from 2002 through 2014, Diplomatic Note 202 dated 28 May 2003 and Military Technical Agreement dated 4 January 2002, prime contractors and subcontractors of US Forces and NATO as well as their personnel are not obliged to pay taxes for activities and related revenue on activities prior to 1 January 2015 to the Islamic Republic of Afghanistan. The mentioned exemption does not include penalties of late filing of annual tax returns or other relevant tax forms which are still applicable according to Afghanistan income tax laws.
2. Instruct the Afghanistan Revenue Department (ARD) to stop collection of controversial taxes from contractors of the attached list.
3. Contractors to the US Forces and NATO are waived from paying business receipt tax, income tax, wage withholding tax, professional services income, insurance withholding taxes, dividend withholding tax, and their related penalties of the mentioned taxes. This instruction does not include late filing penalties of annual tax returns or other relevant tax forms which are still applicable according to Afghanistan income tax laws.
4. Revoke restrictions on access to assets (in particular bank accounts) of contractors that relates to controversial tax issues (contractor taxes from 2002 to 2014).
5. Revoke any decisions of departments and official government authorities (including the Attorney General's Office) in relation to controversial tax issues against the attached list of contractors and remove these contractors from No Exit/No Fly List.
6. Halt any effort of tax collection in relation to controversial tax issues. This instruction does not include penalties of late filing of annual tax returns or other relevant tax forms which are still applicable according to Afghanistan income tax laws.
7. The above suggestions are not applicable to prime contractors and subcontractors (including foreign and Afghan companies) and their employees that paid already their taxes prior to approval this document by the cabinet.

Preference of bilateral agreements according to the law:

[As mentioned in Tax Administration Law,] Article 64:

(1) [blank]

(2) Enacted international agreements between the Government of the Islamic Republic of Afghanistan and foreign governments, or organizations of the United Nations are excepted from the paragraph (1) of this article.

Ruling:

Companies which have secured tax exemption rulings initially in relation to tax exemption as per Diplomatic Note 202 and the Military Technical Agreement (MTA), are included in the attached list and are exempt from paying the below taxes based proposed suggestions of Joint Committee and approved by Decree 19 dated 17/09/1395:

- Contractors to the US Forces and NATO are exempt from professional services withholding tax, insurance withholding taxes, dividend withholding taxes, and related penalties of the aforementioned taxes through to the end of 2014. This exemption does not include penalties of late filing of annual tax returns or other relevant tax forms which are applicable according to Afghanistan income tax laws.
- The above tax exemption ruling is not applicable to prime contractors and subcontractors (including both foreign and Afghan entities) and their employees that have already paid their taxes prior to the approval of this document by the Ministerial Cabinet.

Implementation of Ruling:

The [Ministry of Finance] tax offices shall take into account the suggestions of the Joint Committee of the Ministry of Finance, Resolute Support (RS), and the Embassy of United States of America, in relation to the disputed issues of the attached listed companies are exempt from above mentioned taxes, in addition to the taxes as listed in their previously issued Tax Exemption Confirmation letters [from the Ministry of Finance].

Furthermore, the implementation of this Group Ruling is only applicable to the attached list of contractors on their revenues earned from [contracts with] US Forces and NATO through to the end of 2014. In case their contracts continue after 2014, then the Bilateral Security Agreement (BSA) and Status of Forces Agreement (SOFA) will be applicable.

In addition, if the attached list of contractors did not secure Tax Exemption Confirmation letters [from the Ministry of Finance] according to Diplomatic Note 202 and Military Technical Agreement (MTA) for their contracts, they are eligible to apply for the Tax Exemption Confirmation letters [from the Ministry of Finance] and will be awarded Tax Exemption Confirmation letters [from the Ministry of Finance], after providing supporting documentation in accordance with [the Ministry of Finance] Guide 07 and [subject to the Ministry of Finance] review of those documents in accordance with Article 108 of the Afghanistan Income Tax Law.

The [Ministry of Finance] tax offices shall hereby apply the above Group Tax Exemption Ruling after the reviewing [contractor] documents that prove such eligibility.

With Respect,
Abdul Wali Noori
Director, Legal and Policy Department
[Afghanistan Revenue Department, Ministry of Finance]

Copies to:

1. Directorate of the Large Taxpayers Office
2. Directorate of the Central Revenue Office
3. Directorate of Provincial Tax Offices
4. Provincial Tax Office of Province ()