



**NORTH ATLANTIC TREATY ORGANIZATION
RESOLUTE SUPPORT**



DIPLOMATIC NOTE

DATE: 12 April 2021

TO: Ministries of the Government of the Islamic Republic of Afghanistan (GIROA)

SUBJECT: Diplomatic Note Regarding GIROA Assessment of \$15.77 Million U.S. Dollars (USD) in Taxes to the North Atlantic Treaty Organization (NATO) and United States Contractor, Nordic Camp Supply (NCS)

1. References:

- a. Military Technical Agreement (MTA) between the International Security Assistance Force (ISAF) and the Interim Administration of Afghanistan, signed 5 December 2001.
- b. Diplomatic Note 202 between the United States (U.S.) and the Islamic Transitional Government of Afghanistan, signed 26 September 2002.
- c. Agreement between the North Atlantic Treaty Organization (NATO) and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-Led Activities in Afghanistan (SOFA), signed 30 September 2014.
- d. Security and Defense Cooperation Agreement (BSA) between the Islamic Republic of Afghanistan and the United States of America, signed 30 September 2014.
- e. Ministry of Finance "Private Ruling for Entities Mentioned in the Joint Committee Proposal of Ministry of Finance, Resolute Support, and the U.S. Embassy," dated 18/12/1395 (Aug 3, 2017).

2. This Diplomatic Note serves to emphasize that in accordance with the MTA (reference a.) Annex A, Section 3, paragraphs 8 and 9; Diplomatic Note 202 (reference b.) paragraphs 4 through 6; the NATO SOFA (reference c.) Article 15, paragraphs 3 through 5; and the U.S. Security and Defense Cooperation (BSA) (reference d.) Article 17, paragraphs 3 through 5, contractors that are non-Afghan entities, and their employees that do not "normally reside" in Afghanistan are not subject to taxation.

3. The Ministry of Finance (MoF) ruling cited in reference e. serves as a resolution regarding conflicts in interpretation and implementation of tax issues regarding NATO and U.S. contractors.

4. In reference e., MoF agreed to suspend all the activities for recovering Legacy Taxes. Further, MoF agreed to suspend all restrictions imposed by the government agencies of Afghanistan, including the placement of contractors on "no-fly" lists, and suspend and lift restrictions on their assets.

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5. NATO and U.S. Contractor, Nordic Camp Supply (NCS), has no commercial activity in Afghanistan and the company's activity is limited to supporting NATO and U.S. Missions. Consequently, NCS is tax exempt.

6. In January 2020, GIROA's Deputy Minister of Customs and Revenue, Mr. Mohammad Eesa Qudrat, notified NCS that based on Afghanistan Presidential Decree 814, dated 25 May 2017; a private company (Ernst & Young Ford Rhodes Sidat Hyder & Co. [EYFRSH]) was hired to conduct a comprehensive audit and achieve accurate figures of exempted fuel importation to Afghanistan between March 2009 and March 2016.

7. Based on the audit, GIROA assessed \$15.77 million U.S. dollars (USD) in taxes to NATO and U.S. Contractor, Nordic Camp Supply (NCS), with the bulk of the NCS findings in 2009 / 2010; and attributed to lack of NCS documentation and other considerations as reflected in the table below:

Serial	Remarks	Total Number of Exemption Forms (MN)	Fuel Value (USD)	Payable Amount
1	Proof of Delivery receipt missing	13 x MN	29.75 million dollars	3.57 million dollars
2	MN and Proof of Delivery receipt missing	1 x MN	11.2 million dollars	1.34 million dollars
3	Difference between imported and delivered quantity	5 x MN	6.42 million dollars	0.77 million dollars
4	Diplomatic Notes and Proof of Delivery receipt missing	24 x MN	84.1 million dollars	10.09 million dollars
Total Amount			131.47 million dollars	15.77 million dollars

8. NCS provided written response to the GIROA Deputy Minister of Customs and Revenue disputing the claim of unpaid custom duties totalling \$15.77 million USD. The company indicated that they had limited exchange during the audit with the EYFRSH team, and highlighted at that time that the claims against NCS had no basis in fact or law. NCS outlined to the EYFRSH team that they had previously presented materials demonstrating their legal compliance and exemption to the Ministry of Finance on 8 April 2016, 16 April 2016, 22 June 2016, and 23 April 2017; in addition to the Parliament of Afghanistan on 5 November 2017.

9. In accordance with the negotiations on 20 August 2020 of the Finance Working Group, part of the Afghanistan-NATO Implementation Commission (ANIC) and the Joint Commission (JC), the parties agree that Resolute Support and U.S. Forces-Afghanistan (NATO and the U.S.) must submit a Diplomatic Note to confirm the delivery of fuel and legitimacy of the relevant documents to resolve the matter, and with this action GIROA will not pursue the \$15.77 million USD tax claims against NCS.

10. Immediate notification of all Afghan Ministries and their subordinate organizations is required to ensure implementation and full adherence to the steps

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outlined in this Diplomatic Note, MTA, Diplomatic Note 202, NATO SOFA, and the U.S. BSA.

11. This Diplomatic Note is signed and endorsed by the Afghanistan and NATO/U.S. Co-Leads for the Finance Working Group of the ANIC and JC. The ANIC oversees the adherence to the Afghanistan-NATO SOFA, and the JC oversees the adherence to the United States-Afghanistan BSA. The points of contact for the Diplomatic Note are Ms. Jennifer Allen, JC Secretariat, at 070-414-7519, jennifer.l.allen3.civ@mail.mil, or Ms. Nivia Butler, ANIC Secretariat, at 070-309-3649, cj4iacchead@hq.rs.nato.int.

This letter is prepared in both English and Dari. Both texts are equally authentic, the texts are in conformity with each other, and have the same meaning in all substantive respects.



Jay L. Cooper
Senior Executive Service, U.S. Navy
Chief of Resource Management, CSTC-A
& Co-Lead, Finance Working Group
Afghanistan-NATO Implementation Commission
& Joint Commission

Endorsements:

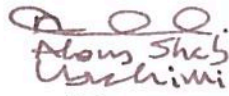


Ms. Amina Ahmady
Director General - Customs
Ministry of Finance
& Co-Lead, Finance Working Group
Afghanistan-NATO Implementation Commission
& Joint Commission

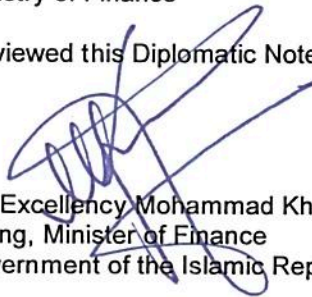


Mr. Nasrullah Durrani
Director General - Revenue
Ministry of Finance

Mr. Alem Shah Ibrahim
Deputy Minister - Customs and Revenue
Ministry of Finance



I reviewed this Diplomatic Note and concur with the contents.



His Excellency Mohammad Khalid Payenda
Acting, Minister of Finance
Government of the Islamic Republic of Afghanistan



ANIC/JC EXECUTIVE STEERING COMMITTEE CONCURRENCE

In accordance with the Implementing Arrangement of the Agreement between the North Atlantic Treaty Organization (NATO) and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-led Activities in Afghanistan, dated 30 September 2014 (NATO SOFA), and the Security and Defense Cooperation Agreement between the United States of America and the Islamic Republic of Afghanistan, dated 30 September 2014 (U.S. BSA), NATO and U.S. acting in our capacity as co-chairs of the Afghanistan-NATO Implementation Commission (ANIC) and the Joint Commission (JC) Executive Steering Committees, agree that the following are approved and should be signed by their respective governmental agency: Diplomatic Note Regarding GIROA Assessment of \$15.77 Million U.S. Dollars (USD) in Taxes of the North Atlantic Treaty Organization (NATO) and United States Contractor, Nordic Camp Supply (NCS), dated 12 April 2021.

This text is prepared in both English and Dari. Both texts are equally authentic; the texts are in conformity with each other, and have the same meaning in all substantive respects.

Executed 5 May 2021 in Kabul, Afghanistan.

Thorsten Poschwatta
Lieutenant General, German Air Force
Chief of Staff, Headquarters Resolute
Support & Co-Chair, Afghanistan-NATO
Implementation Commission, Executive
Steering Committee

E. John Deedrick, Jr.
Lieutenant General, U.S. Army
Commanding General, Combined
Security Transition Command- Afghanistan
& Co-Chair, Joint Commission, Executive
Steering Committee

Mr. Abdullah Raqeebi
Government of the Islamic Republic of Afghanistan
Assistant Minister of Defense, Acquisition Technology & Logistics
& Co-Chair, Afghanistan-NATO Implementation Commission /
Joint Commission, Executive Steering Committee