



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 Release of Vertical Helicopters at HKIA, dated 3 December 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 3 April 2021 in Kabul, Afghanistan.


 Thorsten Peschwatta
 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 Raseebi
 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

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HEADQUARTERS
UNITED STATES FORCES-AFGHANISTAN
BAGRAM, AFGHANISTAN
APO AE 09354

DATE: 3 December 2020

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

SUBJECT: Diplomatic Note Regarding Release of Vertical Helicopters at HKIA

1. References:

- a. Diplomatic Note 202 between the United States (U.S.) and the Islamic Transitional Government of Afghanistan, signed 26 September 2002.
- b. Security and Defense Cooperation Agreement (BSA) between the U.S. and GIROA, signed 30 September 2014.
- c. 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 (Mar 8, 2017).
- d. Supreme Court Interpretation and Analysis Directorate Letter 1880/727, dated 28 July 2015.
- e. No Objection Certification from U.S. Transportation Command (USTRANSCOM) Directorate of Acquisition to the Civil Aviation Authority Representative of the GIROA, dated 18 November 2015

2. This Diplomatic Note serves to emphasize that in accordance with the Diplomatic Note 202 (reference a.) paragraphs 4 through 6; and the U.S. Security and Defense Cooperation (BSA) (reference b.) 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. Vertical de Aviación as a U.S. contractor should have any taxes assessed voided and have their aircraft returned to them immediately.

3. Prior to the signing of the U.S. BSA (reference b.), the controlling agreement was Diplomatic Note 202 (reference a.). This agreement apply to contract activities after 26 September 2002 and prior to 1 January 2015. Reference c. serves as a resolution regarding conflicts in interpretation and implementation of tax issues regarding U.S. contractors that arose during that period. However, the same interpretations are applicable to current issues that are controlled by the BSA.

4. The language describing the tax exemption for U.S. contractors is substantially the same in the Diplomatic Note 202 (reference a.) and the U.S. BSA (reference b.).

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- a. Diplomatic Note 202, paragraph 4, states: "The Government of the United States, its military and civilian personnel, contractors and contractor personnel shall not be liable for any tax or other similar fees assessed within Afghanistan."
 - b. The U.S. BSA, Article 17, paragraph 3: "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, related to or on behalf of United States forces." (emphasis added)
5. As interpreted by the the Ministry of Finance ruling (reference c.) and the Supreme Court Letter of Interpretation (reference d.) this exemption includes all taxes including "business receipt taxes, annual *income taxes*, employee withholding taxes, legal and professional services taxes, insurance taxes, and *dividend taxes*."
6. Given the similarity of the language between the U.S. BSA and Diplomatic Note 202 defining what taxes are exempted, they all should be interpreted as exempting the same taxes, which are all taxes. This is consistent with the ruling of the Ministry of Finance (reference c) which held that U.S. contractors were not liable for any tax, including dividend taxes and income taxes. Therefore, the MoF's ruling should be extended to taxes covered by the U.S. BSA.
7. Vertical de Aviación will recover their Aircrafts immediately. GIROA will void any previous efforts to collect taxes or tax-related charged as it relates to Vertical de Aviación Company. In 2014, GIROA confiscated Vertical de Aviación's aircraft claiming the company owes taxes. Vertical de Aviación has only conducted tax exempt activities in Afghanistan. The aircrafts are located at Hamid Karzai International Airport in Kabul. Vertical de Aviación has attempted to clarify the matter with GIROA officials through the years by providing relevant proof that no taxes/fees are owed, in order to retrieve the aircrafts. Given that Vertical de Aviación does not owe any taxes, GIROA must release Vertical de Aviación's confiscated aircrafts. The confiscated aircrafts are two dark-blue Mi-8 helicopters that are partly disassembled in preparation for transport, two Mi-8 helicopter transmissions with helicopter registration numbers HK-4692 and HK-3863, and one fixed-wing J-32 aircraft with tail number HK-4838.
8. Vertical de Aviación entered into a contract on 1 November 2010 for Contract No. HTC711-10-D-R027 and brought the above aircraft to Afghanistan to support the U.S. DoD, which is covered under the MTA. The contract was terminated on 30 June 2014 and the helicopters have remained on HKIA since then. A No Objection Certificate (reference e.) was sent from U.S. Transportation Command (USTRANSCOM) Directorate of Acquisition to the Civil Aviation Authority Representative of the GIROA on 18 November 2015 stating these facts.
9. Vertical de Aviación has spent the past 5 years trying to obtain the release of the confiscated aircrafts. The company has never been provided a current tax invoice, a past due tax invoice, or any other billing statement and no associated contract that they we were a party to that would generate any invoice, as none exists. Vertical de Aviación has attempted to clarify the matter with GIROA officials through the years by providing relevant proof that no taxes/fees are owed, in order to retrieve the aircrafts.
10. The United States-Afghanistan Joint Commission (JC) has worked this issue with Mr. Amanzeb Ansari, Deputy Minister for Planning and Policy, Afghanistan Civil Aviation Authority (ACAA), who states that ACAA has no reservations in this matter. The JC has also worked with Mr. Khalil Salihzada, Director General of Customs, Ministry of Finance (MOF), who has stated

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that MoF is not holding the aircrafts for any reason and requested this issue be closed out, and the contractor be allowed to return the aircrafts back to the United States.

Resolution of Disputes

11. In accordance with BSA, all disputes must be handled by the Joint Commission (JC).
12. In accordance with the above rulings and agreements, and the negotiations of the Finance Working Group, part of the JC, the U.S. seeks official concurrence and resolution of the above matters related to tax exemption, and release of the forementioned helicopters.
13. ACAA has suggested the U.S. clarifies this issue with the Ministry of Defense (MoD). With the signature on this Diplomatic Note by the Afghanistan Co-Chair of the Executive Steering Committee (ESC) of the Joint Commission (JC), the MoD recognizes the tax exempt status of Vertical de Aviación and agree with MoF and ACAA that these aircraft should be returned to the U.S. contractor, and released as soon as possible.
14. **Immediate notification to all Afghan Ministries and their subordinate organizations is required to ensure implementation and full adherence to the steps outlined in this Diplomatic Note, Diplomatic Note 202, and the U.S. BSA.**
15. This Diplomatic Note is signed and endorsed by the Afghanistan and U.S. Co-Chairs of **Executive Steering Committee (ESC) of the Joint Commission (JC)**. The JC oversees the adherence to the United States-Afghanistan BSA. The point of contact for the Diplomatic Note is Ms. Jennifer Allen, JC Secretariat, at 070-414-7519, jennifer.l.allen3.civ@mail.mil.

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.



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

Endorsements:



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