

A CONTRACTOR GUIDE TO PRE-2015 TAXATION RELIEF

On 07 December 2016, the Afghanistan Cabinet conferred with President Ashraf Ghani and approved recommendations from the United States Forces-Afghanistan (USFOR-A)/Resolute Support (RS)/U.S. Department of State (DoS)/Ministry of Finance (MoF) taxation working group. These recommendations included:

- Companies performing contract work, as either a prime or sub-contractor, for the USFOR-A or NATO prior to 1 January 2015 would have all Afghanistan Revenue Department (ARD) tax “debt” waived/forgiven on income associated with those US/NATO contracts. These back taxes are commonly referred to as “legacy taxes.”
- The Government of the Islamic Republic of Afghanistan (GIROA) agrees to unfreeze any and all assets of the prime and sub-contractors who performed work for US/NATO prior to 1 January 2015.
- GIROA agrees to remove any adverse orders/directives issued by any Afghan Ministry against those prime and sub-contractors mentioned above, including removal from any “no fly list.”
- GIROA will cease any attempt to collect any late fees on any legacy taxes. This **DOES NOT** include late filing fees in accordance with the Afghanistan Tax Administration Law. Per the law this amounts to 100 Afs (~\$1.50 USD) per day for legal entities.

To ensure contractors are able to take advantage of this decision by GIROA, we have compiled a short checklist below of what you will need to do:

1. If your company performed work in Afghanistan and had an Afghanistan business license prior to 2015, and **DID NOT** file a tax return, the first thing you will need to do is receive a tax exemption ruling from the ARD. To do this, the procedures will be similar to those outlined in Guide 07 (attached).
 - a. ARD would prefer full contracts be submitted to them for tax exemption purposes. However, if this is not feasible then obtain a redacted (for Personally Identifiable and/or Proprietary Information) copy of your pre-1 Jan 15 contract for submission. The contract submitted should at least include the contract period, signatures from both parties, the contract value, the contract number and the budget page.
 - b. Contact the contracting agency through which you contracted. Send them a copy of your contract and inform them that you are attempting to resolve your pre-BSA/SOFA tax matters in Afghanistan. Ask them to draft a letter in the format provided in Attachment 2 (depending on whether your contract was with the US or NATO). The contracting agency should then scan and send the signed letter to the International Agreements Branch (IAB) at cj4iaccsointagrops@hq.rs.nato.int. IAB will verify the contract. You may then pick up the letter from IAB at HQ RS (across from the Milano).

- c. You will also need to draft a letter to ARD formally requesting a tax exempt ruling. This application letter must be submitted in Dari or Pashto. Be sure to include a good email address contact in case ARD has any questions about your application.
 - d. Take the letter from your contracting agency (with the RS gold seal from IAB), the contract (full or redacted), your application letter (in Dari or Pashto) and a copy of either Dip Note 202 or the Military Technical Agreement (MTA) (whether your contract was with the US or NATO) to the tax exemption office to request a tax exempt ruling.
2. Once your company receives its tax exempt rulings for the applicable years, you will need to then file returns for each year prior to 2015.
 - a. **Example:** Company X had a contract to deliver fuel from 2005 until 2013. They had a business license in Afghanistan, but never filed taxes. Even though Company X will not owe any taxes, they still must file tax returns for 2005-2013 with the ARD. Company X will then have to pay late filing fees IAW the Afghanistan Tax Administration Law, amounting to of 100 Afs (~1.50 USD) per day for every day they failed to file a tax return.
3. Your company will need to provide any supporting documentation that the ARD requests. Remember, this cabinet resolution simply “waives” all pre-2015 tax liability. It does not waive any tax filing requirements. Similar to taxes in the United States – simply because you do not owe tax does not mean you do not have to file taxes and provide the IRS with necessary information.
4. After you have cleared up your legacy tax issues, ARD must provide you with a tax clearance letter. This document is necessary in order to renew your business license.
5. Once you receive your tax clearance letter you can then renew/apply for your Afghanistan Central Business Registry (ACBR) license. ACBR is the new Afghanistan Investment Support Agency (AISA).

As a reminder, this cabinet resolution only resolves pre-2015 tax matters with the Ministry of Finance. It does not resolve any tax issues post-1 January 2015 or any other issues a contractor may have with other elements of GIRoA.

To begin this process, please contact Abdul Wali Noori, Director of the ARD Legal and Policy Services at anoori7@gmail.com, wali.noori@mof.gov.af, +93-0752-005-438. Or Baryalai Shenwari at sh.baryalai@gmail.com, baryalai.shenwari@mof.gov.af. Your Resolute Support contact is Kathleen C. Butler; kathleen.c.butler.civ@mail.mil.

Implementation of this new measure requires direct and consistent communication between the companies and ARD. We ask that you work closely with each other to resolve your tax records.

4 Attachments:

1. ARD Guide 07
2. Sample Contracting Officer Letters for pre-1 January 2015 Contracts
3. Diplomatic Note 202
4. Military Technical Agreement