

**MEMORANDUM OF UNDERSTANDING**

**between**

**The Islamic Republic of Afghanistan**

**and**

**The United Kingdom of Great Britain and Northern Ireland**

**concerning**

**Tax and Customs Provisions Applicable in Afghanistan to**

**Development Projects Funded by the United Kingdom**

The Government of the United Kingdom of Great Britain and Northern Ireland (the "UK Government") on the one part, and

the Government of the Islamic Republic of Afghanistan (the "Afghan Government"), on the other part,

have decided as follows:

**Paragraph 1 – Purpose**

- 1.1 This Memorandum of Understanding ("MoU") sets out provisions concerning taxes and customs duties applicable in Afghanistan to development projects financed by the UK Government in Afghanistan through financing and grant arrangements entered into by the UK Government (hereinafter 'Projects'), including those persons and entities not employed by the UK Government that are contractually charged with implementing those Projects (hereinafter 'Contractors.'). Contractors will be understood to include both prime contractors and sub-contractors.
- 1.2 For purposes of this MoU, a 'development project' is a project designated as such in a grant or financing arrangement between Afghanistan and the UK, or is clearly intended as being for the economic, social, political, cultural or scientific betterment of Afghanistan or the Afghan people.

**Paragraph 2 – Taxation and Customs Provisions**

The following provisions will apply to Projects:

- 2.1 Any goods imported solely for the purpose of directly implementing Projects will not be liable to customs duties, import tariffs or any other taxes or charges having equivalent effect imposed by the Afghan Government or any sub-division thereof. To

obtain an exemption, the importer will follow the normal customs exemption procedure, demonstrating at time of importation that the goods will be used exclusively in the Project and (in the case of durable goods) that ownership pass to a customs-exempt entity at Project's close.

2.2 Personal and household effects imported or re-exported by Contractors or employees thereof that are not citizens or permanent residents of Afghanistan will not be liable to customs duties, import tariffs or any other taxes or charges having equivalent effect imposed by the Afghan Government or any sub-division thereof. Such personal and household effects will, however, be liable to normal customs clearance procedures. Personal and household effects sold or otherwise disposed of to persons not enjoying similar exemptions will be liable to the applicable tax and customs duties under the laws and regulations of Afghanistan.

2.3 Non-Afghan Contractors and their non-Afghan employees will be exempt from all taxes and public charges (including but not limited to income tax and business receipts tax) imposed by the Afghan Government or any sub-division thereof, on income derived from activities of the Contractors relating directly to the achievement of Project objectives as described in a written contract that is financed by the UK Government. In determining whether an activity relates 'directly' to a Project objective, the following factors will be considered:

(1) whether the Financing Arrangement between the UK and the Afghan Ministry of Finance specifically names the Contractor as tax exempt; or

(2) whether the Project objective, or a component thereof, as identified in a Financing Arrangement between the UK and the Afghan Ministry of Finance, appears as the primary objective in the Contractor's agreement with the UK Government or with another Contractor that in turn holds a contract with the UK Government.

The determination of whether Project-derived income is tax exempt will be made by the Afghan Revenue Department (ARD) upon presentation of satisfactory evidence by the taxpayer that one of the above conditions has been met.

2.4 Contractors and their employees who are citizens, permanent residents or legal entities of Afghanistan will be liable to all taxes and public charges applicable under the laws of Afghanistan.

2.5 A Contractor that is a legal entity will only be exempt to the extent that it reports income derived from a Project to the tax authorities of its home country, and that this project-derived income is liable to taxation. The Contractor need not demonstrate at the time of filing of an Afghan tax return that it is liable to taxation in its home country, but will have supporting evidence to this effect available for inspection within one year of the date of filing.

- 2.6 Reasonable charges imposed by the Afghan Government in exchange for the provision of goods or services will not be considered 'taxes' or 'public charges.' A 'reasonable charge' is a charge assessed for the provision of a specific good or service that is necessary, unavoidable and comparable to market rate for provision of the same good or service.
- 2.7 Nothing in this MoU will be taken to exempt any legal entity from the obligation to register with Afghan Government authorities or to comply with normal tax filing or reporting obligations, including the reporting of tax-exempt income, or with tax withholding obligations concerning taxes for which this MoU does not provide exemption. Specifically, entities that receive tax-exempt income will nonetheless withhold taxes according to the law from any payments to contractors or employees not enjoying an exemption under this MoU.

### **Paragraph 3 – Final Provisions**

- 3.1 Taxes, customs duties and other public charges received from Contractors by the Afghan Government before the effective date of this MoU will not be reimbursed, irrespective of whether the retro-activity provisions at Paras. 3.3 and 3.4 apply.
- 3.2 All Contractors will file or correct previously filed tax returns within one hundred and eighty (180) days of the effective date of this MoU, without imposition of penalty for late filing or previous inaccuracies. Contractors may request from ARD additional time to file or correct their returns, which may be granted at the discretion of ARD. Contractors that fail to file within the requisite period will not benefit from the retro-activity provisions contained in Paras. 3.3 and 3.4.
- 3.3 Contractors eligible for exemption under this MoU will be exempt from liability for all taxes or other duties that may have accrued before the effective date of this MoU. This includes exemption from liability for failure to withhold taxes from payments to non-exempt employees and contractors. Said Contractors will, however, clearly identify in the filings referenced in Para. 3.2 any payments made by them from which there should have been with-holding.
- 3.4 Contractors not eligible for exemption under this MoU will be liable for payment of the tax, but not with-holding, liability, for the three full years prior to effective date of this MoU, and will not be liable for any taxes or with-holding due prior to this period. Said Contractors will, however, clearly identify in the filings referenced in Para. 3.2 any payments made by them from which there should have been with-holding.
- 3.5 Any dispute about the interpretation or application of this MoU will be resolved by consultation between the Governments.
- 3.6 Either Government may terminate this MoU unilaterally by giving six (6) months written notice to the other. In case of termination, this MoU will continue to apply to

on-going commitments entered into while the MoU was in effect. This MoU may be amended at any time by written consent of both Governments. The process in Para. 3.8 will apply to all amendments.

- 3.7 Upon signing of this agreement by the Ministry of Finance, the UK Government will prepare Dari and Pashto versions of this agreement to be submitted along with this English version to the Ministry of Foreign Affairs of Afghanistan for review by that Ministry and signature of the Minister of Foreign Affairs as appropriate. The version sent to the Ministry of Foreign Affairs will be signed in triplicate in English, Pashto and Dari, but in case of any doubt the English version will take precedence.
- 3.8 Following signature of this MoU, each Government will notify the other in writing of the completion of its domestic approval processes. The MoU will come into effect on the date of the second of such notifications.

H.E. Mohammad Omar Zakhilwal  
Minister of Finance  
For the Government of the Islamic Republic of  
Afghanistan

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

HM Ambassador  
For the Government of the United  
Kingdom of Great Britain and Northern  
Ireland

Signed: Richard Stagg

Date: \_\_\_\_\_

H.E. Zalmay Rassoul  
Minister of Foreign Affairs  
For the Government of the Islamic Republic of Afghanistan

Signed: \_\_\_\_\_

Date: \_\_\_\_\_