



Confirming an exemption from income taxation under a bilateral or multilateral agreement

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Introduction

The Islamic Republic of Afghanistan enters into bilateral and multilateral agreements with other countries or international organizations which prevail over the Income Tax Law 2009 (Article 111) and thus may have an impact on the taxability of certain income derived from business activities as performed under contracts with government agencies. Contractors and subcontractors who believe their business activity to be tax exempt under a bilateral or multilateral agreement must apply to the Afghanistan Revenue Department to obtain a private ruling following the procedures explained in this guide

Process

The process to receive confirmation from the Ministry of Finance, Afghanistan Revenue Department whether exemption from tax is available under a bilateral or multilateral agreement involves three steps:

Step 1

Obtain a photocopy of the complete bilateral or multilateral agreement(s) which you consider allows exemption from income tax for your organization.

Obtain a letter from the contract awarding person confirming the details of the contract (s), for example, contract number (s) and date, contract amount, period of completion of the contract project(s) etc, the income for which is claimed to be exempt from tax.

Step 2

Send a photocopy of the complete relevant agreement(s) along with confirmation letter from the contract awarding person to the Ministry of Finance, Afghanistan Revenue Department accompanied by the following information:

- The full legal name of your organization
- Your Taxpayer Identification Number (TIN)
- The name, position, phone number and email address of your nominated contact person within your organization in Afghanistan whom we should contact if we require more information, and to whom we should direct our reply
- Your interpretation or understanding of the applicability of the international agreement to your organization's activities in Afghanistan. Specify:
 - Which project agreements, funding arrangements or contracts are governed by the international agreement, and
 - Which specific income tax types you interpret as being exempted by this agreement.
- Attach copies of supporting documentation, such as copies of project agreements, funding arrangements and contracts, to your, Afghanistan Revenue Department submission. Your letter of request is required to be in the Dari or Pashto language. A copy of the request in English will help expedite the process. Supporting documents need not be translated into Dari or Pashto if they are in English. Supporting documents in a language other than Dari, Pashto or English will need to be translated into any of these languages. Your letter and supporting documents should be addressed and delivered to: Director, Rulings and Exemptions Unit, Afghanistan Revenue Department, Ministry of Finance, Kabul, Afghanistan.

Step 3

The Afghanistan Revenue Department will endeavor to issue a written ruling in response to your submission within

21 calendar days of receipt of all relevant information. This private ruling will state clearly which activities are exempt (if any) and will also specify which tax types are exempt (if any). The ruling will also stipulate any reporting requirements that may exist in order for your organization to be in compliance with the Income Tax Law of Afghanistan.

Example: Joe's Construction Company performs work as a contractor to the Fictitious Global Council of Nations Development Programme (FGCNDP), and also does private contracting work for other businesses located in Afghanistan. Joe's Construction Company contacts FGCNDP and obtains a copy of the relevant international agreement between the FGCNDP and Afghanistan that discusses the taxability of FGCNDP projects. Joe's Construction Company then drafts a letter to the Afghanistan Revenue Department (ARD) which states the name of the business (Joe's Construction Company), the TIN of the business and the name, e-mail address and telephone number for contact. The letter then requests that the Afghanistan Revenue Department provide a private ruling on exemption for their FGCNDP project activity from corporate income tax (Article 2 of the Income Tax Law), business receipt tax (Article 64-67), contract withholding tax from their sub-contractors (Article 72) rent withholding tax (Article 59) and wage withholding tax (Article 58). For supporting documentation, attached to the letter are complete copies of the agreement between FGCNDP and Afghanistan and the project agreement (contract) between FGCNDP and Joe's Construction Company and a confirmation letter from FGCNDP. (The application letter is in Dari with a copy in English and the supporting documents are in English.)

Response by the Afghanistan Revenue Department.

The Afghanistan Revenue Department responds in writing and states:

- The revenues derived from the FGCNDP project as specified in the original submission are exempted from corporate income tax and business receipts tax. Article xyz of the Country Agreement between FGCNDP and the Government of Afghanistan exempts these revenues from taxation.
- Joe's Construction Company is liable to withhold rent withholding tax and to remit amounts withheld in accordance with Chapter 9 of the Income Tax Law of Afghanistan. Since Joe's Construction Company is merely withholding tax from payments of rent on behalf of a landlord, this is not a tax on Joe's Construction Company. As such, the Country Agreement between FGCNDP and the Government of Afghanistan does not exempt the company from this responsibility.
- Joe's Construction Company is liable to withhold wage withholding tax for its Afghan employees and to remit amounts withheld in accordance with Chapter 9 of the Income Tax Law of Afghanistan. Since Joe's Construction Company is merely withholding tax from payments of wages on behalf of employees, this is not a tax on Joe's Construction Company. As such, the Country Agreement between FGCNDP and the Government of Afghanistan does not exempt the company from this responsibility.
- Joe's Construction Company is liable to withhold contract withholding tax for payments to its sub-contractors and to remit the amounts withheld in accordance with Chapter 11 of the Income Tax

Law of Afghanistan. This is also not a tax on Joe's Construction Company but a tax of the sub-contractor. As such, the agreement between FGCNDP and the Government of Afghanistan does not exempt the company from this responsibility.

All other income earned by Joe's Construction Company from activities within Afghanistan which are not governed by the international agreement between the government of Afghanistan and FGCNDP are subject to the Income Tax Law 2009, and the reporting and payment provisions contained therein.

Business Licensing and Tax Clearances

The purpose of a private ruling is to provide the Ministry of Finance, Afghanistan Revenue Department interpretation regarding the application of the Income Tax Law to a particular situation. It is not a 'tax exemption certificate' although if an organization discloses all its business activities in a private ruling request it may have that effect. It is not a 'tax compliance certificate' as a private ruling does not address whether and to what extent the organization has complied with the Income Tax Law.

If an organization requires an official letter from the Afghanistan Revenue Department for the purposes of an application for or renewal of, a business license, then that organization should contact the Large Taxpayer Office or the Medium Taxpayer Office of the Afghanistan Revenue Department, Kabul.

Customs Duties and Other Taxes

The process explained in this guide is in accordance with the Income Tax Law 2009. Therefore, a ruling is limited to matters of income taxation. A ruling cannot be provided on matters of other taxes such as customs duties. If an

Note

A new website, <http://www.ard.gov.af>, makes it easy for taxpayers to find and download useful information to meet their needs, including: the Income Tax Law 2009, various public announcements and rulings, forms, along with instructions for completing same, guides, archived documents, Questions & Answers regarding wage withholding tax, and other references including an Income Tax Manual. The manual discusses separately each article of the law, along with relevant regulations, often with helpful examples.

organization requires clarification on exemption from customs duties, then that organization should contact the Afghanistan Customs Department, Kabul. For other matters of taxation, the organization should contact the relevant government department.

Tax enforcement provisions

Failure to comply with the requirements of the Income Tax Law 2009 may result in the Ministry of Finance and/or Afghanistan Revenue Department using administrative powers prescribed by law to ensure compliance. These provisions are contained in Chapters 14 and 16 which include fines and penalties. Where non-compliance is with the intent of evading tax a person shall be referred to the office of the Attorney General for investigation and prosecution.

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