



**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 Legacy Tax Issues and Taxation of Subcontractors

1. References:

- a. Military Technical Agreement between the International Security Assistance Force 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 (SOFA), signed 30 September 2014.
- d. Security and Defense Cooperation Agreement between the United States of America and the Islamic Republic of Afghanistan (BSA), signed 30 September 2014.
- e. Ministry of Finance (MoF) "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).
- f. Supreme Court Interpretation and Analysis Directorate Letter 1880/727, dated 28 July 2015.

2. This Diplomatic Note serves to emphasize that in accordance with the Military Technical Agreement (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. 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. Prior to the signing of the NATO SOFA (reference c.) and the U.S. BSA (reference d.), the controlling agreements were the MTA (reference a.), and Diplomatic Note 202 (reference b.). Those agreements apply to contract activities after 26 September 2002 and prior to 1 January 2015. Taxation issues arising from contract activities during this time period are referred to as "Legacy Tax" issues.

4. The 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.

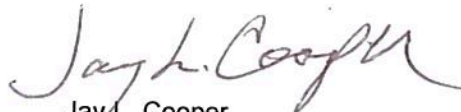
5. In reference e., MoF agreed to suspend all the activities for recovering Legacy Taxes. Further, MoF agreed to suspend all restrictions imposed by the government agencies of Afghanistan, including the placement of contractors on "no-fly" lists, and suspend and lift restrictions on their assets.

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6. The term "contractor" includes prime contractors and subcontractors. This is consistent with the interpretation of the term "contractors" as it was used in the MTA (reference a.), Diplomatic Note 202 (reference b.), and the Ruling of the Ministry of Finance (reference e.).
7. The Supreme Court Letter of Interpretation (reference f.) makes it clear Article 111, paragraph 2, of the Income Tax Law holds that when an international agreement is in conflict with the Tax Law, the international agreement prevails, and those contracts are excluded from Article 111, paragraph 1. This is consistent with international jurisprudence which holds that International Agreements supersede local and national law. Therefore, the Tax Law does not apply to contracts covered by references a., b., c., or d.
8. Diplomatic Note 202, paragraph 4 (reference b.) states: "The Government of the United States, its military and civilian personnel, contractors and contractor personnel shall not be liable to pay any tax or similar charge assessed within Afghanistan." As interpreted by the Supreme Court Letter of Interpretation (reference f.) and the Ministry of Finance ruling (reference e.) 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."
9. In accordance with the above rulings and agreements, and the negotiations of the Finance Working Group, part of the Afghanistan-NATO Implementation Commission and the Joint Commission (ANIC/JC), the parties agree that the Government of the Islamic Republic of Afghanistan will no longer pursue tax claims against legacy contracts.
- 10. 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, 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 the 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](mailto:jennifer.l.allen3.civ@mail.mil), or Ms. Nivia Butler, ANIC Secretariat, at 070-309-3649, [cj4iachead@hq.rs.nato.int](mailto:cj4iachead@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  
SES-2, U.S. Navy  
Branch Head, Resource Management & Co-  
Lead, Finance Working Group  
Afghanistan-NATO Implementation Commission  
& Joint Commission

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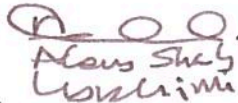
Endorsements:



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

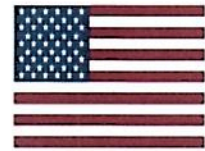


Mr. Alem Shah Ibrahimy  
Deputy Minister - Customs and Revenue  
Ministry of Finance

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 Legacy Tax Issues and Taxation of Subcontractors, 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