



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

AUG 31 2004
In reply refer to:
I-04/002395-P2

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Prohibition on Taxation of U.S. Assistance (DSCA Policy 04-32)
[SAMM E-Change 19]

REFERENCES: (a) Consolidated Appropriations Act, 2004 (Division D – Foreign Operations, Export Financing, and Related Programs Appropriations Act) (P.L. 108-199)
(b) Consolidated Appropriations Act, 2003 (Division E – Foreign Operations, Export Financing, and Related Programs Appropriations Act) (P.L. 108-7)

Section 506 of reference (a) and section 579 of reference (b) prohibit the taxation of U.S. assistance provided under Foreign Operations, Export Financing, and Related Programs Appropriations Act(s). Foreign Military Financing (FMF), International Military Education and Training (IMET), Peacekeeping Operations (PKO), and International Narcotics Control and Law Enforcement (INCLE) are examples of U.S. assistance programs that are subject to the legislation. The country receiving the U.S. assistance must exempt any articles, equipment, materials, supplies, goods, or other commodities purchased with U.S. assistance programs funding from all Value Added Taxes (VAT) and customs duties or reimburse this amount, regardless of the vehicle used to provide the assistance (i.e., Foreign Military Sales (FMS), Direct Commercial Contract (DCC), IMET program, or lease).

If the government receiving the assistance taxes any of the above named items, the legislation requires the Secretary of State to: (1) certify that there are taxes on U.S. assistance that have not been reimbursed and (2) determine in accordance with the terms of this legislation whether to withhold funds or waive the withholding. If the Secretary of State does not waive the withholding, two hundred percent of the total VAT and custom duties assessed by a foreign government on commodities financed with funds appropriated and allocated pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act for the central government of the country must be withheld from the following fiscal year funds. The amount withheld will be reduced by any reimbursement of taxes by the foreign government that assessed the tax or duty.

To ensure that all FMS cases are compliant with references (a) and (b), the attached note (Attachment 1) shall be included on all Letters of Offer and Acceptance

(LOA) for articles that are financed with U.S. assistance funds appropriated and allocated pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act. The prohibitions of references (a) and (b) normally do not apply to Title 10 programs. This note will be included in the DoD 5105.38-M, Security Assistance Management Manual (SAMM) as SAMM E-Change 19. To ensure that DCCs financed with U.S. assistance are compliant with references (a) and (b), a clause on taxes and duties (Attachment 2) must be included on all DCCs.

Because the Security Assistance program (e.g., FMS, IMET Program, etc.) uses the DoD acquisition system, Implementing Agencies are required to inform their contracting activities of the prohibition on taxation of U.S. assistance.

To ensure compliance with this legislation, DSCA (Business Operations Directorate) will issue data calls, at least annually, to the Military Departments and the Defense Finance and Accounting Service (Denver Center) for information on prohibited taxes. DSCA will provide information from these data calls to the Department of State. Section 506 of reference (a) and section 579 of reference (b) exemptions do not limit any other tax exemptions that may be granted through other treaties and agreements. However, only those taxes that violate the provisions of section 506 of reference (a) and section 579 of reference (b) must be reported in the data call.

Guidance in this memorandum is effective immediately. If you have any questions regarding this matter, please feel free to contact Mr. Steve Harris (Security Assistance Policy) at (703) 604-6611, e-mail steve.harris@dsca.mil; Ms. Ann Cataldo (Legal) at 703-604-0297, e-mail ann.cataldo@dsca.mil; Ms. Dawn Burke (Training Policy) at (703) 601-3864, e-mail dawn.burke@dsca.mil; Ms. Del Woods (DCC Policy) at 703-604-6630, e-mail del.woods@dsca.mil; or Ms. Patricia Higgins (Financial Policy) at (703)-604-6570, e-mail patricia.higgins@dsca.mil.


JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments:

- 1) SAMM E-Change 19 – Prohibition of Taxation of U.S. Assistance Note for LOA Documents
- 2) Sample Taxes and Duties Clause for Direct Commercial Contracts (DCCs) Using U.S. Assistance

SAMM E-Change 19 – Prohibition on Taxation of U.S. Assistance Note for LOA Documents

This note will be included in Table C5.T5 of the Security Assistance Management Manual (SAMM):

| Note Name | Note Usage* | Note Text |
|--|--|--|
| Prohibition on Taxation of U.S. Assistance | <p>Mandatory for LOAs (to include Pseudo LOAs) when the sale of articles is financed in whole or in part with any type of U.S. Assistance Funds appropriated under the Foreign Operations, Export Financing, and Related Programs Appropriations Act (e.g., FMF, INCLE, PKO, etc.).</p> <p>Mandatory for Amendments and Modifications that add articles to a case that are financed with any type of U.S. Assistance Funds appropriated under the Foreign Operations, Export Financing, and Related Programs Appropriations Act.</p> | <p>“Any articles, equipment, materials, supplies, goods, or other commodities purchased with U.S. Assistance Funds appropriated and allocated pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act in support of this Letter of Offer and Acceptance (LOA), whether provided directly by the USG or through procurement contracts or otherwise in support of this LOA, shall be exempt from all value added taxes and customs duties imposed by the recipient country or the full amount of the tax or customs duty must be reimbursed by the Purchaser. This exemption is in addition to any other tax exemption provided by the Purchaser through separate agreements or other means”</p> |

* The “Note Usage” column of this table is intended to show when the note should be included on an LOA, Amendment, and Modification. This table is NOT intended to show when an Amendment or a Modification should be used. See DoD 5105.38-M, “Security Assistance Management Manual,” Chapter 6, section C6.7. for information on determining which document is appropriate.

**Sample Taxes and Duties Clause for
Direct Commercial Contracts Using U.S. Assistance**

Taxes and Duties

- a. All taxes, duties, and charges outside the geographical borders of **[insert country]**, to which the Supplier becomes liable in connection with the execution of this contract shall be the sole responsibility of the Supplier, and shall be borne entirely by the Supplier.

- b. All taxes, duties, and related charges within the geographical borders of **[insert country]**, to which the Supplier becomes liable in connection with the materials and services delivered under this contract shall be the sole responsibility of the Government of **[insert country]**, and shall be borne entirely by the Government of **[insert country]**.

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