

Mandatory Reference: Series 300
File Name: 302mac_100903_CD33
New Reference: 10/09/2003
Effective Date: 09/24/2003

Department of State Section 579 Implementation – Taxation of U.S. Foreign Assistance

I. OVERVIEW

Effective Date: 9/24/2003

This reference provides USAID-specific policies and procedures for the implementation of the Department of State Guidance entitled “Section 579 Implementation (Taxation of U.S. Foreign Assistance)–Guidance Text)” at <http://www.state.gov/m/rm/c10443.htm>.

II. PRIMARY RESPONSIBILITIES

Effective Date: 9/24/2003

a. Contracting and Agreement Officers are responsible for inserting the appropriate clause in contracts, grants, and other agreements.

b. The Office of Financial Management/Cash Management and Payment Division (FM/CMP) and Missions are responsible for receiving from contractors, recipients and others the reports on unreimbursed VAT or custom duties (“foreign taxes”). FM/CMP will provide the amounts collected centrally in Washington to Mission controllers for inclusion in the Embassy Interim and Final reports. The Missions are responsible for designating the office responsible for receiving reports for coordinating with the Embassy on the Embassy Report.

c. Contracting Officers (CTOs) are responsible for ensuring that contractors and other recipients submit the required forms to the Embassy, Mission or FM/CMP.

III. REQUIRED REPORTING CLAUSE

Effective Date: 9/24/2003

a. Except as set forth in section IV of this reference, the Contracting or Agreement Officer must insert the following clause in all new USAID agreements (including Strategic Objective Grant Agreements (SOAGs)/Limited Scope Grant Agreements (LSGAs), country contracts, USAID direct contracts, grants and cooperative agreements (including public international organization (PIO) grants)), that obligate or subobligate FY 2003 or later funds. The Contracting or Agreement Officer must add the clause to old agreements when they are modified to add FY 2003 or later funds:

Reporting of Foreign Taxes

- (a) Final and Interim Reports. The [contractor/recipient] must annually submit two reports:
- (i) an interim report by November 17; and
 - (ii) a final report by April 16 of the next year.
- (b) Contents of Report. The reports must contain:
- (i) Contractor/recipient name.
 - (ii) Contact name with phone, fax and email.
 - (iii) Agreement number(s).
 - (iv) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year. NOTE: For fiscal year 2003 only, the reporting period is February 20, 2003 through September 30, 2003.
 - (v) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance is to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if an assistance program for Lesotho involves the purchase of commodities in South Africa using foreign assistance funds, any taxes imposed by South Africa would not be reported in the report for Lesotho (or South Africa).
 - (vi) Any reimbursements received by the [Contractor/Recipient] during the period in (iv) regardless of when the foreign tax was assessed plus, for the interim report, any reimbursements on the taxes reported in (iv) received by the recipient through October 31 and for the final report, any reimbursements on the taxes reported in (iv) received through March 31.
 - (vii) The final report is an updated cumulative report of the interim report.
 - (viii) Reports are required even if the contractor/recipient did not pay any taxes during the report period.
 - (ix) Cumulative reports may be provided if the contractor/recipient is implementing more than one program in a foreign country.
- (c) Definitions. For purposes of this clause:
- (i) "Agreement" includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.
 - (ii) "Commodity" means any material, article, supply, goods, or equipment.
 - (iii) "Foreign government" includes any foreign governmental entity.
 - (iv) "Foreign taxes" means value-added taxes and custom duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.
- (d) Where. Submit the reports to: [insert address and point of contact at the Embassy, Mission or FM/CMP as appropriate. see b. below] [optional with a copy to]
- (e) Subagreements. The [contractor/recipient] must include this reporting requirement in all applicable subcontracts, subgrants and other subagreements.

(f) For further information see <http://www.state.gov/m/rm/c10443.htm>.

b. The clause may require the reports be submitted to the Embassy, the Mission or FM/CMP. For Mission-funded agreements or agreements with activities in one country the clause can identify the specific name and address of the individual designated to receive the report. Missions can receive the reports and forward them to the Embassy or Missions can require the reports to be submitted directly to the Embassy and can provide for a copy to be sent to the Mission. It is the Mission's responsibility for designating the office in the Mission to receive the reports and to coordinate with the Embassy on compilation of the Embassy reports. For USAID agreements issued in USAID/W, if the activity will be carried out in one or a few countries, it is the responsibility of the requesting office to contact the Mission to obtain the name and address of the individual at post designated to receive the report and provide the information to the Contracting/Agreement Officer. For agreements with activities in several countries, the reports may be sent to FM/CMP, who will forward the information to the Missions for inclusion in their Embassy reports.

c. The clause can be modified as appropriate for formatting and other concerns, e.g. country contracts under SOAGS.

d. To the maximum extent practicable, contracting and agreement officers should attempt to negotiate inclusion of the reporting clause into agreements and amendments entered into earlier in FY 2003.

e. The clause need not be included in purchase orders, credit card purchase and other agreements where the Mission or other paying office can tell from the payment documents the amount of foreign taxes to be included in the Embassy reports.

f. For 632(a) transfers and allocations and 632(b) and other interagency obligating agreements, the performing agency (not USAID) is responsible for complying with the State Guidance, unless USAID agrees otherwise. The agreements should state that the receiving agency is responsible for complying with the State Guidance so that there is no issue. Note that transfers or allocations from other USG agencies TO USAID of funds not appropriated in foreign operations appropriations acts are not covered by this guidance.

IV. EXCEPTIONS TO REPORTING REQUIREMENT

Effective Date: 9/24/2003

Reporting is not required for the following:

a. Agreements funded with Operating Expense, Pub. L. 480 funds, or trust funds;

b. Agreements where there are no commodity transactions in a foreign country over the de minimis amount of \$500; and

c. Agreements which do not fund specific goods and services. Some examples are: a fixed-price contract or fixed-obligation grant, a cash transfer or non-project assistance grant to a foreign government; a general contribution to a public international organization which does not identify in the budget specific goods and services for USAID funding; loan guarantees (e.g., Development Credit Authority agreements); or agreements with intermediate credit institutions.

d. Transfers or allocations from other USG agencies TO USAID of funds not appropriated in foreign operations appropriations acts.

V. TAX Clauses SOAGS/LSGAS

Effective Date: 9/24/2003

The tax clauses in [ADS 350](#) go well beyond the requirements of the State guidance and are to be used. Do not use the sample clauses in the Department of State guidance in SOAGs or LSGAs.

VI. Tax Clauses for Framework Bilaterals

Effective Date: 9/24/2003

Missions should consult with the Embassy on the feasibility of amending existing framework bilateral agreements (Section III.A. of the State Guidance). The following is a sample tax clause that reflects current USAID practice which goes beyond what is required by Section 579:

**Framework Bilateral
ARTICLE 5
PRIVILEGES AND EXEMPTIONS**

In order to assure the maximum benefits to the people of [Country] from the assistance to be furnished hereunder whether initiated before or after the effective date of this Agreement:

1. Any supplies, materials, equipment, goods, property, services or funds introduced into or acquired in [Country] by the Government of the United States, or by any person or entity (including but not limited to contractors and grantees) financed by the Government of the United States, as part of, or in conjunction with, the assistance provided hereunder, are exempt from any taxes on ownership or use of property and any other taxes, investment or deposit requirements, and currency controls in [Country]. The import, export, purchase, use or disposition of any such supplies, materials, equipment, goods, property, services or funds in connection with such assistance are exempt from any tariffs, customs duties, import and export taxes, taxes on acquisition, rental or disposition of real or personal property, value-added taxes and other taxes or similar charges in [Country]. No tax (whether in the nature of an income, profits, business, rent, value-added, sales or other tax, duty, or fee of whatever nature, except fees for specific services rendered) shall be imposed by the Government of [Country] in connection with work performed under this Agreement upon any person or entity (including but not limited to contractors and grantees, and sub-contractors and sub-grantees) financed by the Government of the United States under the assistance furnished hereunder.

2. All personnel (and their families), except citizens and permanent residents of [Country], who the Government of the United States or any agency thereof, employs (whether by direct hire, contract or other arrangement) or finances (whether by contract, grant or otherwise with any person or entity) and who are present in [Country] to perform work in connection with this Agreement are exempt from:

(a) income and social security taxes levied under the laws of [Country] with respect to income derived from assistance programs;

(b) taxes (including but not limited to, sales or value-added taxes) on residential leases and the acquisition, ownership, use, or disposition of personal movable property (including vehicles) and services or funds intended for their own use; and

(c) customs, import and export duties on all personal goods, effects (including vehicles), equipment, supplies, services or funds imported into [Country] for their own use, and from all other duties and fees of whatever nature, except fees for specific services rendered.

3. The Government of [Country] will issue expeditiously any import licenses required for supplies, materials, equipment, goods or property imported under this Agreement and will assist, where appropriate, in expediting their movement through port and transportation facilities and their clearance through customs.

4. The Government of [Country] will issue expeditiously any other documentation necessary to facilitate the implementation of programs, projects or activities funded under any assistance being provided in connection with this Agreement, including, but not limited to, visas required for individual employees and their families, work permits, and the registration, under [Country] law, of non-governmental organizations.

5. The provisions of this Article V will apply also to assistance funded by the Government of the United States of America occurring in or transiting through [Country] intended to assist countries in the region].