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PAGE 01 STATE 127905 082329Z ORIGIN PER-01

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TO ALL DIPLOMATIC AND CONSULAR POSTS

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PAGE 02 STATE 127905 082329Z

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INFORM CONSULS, BONN FOR NPSU, MOSCOW PASS TO VLADIVOSTOK

E.O. 12958: N/A

TAGS: AFSN, AFIN, AMGT, APER, KICA, KSEP

SUBJECT: FSN INCOME TAX AND LOCAL SOCIAL SECURITY PAYMENTS

FROM PER/OE

REF: A) 95 STATE 271465; B) 96 STATE 215670; C) 96 STATE 75459

1. SUMMARY: THIS CABLE PROVIDES GUIDANCE ON HOW THE VIENNA CONVENTION AND US REGULATIONS REQUIRE US EMBASSIES TO

HANDLE HOST COUNTRY INCOME AND SOCIAL SECURITY TAX ISSUES

AS THEY APPLY TO OUR LOCALLY EMPLOYED STAFF ("LES") OTHER THAN "ELIGIBLE FAMILY MEMBERS".

2. THIS CABLE PROVIDES GUIDANCE ON THE APPLICABILITY OF

LOCAL TAX LAWS TO THE LOCALLY EMPLOYED STAFF OF U.S.

DIPLOMATIC MISSIONS. POSTS SHOULD EXAMINE EXISTING PROCEDURES TO BRING PRACTICES IN LINE WITH THE INSTRUCTIONS CONTAINED IN THIS MESSAGE. MUCH OF THIS GUIDANCE ON THE SUBJECT HAS NOT BEEN DISTRIBUTED BEFORE. THUS, THIS CABLE SHOULD BE DISTRIBUTED TO AGENCY HEADS AND A COPY RETAINED IN POST'S RECORDS UNTIL THESE GUIDELINES ARE INCLUDED IN A FUTURE ISSUANCE OF 3 FAM. THESE GUIDELINES APPLY TO FSN AND PSC/PSA EMPLOYEES OF ALL AGENCIES AT POST EXCEPT THOSE

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PAGE 03 STATE 127905 082329Z

WHO ARE EMPLOYED WITHIN THE MISSION AS "ELIGIBLE FAMILY MEMBERS".

3. POSTS ENCOUNTERING TAX PROBLEMS NOT COVERED BY THESE GUIDELINES ARE ENCOURAGED TO CONTACT PER/OE FOR GUIDANCE. WE RECOGNIZE THAT TAXATION QUESTIONS ARE OFTEN COMPLEX AND

SENSITIVE. ADDITIONALLY, THESE ISSUES FREQUENTLY CUT ACROSS MAAY ORGANIZATIONAL ELEMENTS AND REQUIRE A BROAD SCALE REVIEW TO FORMULATE AN APPROPRIATE RESPONSE.

#### 4. LOCAL INCOME TAX

THE RULES WE FOLLOW REGARDING WITHHOLDING OR PAYMENT OF TAXES OWED BY OUR LOCALLY EMPLOYED STAFF (FSN, PSA, PSC,

ROCKEFELLERS, PITS) ARE PRESCRIBED UNDER INTERNATIONAL LAW. CONSISTENT WITH ARTICLES 23 AND 34 OF THE VIENNA DIPLOMATIC CONVENTION AND BASED ON THE PREMISE THAT GOVERNMENTS GENERALLY DO NOT TAX OTHER GOVERNMENTS FOR THE CONDUCT OF BILATERAL DIPLOMATIC RELATIONS, THESE EMPLOYEES SHOULD BE CONSIDERED BY THE HOST COUNTRY AS THOUGH THEY WERE "SELF

EMPLOYED" FOR TAX PURPOSES. THIS CONCEPT CREATES A DIRECT RELATIONSHIP BETWEEN OUR LES EMPLOYEES AND THEIR COUNTRY'S

TAX OFFICIALS.

5. AS SUCH, UNLESS THERE IS A BILATERAL AGREEMENT OR ARRANGEMENT APPROVED BY THE DEPARTMENT WHICH IS

SPECIFICALLY TO THE CONTRARY, THE EMPLOYEE IS RESPONSIBLE FOR PAYING HOST COUNTRY INCOME/SALARY TAXES, AND PAYING THESE TAXES REMAINS A MATTER STRICTLY BETWEEN THE HOST

COUNTRY AND OUR LOCALLY HIRED EMPLOYEES. (SEE 3 FAM

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PAGE 04 STATE 127905 082329Z

7224.2-1 AND 3 FAM 7371.) NEITHER THE EMBASSY AS A WHOLE NOR INDIVIDUAL AGENCIES SHOULD WITHHOLD OR PAY

INCOME/SALARY TAXES DIRECTLY TO THE HOST GOVERNMENT.

6. THE US MISSIONS MUST ALSO NOT CONDONE OR TAKE ANY ACTION

WITH THE INTENT OF ABETTING LOCAL TAX EVASION. INSTEAD, POSTS SHOULD ENSURE THAT EMPLOYEES ARE FULLY AWARE OF THEIR TAX OBLIGATIONS AND THAT USG REGULATIONS SPECIFICALLY REQUIRE THAT ALL EMPLOYEES MEET THEIR JUST FINANCIAL OBLIGATIONS.

7. AS A POINT OF CLARIFICATION, POSTS SHOULD UNDERSTAND THAT, GENERALLY SPEAKING, POSTS SHOULD NOT DRAW PARALLELS BETWEEN THE STATUS OF INTERNATIONAL ORGANIZATIONS AND USG ENTITIES OVERSEAS, AS THE GOVERNING TREATIES AND OTHER LAWS MAY PRESCRIBE DIFFERENT LEGAL REGIMES FOR FOREIGN MISSIONS

COMPARED TO INTERNATIONAL ORGANIZATIONS. IN ADDITION, WHILE LOCALLY EMPLOYED STAFF ARE TO BE CONSIDERED "SELFEMPLOYED" FOR TAX PURPOSES, THEY ARE STILL CONSIDERED AS EMPLOYEES OF THE MISSION UNDER OTHER LOCAL LAWS.

8. HERE IS WHAT WE CAN/CAN DO: POSTS CAN ASSIST EMPLOYEE PAYMENTS OF INCOME/SALARY TAXES THROUGH VOLUNTARY EMPLOYEE-INITIATED PAYROLL ALLOTMENTS TO A FINANCIAL INSTITUTION BY POST FROM WHICH EMPLOYEES MAY PAY INCOME

TAXES TO THEIR GOVERNMENT. THIS CAN BE DONE WITHOUT THE NEED

FOR A BILATERAL AGREEMENT OR DEPARTMENTALLY - APPROVED

ARRANGEMENT TO PROVIDE THE TERMS FOR THIS PROCESS. (SEE 3  
FAM 7224.2-1)

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PAGE 05 STATE 127905 082329Z 9. LOCAL SOCIAL SECURITY TAX

SECTION 408(A) OF THE FOREIGN SERVICE ACT OF 1980, AS AMENDED,  
STATES THAT THE COMPENSATION PLANS TO BE ESTABLISHED BY THE  
SECRETARY FOR FSNS SHALL, TO THE EXTENT CONSISTENT WITH THE  
PUBLIC INTEREST, BE BASED UPON PREVAILING WAGE RATES AND  
COMPENSATION PRACTICES, INCLUDING

PARTICIPATION IN LOCAL SOCIAL SECURITY SYSTEMS. FOR ISSUES OF  
EXEMPTION OR WITHDRAWAL FROM LSSS, SEE REF B (96 STATE 215670)

10. WITHOUT PREJUDICE TO ITS POSITION UNDER INTERNATIONAL LAW  
(SEE REF B), UNDER THE 408(A) AUTHORITY, THE USG CAN  
VOLUNTARILY PAY EMPLOYER CONTRIBUTIONS THROUGH THE  
PAYROLL SYSTEM DIRECTLY TO A LOCAL SOCIAL SECURITY SYSTEM  
(LSSS)

FOR PARTICIPATING EMPLOYEES. ALTERNATIVELY, IF AUTHORIZED IN  
THE LOCAL COMPENSATION PLAN, THE USG CAN REIMBURSE  
EMPLOYEES FOR AN AMOUNT EQUIVALENT TO THE EMPLOYER'S  
CONTRIBUTION TO LSSS IF DIRECTLY PAID BY THE EMPLOYEE AS A  
SELF-EMPLOYED PERSON.

11. PAYMENTS INTO THE LSSS MUST BE DONE ACCORDING TO THE  
RULES OF THAT SYSTEM INCLUDING THE LSSS DEFINITIONS OF BASE  
SALARY AND OTHER FORMS OF INCOME (BONUSES AND ALLOWANCES)  
THAT ARE SUBJECT TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS.

12. SOME LOCAL SOCIAL SECURITY SYSTEMS LIMIT COVERED  
EARNINGS TO BASE PAY ONLY AND/OR HAVE A CAP ON COVERED

EARNINGS IN ORDER TO KEEP BENEFIT PAYMENTS LOW. ON THE OTHER  
HAND, MOST INCOME TAX SYSTEMS DEFINE TAXABLE INCOME

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ON AN ALL INCLUSIVE BASIS WITHOUT LIMIT, THAT IS, ALL CASH INCOME, IN ORDER TO MAXIMIZE TAX REVENUES. BENEFITS

PROVIDED IN-KIND, SUCH AS MEALS OR ACTUAL TRANSPORTATION, MAY ALSO BE TAXED ON THE BASIS OF IMPUTED CASH VALUES.

THUS, IT IS NOT UNUSUAL FOR THE DEFINITION OF LSSS COVERED EARNINGS TO DIFFER FROM THE DEFINITION OF TAXABLE INCOME.

### 13. REPORTING EMPLOYEE INFORMATION

REPORTING PAYROLL INFORMATION FOR INCOME TAX PURPOSES BY THE US MISSION IS DISCOURAGED. POST SHOULD CONSULT EARLIER

ALDAC GUIDANCE ON THIS SUBJECT (REF A). INFORMATION ON LOCAL HIRE EMPLOYEES, THEIR INCOME AND OTHER PERSONAL DATA, CAN ONLY BE SHARED WITH THE HOST GOVERNMENT IF AND WHEN SPECIFICALLY AUTHORIZED BY THE COM.

14. THE DEPARTMENT STRONGLY RECOMMENDS THAT THE EMPLOYEES' EARNINGS AND LEAVE STATEMENTS PROVIDED BY THE PAYROLL

SYSTEM BE USED BY THE EMPLOYEE, IF REQUIRED, TO DOCUMENT

EARNED SALARIES AND BENEFITS TO THE HOST COUNTRY. IF THE EMPLOYEE EARNS BENEFITS PAID OUTSIDE THE PAYROLL SYSTEM WHICH ARE CONSIDERED TAXABLE LOCALLY, SUCH AS CASH AWARDS, THE EMPLOYEE WOULD BE RESPONSIBLE FOR REPORTING THESE

BENEFITS, AS WELL. THE DEPARTMENT ALSO STRONGLY RECOMMENDS THAT ANY EARNINGS DOCUMENTS BE SUBMITTED TO THE HOST GOVERNMENT BE SIGNED AND PRESENTED BY THE EMPLOYEE, NOT BY POST.

15. IF DESPITE THE ABOVE RECOMMENDATION ANY SUCH REPORTS

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ARE FURNISHED BY POST, THEIR ACCURACY MUST BE CERTIFIED BY COM. IF POST ADDS ANYTHING TO THE EARNINGS AND LEAVE STATEMENT, COM CERTIFICATION IS SIMILARLY REQUIRED. EITHER INSTANCE CARRIES WITH IT A WORK LOAD FOR THE ADMIN OFFICER AT POST AND POTENTIAL LIABILITY FOR ANY ERRORS WHICH MIGHT HAVE BEEN MADE. THE EMBASSY ENJOYS INVIOABILITY OF ITS ARCHIVES UNDER INTERNATIONAL LAW, AND REPORTING PAYROLL INFORMATION IS NOT RECOMMENDED EXCEPT WHEN NECESSARY TO GREATLY FACILITATE GOVERNMENTAL RELATIONS AND WHEN IT CAN BE DONE WITHOUT ADVERSELY AFFECTING THE SAFETY AND PRIVACY OF LOCAL HIRE EMPLOYEES. (REQUIRING EMPLOYEES TO PAY TAXES IS NOT/NOT CONSIDERED AN ADVERSE IMPACT ON THE EMPLOYEES.)

#### 16. LOCAL TAX EXEMPTIONS

LOCAL HIRES OF DIPLOMATIC ENTITIES ARE RARELY EXEMPTED BY THE HOST GOVERNMENT FROM LIABILITY FOR INCOME TAXES. AT PRESENT, THE DEPARTMENT IS AWARE OF TWO COUNTRIES (EGYPT AND SWEDEN) THAT EXEMPT ALL LOCALLY EMPLOYED STAFF OF DIPLOMATIC MISSIONS FROM INCOME TAX. FOR LOCALLY HIRED EMPLOYEES IN THESE TWO COUNTRIES, THE DEPARTMENT HAS AUTHORIZED LOCAL COMPENSATION PLANS WITH SALARIES AT THE NET AFTER TAX (LOWER) LEVEL, IN ORDER TO ENSURE OUR EMPLOYEES' NET TAKE HOME PAY IS EQUIVALENT TO THEIR PEERS EMPLOYED OUTSIDE DIPLOMATIC MISSIONS. THIS IS THE POLICY THAT THE DEPARTMENT WILL CONTINUE TO FOLLOW IN OTHER SITUATIONS WHERE A HOST GOVERNMENT EXEMPTS LOCAL HIRES OF THE USG FROM LIABILITY FOR TAXES.

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PAGE 08 STATE 127905 082329Z

17. IN SOME COUNTRIES, SOME INDIVIDUAL LOCALLY HIRED EMPLOYEES MAY BE EXEMPT FROM HOST GOVERNMENT TAXES AS A RESULT OF CIRCUMSTANCES BEYOND THE CONTROL OF THE USG, SUCH AS THE CITIZENSHIP OR PLACE OF RESIDENCE OF THE EMPLOYEE.

NO ADJUSTMENT IS MADE TO THE LOCAL COMPENSATION PLAN TO TAKE ACCOUNT OF THESE SITUATIONS.

18. MANY "INDIVIDUALLY TAX EXEMPT" EMPLOYEES ARE EXCLUDED FROM LSSS BENEFIT COVERAGE AS WELL, SUCH AS NONE HOST COUNTRY CITIZENS. AGAIN NO ADJUSTMENT TO THE LOCAL

COMPENSATION PLAN IS MADE IN THESE INDIVIDUAL CASES. (SEE 96 STATE 75459)

19. WHEN A HOST GOVERNMENT INTRODUCES NEW INCOME TAXES, THE DEPARTMENT LOOKS TO PREVAILING PRACTICE TO DETERMINE IF LOCAL EMPLOYERS ADJUST SALARIES OF LOCAL HIRES TO OFFSET

THE NEW TAXES. WHEN IT IS DETERMINED THAT LOCAL EMPLOYERS INCREASE SALARIES DUE TO NEW TAXES, DEPARTMENT MAY THEN AUTHORIZE ADJUSTED SALARIES FOR US MISSION EMPLOYEES ACCORDINGLY, BUDGET PERMITTING.

20. IF LOCALLY HIRED EMPLOYEES ARE EXEMPT FROM ANY PORTION OF TAXATION, OR SHOULD THEY BECOME SUBJECT TO NEW TYPES OF TAXATION, THIS SHOULD BE ACCURATELY REPORTED TO PER/OE BY POST.

21. UNITED STATES TAXES

LOCALLY HIRED EMPLOYEES WHO ARE US CITIZENS OR US PERMANENT RESIDENT ALIENS MUST ALSO MEET ALL THEIR TAX OBLIGATIONS TO

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PAGE 09 STATE 127905 082329Z

THE US FEDERAL GOVERNMENT AS WELL AS THEIR OBLIGATIONS

UNDER ANY APPLICABLE STATE, COUNTY OR MUNICIPAL GOVERNMENT



INCOME TAX LAWS. POSTS MAY FIND THE FOLLOWING IRS PUBLICATIONS TO BE OF ASSISTANCE:

PUBL 15-A: EMPLOYERS SUPPLEMENTAL TAX GUIDE

PUBL 54: TAX GUIDE FOR US CITIZENS & RESIDENT ALIENS ABROAD  
FORM TDF 90-22.1: REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

ANY QUESTIONS ABOUT THE OBLIGATIONS SHOULD BE ADDRESSED TO THE RESPECTIVE TAX AUTHORITY.

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