

2 FAM 260

TAX EXEMPTIONS ACCORDED U.S. REPRESENTATIVES ABROAD

(CT:GEN-323; 12-6-2005)
(Office of Origin: L/DL)

2 FAM 261 GENERAL

(CT:GEN-323; 12-6-2005)

The Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations (“the Vienna Conventions”) reflect long-standing principles of international law that one government does not tax another. In light of this principle, the Department considers any taxation of U.S. posts or accredited personnel to be in contravention of international treaty obligations. To the extent possible, the Department seeks to obtain total relief from taxation for U.S. posts and their diplomatic agents, consular officers, and administrative and technical staff from local, regional, and/or federal foreign government taxes.

2 FAM 262 AUTHORITY TO SEEK TAX RELIEF

(CT:GEN-323; 12-6-2005)

- a. Posts should designate an officer responsible to monitor and/or implement diplomatic tax relief. The designated officer acts in liaison with representatives of concerned U.S. Government agencies.
- b. Each post should make its best efforts to obtain tax relief through discussions with the government of the receiving state.
- c. Tax relief, whether through reimbursement or point-of-purchase exemption, is based on all or any of the following sources of authority:
 - (1) International treaties and conventions
 - (a) Vienna Convention on Diplomatic Relations (VCDR), Articles 23, 28, 34, and 37;
 - (b) Vienna Convention on Consular Relations (VCCR), Articles 32, 49, and 72; and/or
 - (c) Other applicable agreements, such as bilateral consular conventions or friendship, commerce and consular rights

agreements, or those concluded under authority of the Diplomatic Relations Act, 22 U.S.C. 254(a).

- (2) Reciprocity, where applicable; and/or
 - (3) Customary international law or practice.
- d. For further guidance, please contact the Diplomatic Tax and Customs Program in the Office of Foreign Posts, DS/OFM/TC. TC assists posts' best efforts to ensure proper tax relief and to negotiate with foreign governments for tax relief. (See 1 FAM 264.2-4.)

2 FAM 263 TAXES ELIGIBLE FOR DIPLOMATIC TAX RELIEF

(CT:GEN-323; 12-6-2005)

A charge eligible for diplomatic tax relief must be a tax, not a fee. The Vienna Conventions do not provide tax relief for "services rendered" fees. (VCDR Art. 34(e); VCCR Art. 49(1)(e)). The determination of whether a charge is a "fee" or a "tax" is not based on the name given by the governmental entity. The following describes:

Tax: A tax raises revenue for a taxing jurisdiction. Common examples of taxes include charges representing a percentage or ad valorem charges because they do not correlate to the cost or value of the service. Taxes are eligible for diplomatic tax relief under the Vienna Conventions.

Fee: A fee is a payment directly linked to a service or commodity provided. Common examples of fees include sewage, electricity, airport, registration, service, and pet license taxes. In order to qualify as a fee for "services rendered," the amount charged must be itemized and directly correlate to the actual cost of the service or support the continued provision of the service, e.g., a charge related to volume such as gallons of water or kilowatts of electricity. Fees for "services rendered" are ineligible for diplomatic tax relief under the Vienna Conventions.

Note: For assistance in determining whether a charge is a tax or fee, please contact DS/OFM/TC.

2 FAM 264 CONSUMPTION TAXES (VALUE ADDED TAX & SALES)

(CT:GEN-323; 12-6-2005)

A consumption tax is a charge on the acquisition of goods and services paid by the final consumer. Common examples of consumption taxes include Value Added Tax (VAT/IVA), Goods and Services Tax (GST), and sales tax.

2 FAM 264.1 Identification of Consumption Taxes

(CT:GEN-323; 12-6-2005)

All consumption taxes can generally be identified in the following ways:

- (1) Consumption taxes are direct taxes that are ultimately borne by the final consumer.
- (2) Consumption taxes are not assessed against companies. This type of taxation is charged as a percentage of a good's price, which means that the actual tax burden is visible at each stage in the production and distribution chain.

2 FAM 264.2 Tax on Utility Services

(CT:GEN-323; 12-6-2005)

Purchases of utility services may be subject to consumption taxes or other forms of taxation, including local or municipal levies. Utilities services include but are not limited to, electricity, heating fuel oil, telephone/cellular services, Internet services, water, and cable/satellite television. All posts should assert their right to benefit from the relief of such taxes. However, fees or surcharges may also be imposed on such transactions. Such fees may be imposed to directly support the infrastructure the utility provider uses in the distribution of its services. In general, such fees are ineligible for relief.

2 FAM 264.3 Tax on Gasoline

(CT:GEN-323; 12-6-2005)

Purchases of gasoline (petrol) or diesel fuels may be subject to consumption taxes or other special local or municipal levies. All posts should assert their right to benefit from the relief of such taxes.

2 FAM 264.4 Hotel and Restaurant Taxes

(CT:GEN-323; 12-6-2005)

Purchases at hotels and restaurants may be subject to consumption taxes or other special local or municipal levies. All posts should assert their right to benefit from the relief of such taxes. However, fees or surcharges may also be imposed on such transactions. An example of this is commonly referred to as a "tourism tax" or "tourism fee/surcharge." In many cases, a tourism tax is essentially a service fee and is therefore generally ineligible for relief.

2 FAM 264.5 Contract Taxes

(CT:GEN-323; 12-6-2005)

Purchases of services or materials provided by a contractor may be subject to consumption taxes or other special local or municipal levies. For example, it is common for VAT to be imposed on security guard contracts. All posts should assert their right to benefit from the relief of such taxes. Some governments may also impose a “works contract tax.” Generally, this tax is imposed directly on the contractor as a form of corporate income tax. In the majority of cases, given the indirect manner in which this tax is levied, posts will not be able to obtain relief from such charges.

2 FAM 264.6 Taxes on Construction/Renovation Projects

(CT:GEN-323; 12-6-2005)

Purchases of goods and services associated with construction or renovation projects are generally eligible for tax relief. Such purchases may be subject to consumption taxes, “works contract tax,” or other local or municipal levies. Given that contracted agents carry out most construction or renovation projects, it is important for posts to ensure the availability of tax relief and the procedure through which such relief will be extended on construction/renovation-associated purchases in advance of any proposal requests. It is highly recommended that posts consult with OFM/TC while planning these projects.

2 FAM 265 REAL PROPERTY TAX EXEMPTION

2 FAM 265.1 Real Property Owned/Leased by the U.S. Government

(CT:GEN-323; 12-6-2005)

Posts should seek tax exemptions, to the extent possible, on properties owned or leased by the U.S. Government. See 15 FAM 167 for tax exemptions on U.S. Government-owned or -leased property.

2 FAM 265.2 Real Property Owned by Post Members

(CT:GEN-323; 12-6-2005)

In accordance with the Vienna Conventions on Diplomatic and Consular

Relations (VCDR), real property owned by individual post members is generally subject to taxation.

2 FAM 266 PERSONAL INCOME TAX

2 FAM 266.1 Official Wages

(CT:GEN-323; 12-6-2005)

The Vienna Conventions on Diplomatic and Consular Relations (VCDR) generally authorize an exemption from host-country national, state, and local income tax requirements on the wages, fees, or salary of accredited employees of a U.S. post (i.e. diplomatic agents, consular agents, and administrative & technical staff members) that are received as compensation for official service to the U.S. government or international organization, as long as that individual is not a citizen or permanent resident of the receiving state.

2 FAM 266.2 Non-Official Earnings

(CT:GEN-323; 12-6-2005)

In general, accredited employees of a post (i.e. diplomatic agents, consular agents, and administrative & technical staff) as well as their dependents are not entitled to an exemption from federal, state, or local income tax requirements on the basis of diplomatic or consular status for non-official income or earnings received in the principal employee's country of assignment. Such earnings include, but are not limited to, interest or investment income, capital gains, and gambling winnings. If a bilateral income tax agreement exists between the United States and a foreign country, such earnings may be exempt from taxation or eligible for reduced rates. Individuals interested in determining whether such a bilateral agreement exists should contact the Internal Revenue Service (IRS) or a tax professional.

2 FAM 267 TRACKING TAX REIMBURSEMENTS AND EXEMPTIONS

(CT:GEN-323; 12-6-2005)

Each post is responsible for tracking tax reimbursements and exemptions. To properly account for tax relief privileges, please review 4 FAM and 6 FAH 5 for guidance.

2 FAM 268 MISUSE OF TAX RELIEF PRIVILEGES

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The Department reminds all chiefs of mission, employees and contractors that they are required to comply with all applicable host country tax laws and regulations. Violations of these laws and regulations can constitute a serious offense and should be reported to the Inspector General.

2 FAM 269 UNASSIGNED