



Department of Defense INSTRUCTION

NUMBER 5100.64

March 30, 2006

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GC, DoD

SUBJECT: DoD Foreign Tax Relief Program

- References:
- (a) DoD Directive 5100.64, "DoD Foreign Tax Relief Program," June 12, 1979 (hereby canceled)
 - (b) Deputy Secretary of Defense Memorandum, "DoD Directives Review -- Phase II," July 13, 2005
 - (c) DoD Directive 5145.01, "General Counsel of the Department of Defense," May 2, 2001
 - (d) DoD ~~Directive Instruction~~ 8910.1, "~~Management and Control of Information Requirements Information Collection and Reporting,~~" ~~June 11, 1993~~ *March 6, 2007*
 - (e) through (h), see Enclosure 1

1. PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction according to the guidance in Reference (b) and the authority in Reference (c).

1.2. Defines the tax relief policy of the Department of Defense, designates the organizational element that has continuing responsibility for the overall direction of the DoD Foreign Tax Relief Program, delineates the responsibilities of other organizational elements to implement and monitor the program, and requires the preparation and maintenance of specified foreign country tax law studies to help institute statistical reporting procedures.

2. APPLICABILITY

This Instruction applies to:

2.1. The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other

organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. The policy set forth in this Instruction applies to appropriated and nonappropriated funds of the Department of Defense that are subject to taxes imposed by:

2.2.1. Foreign countries in which U.S. Military Forces are regularly stationed or to which they are regularly deployed (other than attaché and other military personnel assigned to a U.S. diplomatic mission); and

2.2.2. Any foreign countries in which most U.S. defense activities serve the common defense or overall military security of the country.

2.3. The policy set forth in this Instruction also applies to Security Assistance and related expenditures in all countries.

3. DEFINITIONS

3.1. Relief. Any method, technique, or procedure by which the ultimate economic burden of a tax on DoD funds may be avoided or otherwise remedied, such as exemption, refund, or drawback.

3.2. Tax. All direct or indirect foreign customs duties, import and export taxes, excises, fees and other charges imposed at the national, local, or intermediate level of a foreign country other than charges for services requested and received, regardless of how a charge is denominated in foreign law or regulation. Taxes include, but are not limited to, purchase tax, sales tax, use tax, gross receipts tax, stamp tax, transfer tax, transaction tax, turnover tax, value added tax, service tax, trade tax, business tax, license tax, transportation tax, circulation tax, luxury tax, possession tax, production tax, registration tax, consumption tax, gasoline tax, real property tax, personal property tax, and gross income tax.

4. POLICY

It is DoD policy to secure, to the maximum extent possible, effective relief from all foreign taxes wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the Department of Defense (including Security Assistance and related appropriations) or under the control of its nonappropriated fund activities. Tax relief shall be considered impractical when the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a de minimis matter, or when the administrative burden of securing effective relief from a tax in a particular instance is out of proportion to the amount of the relief obtained.

5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense shall:

5.1.1. Provide overall supervision and direction of the DoD Foreign Tax Relief Program.

5.1.2. Resolve any significant issues relating to the program.

5.1.3. Designate those countries that are within the scope of subparagraph 2.2.2. of this Instruction.

5.1.4. Direct the preparation of country tax law studies for countries not within the scope of subparagraph 2.2.1. or 2.2.2. of this Instruction.

5.1.5. Designate the DoD member of the Inter-Agency Committee on Foreign Tax Relief, established by the Department of State.

5.1.6. Ensure that information requirements are valid, accurate, and essential to the supervision and direction of the DoD Foreign Tax Relief Program, in accordance with DoD Directive 8910.1, Reference (d), and DoD 8910.1-M, Reference (e).

5.2. The Under Secretary of Defense (Comptroller)/*Chief Financial Officer, Department of Defense* shall perform such fiscal functions as may be required to implement the DoD Foreign Tax Relief Program, including advice and assistance in the institution of procedures for collecting data, compiling reports, and performing internal audits.

5.3. The Under Secretary of Defense for Policy shall monitor the negotiation and conclusion of international agreements subject to the Secretary of Defense's approval authority under DoD Directive 5530.3 (Reference (f)), to ensure that such agreements are compatible with the policy set forth in this Instruction and any implementing guidance.

5.4. The Chairman, Defense Acquisition Regulatory Council, under the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall coordinate with the General Counsel of the Department of Defense before the issuance, amendment, or revision of any portion of DoD Directive 5000.35 (Reference (g)) (or any Regulation, Directive, circular, or other publication within the scope of Reference (g)) on the implementation of the DoD Foreign Tax Relief Program.

5.5. The Secretaries of the Military Departments and the Directors of the Defense Agencies shall issue Instructions or Regulations that charge a single office within the respective Military Department or Defense Agency (referred to as the "Cognizant Office") with continuing responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within such Military Department or Defense Agency. Such Instructions or Regulations shall delegate authority to the Cognizant Office commensurate with its responsibility.

5.6. The Commanders of the Combatant Commands shall:

5.6.1. Issue management procedures to guide and coordinate the administration of the DoD Foreign Tax Relief Program throughout their respective areas of responsibility, as appropriate.

5.6.2. Designate a single Military Commander for each foreign country that comes within the scope of subparagraph 2.2.1. or 2.2.2. of this Instruction. The designated Military Commander shall be the same designated under the procedures in paragraph 4.3. of DoD Directive 5525.1 (Reference (h)). The Designated Military Commander shall:

5.6.2.1. Make and maintain a current country tax law study in accordance with Enclosure 2 of this Instruction.

5.6.2.2. Be the single point of contact for U.S. contracting officers and activities for investigating and resolving specific matters that relate to the DoD Foreign Tax Relief Program within the country for which the Military Commander is designated and for forwarding major problems affecting that program through proper channels to the General Counsel of the Department of Defense.

5.6.2.3. Provide liaison with the responsible U.S. diplomatic mission on current tax relief problems and, where appropriate, with local foreign tax authorities.

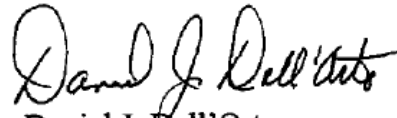
6. INFORMATION REQUIREMENTS

6.1. The reporting requirement in Enclosure 2 on submitting country tax law studies and revisions thereof is assigned Report Control Symbol DDS(D)1036.

6.2. Each January, the Heads of the Cognizant Offices shall furnish a summary of significant activities during the preceding year in implementation of the DoD Foreign Tax Relief Program to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Cognizant Office to discharge its responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within its Military Department or Defense Agency, and for circulating the information contained in country tax law studies to U.S. contracting officers and activities. The reporting requirement in this paragraph is assigned Report Control Symbol DDGC(A)1198.

6.3. Each January, each Combatant Commander shall furnish a summary of significant activities during the preceding year of administering the DoD Foreign Tax Relief Program to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Combatant Command to discharge its responsibility to supervise and coordinate the preparation and maintenance of country tax law studies. The reporting requirement in this paragraph is assigned Report Control Symbol DDGC(A)1199.

7. EFFECTIVE DATE. This Instruction is effective immediately.

A handwritten signature in black ink, appearing to read "Daniel J. Bell'Orto". The signature is written in a cursive, flowing style.

Daniel J. Bell'Orto
Acting General Counsel

Enclosures

- E1. References
- E2. Country Tax Law Studies

ENCLOSURE 1

REFERENCES

- (e) DoD 8910.1-M. "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (f) DoD Directive 5530.3, "International Agreements," June 11, 1987
- (g) DoD ~~Directive~~ *Instruction* 5000.35, "Defense Acquisition Regulations (DAR) ~~Management System,~~ *July 21, 2004 October 21, 2008*"
- (h) DoD Directive 5525.1, "Status of Forces Policy and Information," August 7, 1979

ENCLOSURE 2

COUNTRY TAX LAW STUDIES

E2.1.1. The taxes covered by each country tax law study shall be limited to those which, in the absence of tax relief, would affect or appear to affect U.S. Government expenditures, even as a de minimis matter. (All such taxes are hereafter referred to as "applicable taxes.") The formats of the studies for all countries shall be similar within each Combatant Command and designed to ease statistical reporting requirements. The studies shall be prepared and maintained so that U.S. contracting officers and activities may use the studies to reliably estimate the total amount of taxes applicable to any particular contract or purchase and the amount thereof for which tax relief is available.

E2.1.2. Each country tax law study shall consist of the following:

E2.1.2.1. A general survey of all applicable taxes, together with translations, as appropriate, of the salient features of the law or regulations imposing those taxes.

E2.1.2.2. For each applicable tax, a summary statement containing the tax name; its rate (or rates); the taxing authority (national, provincial, or municipal); the legal incidence of the tax (the nature of the taxpayer or other entity liable for paying the tax to the taxing authority under the law of the country); its description (including the base or bases on which the tax is imposed); the applicability of the tax to various types of contracts (supplies, services, or construction) when the tax is applicable to only one or several of such types of contracts; the applicability of the tax to the prime contract, as well as to any subcontracts or purchase orders issued by the prime contractor or subcontractor; the applicability of the tax to contractor and subcontractor personnel; the variation, if any, of the applicability of the tax depending upon the domicile of the contractor or contractor personnel, such as the United States, host country, or third country; any applicable exemptions or deductions of significance; and the method of collecting the tax.

E2.1.2.3. The basis upon which it is concluded that each applicable tax, in the absence of tax relief, would affect or appear to affect, U.S. Government expenditures; and any evidence of the degree to which its ultimate economic burden would, in the absence of tax relief, be borne by the U.S. Government rather than be absorbed by others.

E2.1.2.4. The substantive tax relief, if any, from each applicable tax that is available to the U.S. Government either by international agreements in force or under the tax law or other regulation of the country; the procedures that may be used to obtain any such relief; the requirement, if any, for issuing a tax exemption certificate by the military procuring agency or by an agency of the country to secure an exemption; the entitlement, if any, of the taxpayer to interest on any tax refund made by the host country; the credits, if any, that may be available against any other taxes otherwise payable by the taxpayer resulting from paying the tax under analysis; the approximate amount of the tax that should be involved in a particular case, if such may be estimated, taking into account the costs of filing a claim for refund by a contractor to warrant filing such a claim; and a brief narration of any significant problems that have occurred in attempting to obtain relief in particular cases.

E2.1.2.5. A conclusion as to the adequacy of current tax relief measures; and such recommendations as may be appropriate for more efficient implementation of the policy set forth in this Instruction.

E2.1.3. Appended to each country tax law study shall be a verbatim quotation of all provisions on tax relief afforded by the country that are contained in international agreements in force.

E2.1.4. One copy of each country tax law study shall be forwarded to the General Counsel of the Department of Defense and to each of the Cognizant Offices of the Military Departments and the Defense Agencies within 30 days after its approval by the designated Military Commander. The information contained in the studies shall be circulated by the Cognizant Offices to U.S. contracting officers and activities, when required.

E2.1.5. Country tax law studies shall be subject to continuing review. When there is a significant change in country tax laws, regulations, tax relief procedures, or in pertinent international agreements in force, the corresponding revision shall be promptly forwarded by the designated Military Commander to each of the offices referred to in E2.1.4.