



DoD INSTRUCTION 5100.64

DoD FOREIGN TAX RELIEF PROGRAM

Originating Component: Office of the General Counsel of the Department of Defense

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Approved by: Jennifer M. O'Connor, General Counsel

Purpose: This issuance, in accordance with the authority in DoD Directive 5145.01:

- Establishes the tax relief policy of the DoD.
- Designates the organizational element that has continuing responsibility of the overall direction of the DoD Foreign Tax Relief Program.
- Delineates the responsibilities of other organizational elements to implement and monitor the program.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to:

a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint 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 within the DoD.

b. Appropriated and nonappropriated funds of the DoD that are subject to taxes imposed by:

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

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

1.2. POLICY. It is DoD policy to secure, to the maximum extent practicable, effective relief from all foreign taxes. This policy applies wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the DoD (including security assistance and related appropriations) or under the control of its nonappropriated fund activities. However, in situations where the economic burden of a tax 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 greater than the amount of the relief likely to be obtained, tax relief will be considered impractical and will not be sought under the provisions of this issuance.

SECTION 2: RESPONSIBILITIES

2.1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DOD). The GC DoD:

- a. Supervises and directs the DoD Foreign Tax Relief Program.
- b. Resolves any significant issues relating to the DoD Foreign Tax Relief Program.

2.2. UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER, DEPARTMENT OF DEFENSE. The Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, performs any fiscal functions that may be required to implement the DoD Foreign Tax Relief Program, including providing advice and assistance in instituting procedures for collecting data, compiling reports, and performing internal audits.

2.3. UNDER SECRETARY OF DEFENSE FOR POLICY. The Under Secretary of Defense for Policy, in coordination with the GC DoD, monitors the negotiation and conclusion of international agreements subject to the Secretary of Defense's approval authority under DoD Directive 5530.3, to ensure that such agreements are compatible with the policy in this issuance and any implementing guidance.

2.4. DEFENSE ACQUISITION REGULATIONS COUNCIL DIRECTOR. Under the authority, direction, and control of the Director, Defense Procurement and Acquisition Policy, the Defense Acquisition Regulations Council Director coordinates with the GC DoD before issuing, amending, or revising any portion of DoD Instruction 5000.35 (or any regulation, directive, circular, or other publication within the scope of DoD Instruction 5000.35) on implementing the DoD Foreign Tax Relief Program.

2.5. SECRETARIES OF THE MILITARY DEPARTMENTS AND THE DIRECTORS OF THE DEFENSE AGENCIES AND THE DOD FIELD ACTIVITIES. The Secretaries of the Military Departments and the Directors of the Defense Agencies and the DoD Field Activities issue appropriate guidance that assigns to a single office within the respective organization the continuing responsibility for internally supervising and monitoring the implementation of the DoD Foreign Tax Relief Program.

2.6. GEOGRAPHIC COMBATANT COMMANDERS. The Geographic Combatant Commanders:

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

b. Designate a single military commander for each foreign country that comes within the scope of Paragraph 1.1.b. of this issuance. Within that foreign country, the designated military commander will:

(1) Be the single point of contact for investigating and resolving specific matters relating to the DoD Foreign Tax Relief Program and forward major problems affecting that program through proper channels to the GC DoD.

(2) Liaise with the responsible U.S. diplomatic mission on current tax relief problems and with local foreign tax authorities, where appropriate.

GLOSSARY

G.1. ACRONYMS.

GC DoD General Counsel of the Department of Defense

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

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

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, business tax, circulation tax, consumption tax, gasoline tax, gross income tax, gross receipts tax, license tax, luxury tax, personal property tax, possession tax, production tax, purchase tax, real property tax, registration tax, sales tax, service tax, stamp tax, trade tax, transaction tax, transfer tax, transportation tax, turnover tax, use tax, and value added tax.

REFERENCES

DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),”
December 2, 2013, as amended

DoD Directive 5530.3, “International Agreements,” June 11, 1987, as amended

DoD Instruction 5000.35, “Defense Acquisition Regulations (DAR) System,” October 21, 2008