



## Guide 23

### Confirming an exemption from income taxation of a non-profit organization.



Non profit organizations may apply to the Afghanistan Revenue Department (ARD) for a private ruling to qualify for and obtain tax exempt status based on a legal interpretation of their tax liability based on their operations related to the Income Tax Law 2009, Afghanistan's laws governing non governmental organizations, and relevant treaties as may apply to the organization's purpose and funding situation.

- *Not* a 'tax compliance certificate' since a private ruling does not address whether and to what extent the organization has complied with the Income Tax Law 2009

#### Qualification.

Not-for-profit organizations established under the Law on NGOs in Afghanistan (Gazette No 859, 15 Saratan 1384) may apply to ARD for a private ruling related to their tax liability from contributions, grants and income from necessary operations in Afghanistan as provided by Article 10, Income Tax Law 2009.

To qualify, the organization must:

- *Operate on a non-profit basis* exclusively for educational, cultural, literary, scientific or charitable purposes. Contributors, shareholders, members and employees cannot benefit from the organization during its operation or upon its dissolution.
- *Register with Ministry of Economy* under the Law on Non-Governmental Organizations (NGOs). However,

#### What is a private ruling?

A private ruling provides a non profit organization applicant for a tax exemption with a legal interpretation regarding the application of the Income Tax Law 2009 to a particular situation.

#### What a private ruling is not:

- *Not* a 'tax exemption certificate' although if an organization discloses all its business activities in a private ruling request it may have that effect



such registration alone does not confer the right to an organization to be a tax exempt under the Income Tax Law 2009. Such an exemption requires that an organization's goals and activities satisfy requirements stipulated in Article 10, Income Tax Law 2009.

If recognized and approved as a tax exempt under Article 10, ARD will issue the non profit organization a private ruling confirming its exempt status. This exemption remains valid unless the facts as stated in the request for private ruling change and thereby the organization no longer qualifies; or, the Ministry of Finance reverses the exemption based on contrary facts as submitted by ARD.

### Application

ARD will issue an exemption, for the purpose of Article 10 of the Income Tax Law 2009, to those non-profit organizations which apply for a private ruling and which, by their documentation, satisfy the qualifications for tax exempt status. To apply, non-profit organizations must:

### Step 1 Register

With Ministry of Economy under the Law on Non-Governmental Organizations (NGOs) as a non profit organization complying with the provisions of that law.

### Step 2 Submit application on prescribed form

Signed by president or secretary of the organization, to ARD, with the following attachments:

- By-laws, rules and regulations, any memorandum or articles of association or the constitution (charter) of the organization
- Latest audited balance sheet and financial statements prepared under International Accounting Standards (IAS)
- List names, addresses and telephone numbers of officers including directors, chairman, vice-chairman, secretary, treasurer, manager and others along with their family relationships with each other, if any
- Assessment issued by High Evaluation Commission (HEC) for registration of the organization under the Law on NGOs
- A statement of application of the surplus funds of the organization; and
- List donations, contributions, subscriptions and grants for the welfare activities/projects undertaken by the organization.

*Language.* ARD requires applications be submitted in Dari or Pashto. However, a copy of the request in English will expedite the process. Supporting documents in English are not required to be translated into Dari

or Pashto. Supporting documents in a language other than Dari, Pashto or English must be translated into any of these languages.

*Delivery.* The application should be addressed and delivered to: Director, Rulings and Exemption Unit, Afghanistan Revenue Department, Ministry of Finance, Kabul, Afghanistan.

### Step 3 Provide further documentation if required

ARD may request further documentation before ruling on the application.

### Issuance, Validity & Term.

ARD usually will issue a private ruling within 21 calendar days of receipt of all relevant documentation. ARD will assign a unique case number to the organization for future reference.

This private ruling will

- State exempt status of the organization under Article 10, Income Tax Law 2009
- State the exemption to the contributions and income from necessary operations of the organization
- Stipulate the reporting requirements and withholding income tax requirements that may exist for the organization to be in compliance with the Income Tax Law 2009
- Remain valid unless withdrawn for reasons assigned and then

only after the organization has an opportunity for a hearing to contest such action.

### Reporting requirements and other obligations

Approval as a tax exempt organization does not absolve the organization from reporting requirements under the Income Tax Law 2009, that is, filing of an income tax return (Article 88) and audited accounts, maintenance and preservation of records (Article 36), from withholding tax from salary and wages (Article 58), from rent withholding tax on buildings and houses (Article 59), and from preparation and submission of withholding tax statements (Articles 61 and 62).

### Bi-lateral agreements and tax exempt status.

If non-profit organizations engage in support of humanitarian or development tasks funded under a bilateral agreement with a donor country, a multilateral organization or an international financial institution as stipulated in Article 10(1) 2, Income Tax Law 2009, the non-profit organization may be subject to rules relating to contractors which can affect its exempt status.

The Minister of Economy, at the request of the Chief of the Diplomatic Agency, in turn responding to the donor country as required under Article 8 (7) of the Law

on NGOS, has authority to grant the non-profit organization an exemption from certain taxes including contract withholding based on such treaty or bilateral or other agreement.

Any tax exemption clause in an agreement between a specific minister or governmental official and a given non-profit organization is invalid by law (Article 111).

An exemption clause for contractor's profit contained in a bilateral agreement with the Government of Afghanistan is, however, valid.

If the non-profit organization believes a bilateral agreement exempts it from tax liability, it can decide on three possible courses of action:

1. *Do nothing* and proceed under the assumption that its activities incur no tax liability. If audited and unable to support its case, the organization will be liable to pay tax and penalties
2. *Submit a letter request to ARD for a private ruling* stating the legal basis for the exemption and attaching relevant documents such as copies of contracts, evidence of grants or donations, a permission letter from the Minister of Economy, and/or other documentation

#### Note

Guide 07 explains the procedure for exemption under bilateral or multilateral agreements. If the ruling issued concludes that a non-profit organization's income from that contract is exempt from tax, a copy of the ruling should be attached with the annual tax return showing no tax amount due. If the income is determined not exempt, the applicable tax will be paid with submission of the annual tax return.

3. *Refer to a group ruling* for its exemption claim obtained from ARD by the donor country, international financial institution or multilateral organization, as the case may be, that engaged the non profit organization and funded the project.

#### Note

There are no fees or charges payable to ARD for obtaining a private ruling or at any stage of the tax assessment, collection or enforcement processes.

### Business Licensing and Tax Clearances

If an organization requires an official letter from ARD for the purposes of an

application for or renewal of, a license, then that organization should contact the Medium Taxpayer Office (MTO), ARD, Kabul.

### Customs Duties and Other Taxes

The process for private ruling as described is in accordance with the Income Tax Law 2009 and limited to matters of income taxation. ARD cannot rule on matters of other taxes or customs duties. For other matters of taxation, the organization should contact the relevant government department. For clarification on exemption from customs duties, the organization should contact the Afghanistan Customs Department, Ministry of Finance, Kabul.

### Enforcement Provisions

Failure to comply with the requirements of the Income Tax Law 2009 may result ARD taking administrative action as prescribed in Chapters 14 and 16 which include additional income tax and penalties. Where non-compliance

is with the intent of evading tax a person shall be referred to the office of the Attorney General for investigation and prosecution.

#### Note

Afghanistan Revenue Department tax offices and Mustufiats provide forms, guides, and instructions to taxpayers free of charge, available both as printed and as downloadable versions from a new website <http://www.ard.gov.af>. The website also provides locations, contact numbers and hours of operation for Afghanistan Revenue Department tax offices and Mustufiats. Taxpayers also can download other useful information including various public announcements and rulings, questions & answers regarding wage withholding tax, the Income Tax Law 2009, and an Income Tax Manual. The manual discusses separately each article of the law, along with relevant regulations, often with helpful examples.