ATTACHMENT 4 to Addendum 2 AIPJ

AusAID Information Note
1 June 2010

Indonesian tax exemptions on Australian development cooperation funds

Please see below the following information relating to Indonesian tax exemptions on Australian development cooperation funds. Advice on possible interpretations and applications of the below information remains the responsibility of Contractors.

WHAT THE GADC SAYS:

The General Agreement on Development Cooperation (Jakarta, 9 July 1998)[1] contains four articles directly relevant to tax. These are:

"Article II" Definitions
'In this Agreement:…
...(b) "Australian project personnel" means Australian nationals or permanent residents or other persons who are not nationals or permanent residents of Indonesia who are working in Indonesia on an Activity under this Agreement and whose salaries or other costs are funded from the contribution of the Government of Australia to the Activity;

(c) "Australian firms" means Australian or other non-Indonesian firms, organisations, institutions, or executing agencies engaged in an Activity;…'

"Article VIII" Public Charges
The Government of the Republic of Indonesia shall ensure that Australian Development Cooperation Funds are not used to pay any taxes, customs, duties or any other levies imposed by the Government of the Republic of Indonesia, on any goods, materials, equipment, vehicles and services purchased or acquired for, or related to the execution of any Activity being carried out in the Republic of Indonesia.

"Article XI" Income Tax
The income tax liability of Australian firms and Australian personnel shall be borne by the Government of the Republic of Indonesia.

"Article XII" Personnel

[1] http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/1999/13.html?query=title(indonesia)

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The Government of the Republic of Indonesia shall, in accordance with Law Number 7 of 1983 of Income Tax (as amended by Law Number 10 of 1984), Government Regulation Number 19 of 1985 and their implementing regulations each as at the date of entry into force of this agreement;
(a) exempt Australian firms and Australian personnel from, or bear the costs of, import duties and other taxes imposed by the Government of the Republic of Indonesia on taxable goods and services or import of taxable goods for, or related to, the execution of activities; and

(b) exempt Australian personnel from the payment of Custom duties, excise duties and other taxes in respects of bona fide personnel and household effects brought into the Republic of Indonesia within 6 months of his or her first arrival in the Republic of Indonesia for their own use or the use of their dependents....

AUSAID's OVERALL EXPERIENCE TO DATE

- Articles XI and XII restricts the exemption of Income Tax and taxable goods and services or imports of taxable goods for, or related to, the execution of activities to "Australian firms", and "Australian Personnel" [Australian Project Personnel] as defined in Article II. Individuals or firms not caught under the definition are liable to the taxes mentioned;
- Article VIII Public Charges, when read in conjunction with other GADC Articles, restricts the exemption of taxes, customs duties or other levies imposed on goods and services purchased or acquired for the execution of activities, to individuals and firms falling under the definition of "Australian Firms" and "Australian Personnel" [Australian Project Personnel];
- any exemptions for income tax or any other taxes applied to “Australian firms” or “Australian Personnel” [Australian Project Personnel] would not apply to National or Permanent Residents of Indonesia who are working in Indonesia on an activity under the GADC and whose salaries and other costs are funded from the contribution from the Government of Australia to the activity. This also applies to any Indonesian firms, organisations, institutions, or executing agencies engaged in any activity under the GADC.

A RECENT DEVELOPMENT…

- Historically, issues have arisen in applying the tax exemption under the GADC as it was inconsistent with Indonesian tax law. AusAID has worked to resolve this inconsistency, and in April 2009 was issued a letter from the Director General Tax confirming AusAID's interpretation of the GADC such that development funds are exempt from tax.
- AusAID has recently successfully sought inclusion of that clarification in activity-level subsidiary arrangements, and will continue to pursue this. This provides a more robust basis for ensuring the exemption is upheld.

FUTURE ‘ADVICE’ FROM AUSAID

- For future activities, AusAID will advise contractors whether subsidiary arrangements contain a provision confirming the tax-related provisions of the GADC. Based on this advice, Contractors will have to seek independent advice on the application of those exemptions in the context of the particular activity.

PRACTICAL MEASURES

Contractors can:

- on the basis of the exemption seek to *not* pay tax on relevant goods and services;
- if tax *is* charged on exempt items, seek a refund of the taxed amount through the State Secretariat (‘SekNeg’) process. This involves the contractor providing AusAID the relevant invoices; AusAID providing it to SekNeg; and SekNeg facilitating reimbursement through DG Tax; and
- On the basis of the information available, and independent professional advice, assess and factor tax-related risk into their pricing of tenders.