Part 229 - TAXES

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Subpart 229.1 - GENERAL

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General. For additional information on the designated legal counsels, see PGI 229.101 (a).

(b) For information on fuel excise taxes, see PGI 229.101 (b).

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101 (c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101 (d).

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170-1 Definition.

“Commodities,” as used in this section, means any materials, articles, supplies, goods, or equipment.

229.170-2 Policy.

(a) By law, bilateral agreements with foreign governments must include a provision that commodities acquired under contracts funded by U.S. assistance programs shall be exempt from taxation by the foreign government. If taxes or customs duties nevertheless are imposed, the foreign government must reimburse the amount of such taxes to the U.S. Government (Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7), as amended by Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and similar sections in subsequent acts).

(b) This foreign tax exemption—

(1) Applies to a contract or subcontract for commodities when—

(i) The funds are appropriated by the annual foreign operations appropriations act; and

(ii) The value of the contract or subcontract is $500 or more;

(2) Does not apply to the acquisition of services;

(3) Generally is implemented through letters of offer and acceptance, other country-to-country agreements, or Federal interagency agreements; and

(4) Requires reporting of noncompliance for effective implementation.

229.170-3 Reports.

The contracting officer shall submit a report to the designated Security Assistance Office when a foreign government or entity imposes tax or customs duties on commodities acquired under contracts or subcontracts meeting the criteria of 229.170-2 (b)(1). Follow the procedures at PGI 229.170-3 for submission of reports.

229.170-4 Contract clause.

Use the clause at 252.229-7011 , Reporting of Foreign Taxes – U.S. Assistance Programs, in solicitations and contracts funded with U.S. assistance appropriations provided in the annual foreign operations appropriations act.

Subpart 229.2 - FEDERAL EXCISE TAXES

229.204 Federal excise tax on specific foreign contract payments.

The contracting officer shall not authorize the Governmentwide commercial purchase card as a method of payment during any contract period of performance if the contract includes the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, unless the contract also includes the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, indicating that the contractor is fully exempt from the tax.

Subpart 229.4 - CONTRACT CLAUSES

229.402 Foreign contracts.

229.402-70 Additional provisions and clauses.

(a) Use the basic or the alternate of the clause at 252.229-7001 , Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern for performance in a foreign country.

(1) Use the basic clause in solicitations and contracts when the contract will be performed in a foreign country other than Germany.

(2) Use the alternate I clause in solicitations and contracts when the contract will be performed in Germany.

(b) Use the clause at 252.229-7002 , Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c)(1) Use the clause at 252.229-7003 , Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(2) Use the provision at 252.229-7012 , Tax Exemptions (Italy)—Representation, in solicitations that contain the clause at 252.229-7003 , Tax Exemptions (Italy). If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.229-7012 in the solicitation.

(d) Use the clause at 252.229-7004 , Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into Spain of supplies for construction, development, maintenance, or operation of Spanish-American installations and facilities.

(e) (1) Use the clause at 252.229-7005 , Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(2) Use the provision at 252.229-7013 , Tax Exemptions (Spain)—Representation, in solicitations that contain the clause at 252.229-7005 , Tax Exemptions (Spain). If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.229-7013 in the solicitation.

(f) Use the clause at 252.229-7006 , Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229-7007 , Verification of United States Receipt of Goods, in solicitations and contracts when contract performance will be in the United Kingdom.

(h) Use the clause at 252.229-7008 , Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229-7009 , Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229-7010 , Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

(k) Use the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, in contracts that include the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, when the contractor has—

(1) Represented that it is a foreign person in response to the provision at FAR 52.229-11, Tax on Certain Foreign Procurements—Notice and Representation; and

(2) Indicated that it is fully exempt from the tax for reasons cited on their IRS Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

Subpart 229.70 - SPECIAL PROCEDURES FOR OVERSEAS CONTRACTS

To obtain tax relief for overseas contracts, follow the procedures at PGI 229.70.