USAID-Funded Economic Governance II Project

OPERATION OF MOBILE PHONE TAX

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Operation of Mobile Phone Tax

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TAX ON THE PROVISION OF MOBILE TELEPHONE SERVICES GUIDE FOR MOBILE PHONE SERVICE OPERATORS

INTRODUCTION

A tax on the provision of mobile phone services is to come into force on…….

The supply of a mobile phone service is treated as taking place in Iraq if the facilities for supplying the service are located here, or if the cellular telecommunication is emitted or received in Iraq or the billing location is in Iraq

The relative law requires all businesses providing services that enable access to a mobile phone network either by rental, pre-paid cards or any other means such as electronic transfer of credit, to register with the General Commission for Taxes (GCT). Providers of such services will be required to charge tax on their supplies of mobile phone services, keep records of those supplies and submit periodic tax returns to the GCT together with payment of the tax that has been charged. Providers will also be required to maintain records of their supplies which will be subject to periodic audit by the tax authorities. Failures to comply with the law correctly will be subject to penalties.

This Notice explains what is to be done by suppliers of mobile phone services in order to comply with the Mobile Phone Law and Regulations. The second part specifies the forms to be brought into use.

GENERAL EXPLANATION

The tax on mobile phone services (MPST) comes into operation on …… At least 15 days before that date businesses providing these services must register with GCT using either Form 9902 or 9903 as shown on the GCT web site http://www.iraqtax.org. They should also ensure that their accounting system provides sufficient information for them to account correctly for the amount of tax they are required to pay. Their accounting system must also include arrangements for the issue of invoices to customers showing details of the MPST charged.

Monthly tax returns, Form 0801, in the format shown at Appendix 1 must be submitted to the GCT together with payment of the tax shown on them as due. Taxpayers' activities will be subject to inspection and records will be audited periodically.

Late submission of returns or payment or both will be subject to interest and also, together with other infringements of the Law and Regulations, may be subject to penalties.

The following paragraphs set out the detailed requirements of the tax. Provision has been made to deal with the administration of the exemption of diplomats and certain other authorised organizations and persons from payment of the tax.

The Law and Regulations also allow for relief from bad debts under certain conditions.

REGISTRATION & DE-REGISTRATION

Registration

If no previous application for registration for tax exists, a form 9902 is to be completed and submitted to the GCT. In cases where a registration for other taxes already exists, form 9903 is to be used.

Where form 9902 is used the GCT, after processing the application, will issue a Taxpayer Identification Number (TIN) certificate. Where form 9903 is used a TIN certificate will have been issued already to the taxpayer and the GCT will record that it now extends to liability to MPST. Failure to apply for registration or to notify liability to MPST may incur a penalty under Section 18 of the Mobile Phone Tax Law.

The registration will be treated as covering all places in Iraq where the business of the taxpayer is carried on. If a business operates from more than one location in Iraq, the TIN will apply to them all and all the activities of the business will be reported on one monthly tax declaration.

Subsequent changes to details of the registration, for example movement of address, changes in activity or legal status of the business are to be advised to the GCT within 15 days of them taking place using form 9903.

De-Registration

If a business ceases permanently, goes into liquidation, receivership or administration proceedings the GCT must be informed within one month of the event. If trading continues for any period the requirements of the Mobile Phone Tax Law will continue to apply until such time as the business ceases and the registration has been cancelled.

Before completing de-registration procedures the GCT will ensure that any outstanding liability to pay tax, interest and penalties has been discharged. If necessary an audit may be carried out to verify that no such liabilities remain.

APPLICATION OF THE TAX

Time tax becomes due

The time when liability to account for tax arises when the earliest of the following events occurs.

a. The date when an invoice is issued which must be done at least by the end of the month in which a supply of mobile phone services is provided.

b. The date when a supply is paid for in whole or in part

In the following cases the rules are as specified below.

Monthly or periodic contracts for which periodic bills are issued

When an invoice is issued or payment is made under the contract. If the contract allows for extra charges to be made for additional mobile phone services these are to be accounted for when billed or paid. In all circumstances whichever is the earlier event creates a liability to account for MPST.

Pre-paid phone cards

MPST becomes due at the time these are sold or delivered on consignment terms for onward sale to users, including any to outlets operated by the mobile phone service supplier itself.

Payments received directly by the mobile phone service supplier from users.

It is possible to use credit cards and electronic cards to add credit to a mobile phone. For the time being such facilities are not available in Iraq. When they are introduced mobile phone service providers should note that MPST becomes due when receipt of payment is accepted in the mobile phone supplier’s system and credit given.

Self-supply of mobile phone services to the business itself or to members of staff.

Whenever a mobile phone supplier or members of its staff makes use of the service for business or personal use, MPST becomes due at that time.

Value of supply and charging of tax

The Law requires tax to be accounted for as a percentage of the gross charge for the supply of the services without any deduction whatsoever.

In the case of services that are billed to customers the basis for the tax calculation is the full amount charged to the customer regardless of the actual payment received. Once the tax is introduced it will have the effect either of increasing existing prices to the extent of the tax rate or of reducing the amount of air time given at existing prices.

In the case of sales of prepaid cards the face value is to be taken as the gross charge and tax is to be accounted for on that basis regardless of the payment received for the supply of cards. With tax at a rate of 10% this will be equivalent to one eleventh of the face value of the cards. Since the face value of pre-paid mobile phone cards is a fixed amount it means that, in practice, that suppliers of mobile phone services will have to review their costing structure to take account of their liability to MPST.

Discounts given for prompt payment and surcharges made for late payment do not affect the basis of value for tax.

Records and Accounts

Every registered supplier of mobile phone tax services must keep records and books of account at their principal place of business. No specific form of accounting is prescribed but the accounts and records must be sufficient to enable taxpayers to calculate correctly the MPST that they are due to pay. Books and records are to be kept in the Arabic or Kurdish language.

Where a mobile phone service provider operates at more than one location in Iraq, the accounting system at the principal place of business must account for all the activities of the business.

Entries in accounts must be kept up to date showing the date, value and details of each transaction.

It is recommended that a separate account titled “Mobil Phone Service Tax Account” is to be set up. This will summarise the MPST for each return period of one month and show any adjustments including any relating to miscalculations or errors discovered in the period. Any reduction on account of bad debts (see later) is to be shown separately in this account. Such an account will enable the monthly Mobile Phone Tax to be completed readily.

Where the GCT considers that an accounting system is insufficient to account properly for taxable activities it has power to require the system to be revised or for additional records to be kept or both.

If any records are kept in electronic form the system must be discussed first with the GCT to ensure that it is acceptable for the purpose of accounting properly for tax. In particular it should be possible for the accounts to be accessed readily by a tax audit officer and should not be capable of alteration once they have been created.

Records and accounts are to be kept for 7 years following the date from which they were produced, unless the GCT gives written Instruction to dispose of them earlier.

Invoices and billing

This section relates to all sales other than tax-free sales to diplomatic missions and other persons entitled to exemption from tax. The arrangements for them are set out in a later section.

All sales must be billed and recorded in the accounts which must be kept up to date. The following are the main categories of transactions likely to occur. If other methods of providing supplies of mobile

phone services develop, the method of accounting for them is to be discussed with and agreed by the regional office of the GCT.

Periodic Billing of supplied made under contract (usually monthly)

Serially numbered and dated invoices must be prepared and a copy kept showing:

1. The name, address and TIN of the supplier;
2. The name and address of the person to whom issued;
3. A description of the services supplied;
4. The amount charged for the services and,
5. The rate and amount of tax charged.

Invoices issued for sales of pre-paid cards

The details specified above for periodic billing apply to the invoices which must be issued at the time of delivery of cards whether on consignment or on outright sale. In the case of cards sold on consignment this must be specified on the invoice together with a note of any conditions applying.

Since tax is included in the face value of prepaid cards it cannot be shown separately. Instead the invoice should show “Mobile Phone Tax included at the rate of 10%”

Provision of credit whether by means of credit cards or “top-up” cards

As noted earlier, these facilities at not available at present. Once they are introduced accounting arrangements must identify daily all electronic sales by the above means. Characteristically, details will identify the telephone number, the amount of credit purchased and the means by which it was obtained. There is no objection to these amounts being summarised into daily totals provided it is possible to check how these amounts are compiled. The system must also provide the customer at the point of sale with evidence of the date and amount of credit purchased and the mobile telephone to which it has been granted.

Provision of pre-paid cards from the mobile phone service provider’s own outlet(s)

Where sales of cards are made direct to users from a mobile telephone service supplier’s own retail outlet there must be a system showing the numbers of cards delivered to that outlet, a record of daily sales and stock record. See also the later paragraph about stock records.

If, in the future, a system is introduced enabling customers to have their mobile phones topped up at the operator’s outlet through one or more terminal the system will need to identify and account for sales whether for cash, a top-up card or credit card.

Use of mobile telephones or pre-paid cards operated through the service provider’s own network

Use of the mobile phone operators’ own services whether by way of business or authorised private use is subject to MPST. Separate records of such usage whether on a contract-type or pre-paid card basis are to be maintained and included in the records forming the periodic declaration of tax due. Entries are to be made in these records at least monthly in the case of contract-type use or at the time that pre-paid cards are taken into use.

Credit Notes

Where it is necessary to give a credit, for example for amounts overcharged on contract accounts or top-up cards delivered on consignment terms and returned, a credit note is to be issued showing the same type of information as required on invoices including date of issue and serial number and cross-referred to the original document.

Where cards are returned to stock or destroyed, the credit note must be cross-referred to the stock record. The next paragraph deals with stock records including destruction of cards. Details of the credit note are then to be included in the accounts of the business and a copy of the credit note retained

Stock records

Since pre-paid cards have a high intrinsic value to the mobile telephone service provider, it is expected that stocks of cards will be stored under secure conditions and accurate records of stock and stock movements maintained. As a minimum, these must include the following information and be maintained up-to-date daily.

Amounts of cards in each denomination received from suppliers with details of the purchases invoice and any inward consignment note.

Amounts of cards issued in each denomination showing in all cases details of the recipient and the relative invoice. In the case of cards supplied to own retail outlet or provided for use within the business details of the delivery note or internal docket.

Amounts of cards in each denomination received back into stock with details of their origin.

If it is necessary to destroy any cards this should be done only with written Instruction from a person at director level. This order should specify the numbers and denominations of cards to be destroyed and the reason for the destruction including details of their original delivery if they have been returned. After destruction has been carried out, a certificate of destruction specifying the numbers and denominations of cards destroyed is to be given. This must be signed by two members of the business at management level who have carried out or witnessed the destruction.

Each day the opening and closing stock for each denomination is to be reconciled with receipts, issues, returns and any destructions.

Bad Debts

Where a customer has failed to pay for the supply of mobile phone services made either under a contract or by the provision of pre-paid cards, credit for the tax that has been accounted for by the supplier may be claimed in accordance with the following conditions.

- tax on the supply of credit or pre-paid cards must have been accounted for in a MPST return and included in the payment made with the return;
- at least (six months) must have elapsed since the supply was made;
- it can be demonstrated that attempts to collect the sum owing including tax have been unsuccessful either completely or only partly;
- the amount has been written off in the accounts of the business as irrecoverable;

- a separate bad debt account is maintained for MPST purposes showing details of the amounts of tax relief claimed on account of bad debts as well as the amounts of any subsequent recoveries from debtors;

- all documents relating to the claim for bad debt relief is maintained in a separate file available for examination, and,

The amount of tax relating to a claim for bad debts is shown in the relevant box of the MPST Return (form 0801) for the period in which the claim is made.

If, after a claim to bad debt relief has been made a payment is received from the debtor, an amount proportionate to the MPST is to be calculated. Details of the recovery are to be entered in the bad debt account. The proportionate amount of tax recovered is to be entered in the box provided for that purpose on the tax return. Entries are to be made within the month that the recovery is received.

Exemption from tax for Diplomatic Missions and International Organisations

Legal Basis

Section 14 of the Mobile Phone Tax Law provides for exemption from the tax for the following classes of persons.

1. Foreign diplomatic and consular representative offices and international organisations together with the staff of these offices provided that they are not Iraqi citizens.

2. Persons exempted from tax under special laws who must provide a certificate to prove they are entitled to exemption.

The first group is governed by the provisions of the Vienna Conventions 1961 and 1963 either explicitly in the case of diplomatic missions or by implication in the case of International Organisations. The Conventions limit the exemption to the extent that tax cannot be recovered if it is included in the price charged for goods and services.

The second group, which consists largely of contractors and consultants officially sponsored by a country providing assistance to Iraq are entitled to claim a refund of any tax charged as part of the price of goods or services purchased. This arrangement does not extend to locally established contractors and citizens of Iraq.

Arrangements for relief from MPT

This will be done by a system of authorisation for tax-free invoicing as explained below. To enable mobile phone service providers to issue invoices without tax being charged to a customer entitled to exemption from tax the supplier must be in possession either of a letter from a diplomatic mission or organisation of equivalent status or, in the case of a contractor, an authority issued by the Iraqi government. The requirements to be followed are given below.

Issue of invoices without charging tax for mobile phone services supplied under a contract or for bulk supplies of pre-paid phone cards

Diplomatic and Consular Missions and International Organisations

Evidence of entitlement to exemption from the tax will be a formal letter signed by a senior official (First Secretary or above) at the post confirming their status and entitlement to be exempt from a charge to tax. In the case of an International Organisation the letter must signed at the level of the head or deputy head of the post to confirm that they have equivalent status to a diplomatic mission

and quote the justification for it. This will be the protocol signed between the Iraqi authorities and the organisation. The letters will be filed by the GCT for future reference.

Contractors and consultants officially sponsored by a country providing assistance to Iraq

These organisations and persons are covered by the Coalition Provisional Authority Order Number 17 (Revised) which provides for exemption from taxes such as the tax on mobile phones services where they are for official use or to be used for the performance of contracts in Iraq. Essentially this includes the following.

Contractors, subcontractors, international consultants and private security companies who are non-Iraqi legal entities or personnel who are not Iraqi citizens, providing services, equipment, provisions, supplies, material, other goods or construction work to: the CPA, the MNF or for international humanitarian or reconstruction efforts in Iraq or do so for a State arranging the provision of all these supplies.

In all these cases the customer must possess an authorisation of tax-free status from [ ] To obtain the authorisation the applicant must provide a formal letter signed by the head or deputy-head of the organisation stating briefly the nature of their activities together with a letter from the agency of the sponsoring foreign country (for example USAID, DFID or equivalent) confirming that the contractor or other person is operating under a contract agreed with them. The letters should specify entitlement to exemption from taxes under the above-quoted Order and the date of expiry of the contract.

Details of the method for applying for tax-free authorisation can also be obtained from the tax administration web-site of the General Commission for Taxes, http://www.iraqtax.org

Conditions applying to the issue of invoices without tax being charged

- A copy of the documentation referred to above the invoice must be held by the mobile phone service supplier and the reference number quoted on each invoice.

- The tax-free invoice must state clearly the nature of the supply. In the case of a supply of services it must not extend beyond the period of the contract with the sponsoring agency. . In the case of bulk supplies of prepaid cards, these are not to be invoiced without tax being charged within one month of the end of the contract.

- In the case of bulk supplies of pre-paid cards the tax component, at the current rate of tax of 10%, is one eleventh of the face value of the cards. The amount charged to be shown on the invoice therefore will be the total of the face value of the cards supplied reduced by the amount of the tax included in that value.

Sales to diplomatic missions and accredited contractors of mobile telephone pre-paid cards other than on an invoice

No reduction is to be made for the tax component in the face value of the cards

Tax Returns and payment of tax

These are to be made monthly showing the total tax due for the month. Returns, together with the full amount of tax shown on them as due, should reach the GCT by the 15th of the month following the tax period. If the 15th falls on a weekend or Public Holiday the return must be made by the next working day. It is the responsibility of the taxpayer to obtain a tax return form in time to submit it by the correct date. Detailed notes to explain how a return is to be completed are provided with the return.

If, after a return has been submitted, it is discovered that errors were made resulting in an incorrect declaration, an amended declaration may be submitted. Any liability to penalties and interest is not affected by the submission of an amended return except to the extent of any difference between the original and amended declarations.

Official checks, controls, interest and penalties

Audit of records

The GCT has a responsibility to ensure that the correct amount of MPST is paid. In addition to checking the details shown on tax returns, periodic checks will be made to verify that tax is being accounted for correctly. The law provides authority for authorised officers of the GCT to visit taxpayers and to examine their books and records. The law also requires taxpayers to make their books, accounts and vouchers available for inspection. An authorised officer has power to enter at any time the place where a mobile phone business is carried on. However, general practice will be for visits by officers to be made by appointment at a time mutually convenient both to them and the taxpayer. If it is necessary to change the time of the audit visit, prior notice should be given to avoid wasting the time of either party. If requested, an authorised officer will produce his document of Instruction signed by the Director of the GCT.

If records are kept wholly or partly in electronic form, arrangements should be made by the taxpayer for them to be examined by the audit officer to a sufficient extent to satisfy him or her self that the system is accounting for tax correctly. If an authorised officer considers it necessary to print out certain documents or records, printing facilities are to be made available.

If a taxpayer's records are considered to be insufficient to account correctly for the tax due to be paid, the GCT has the power to require additional records to be maintained.

Assessments

These may be issued in the following cases.

1. Where a tax return has not been submitted by the due date.

2. Where a tax audit has revealed errors or mis-declarations resulting in a return or returns being incorrect.

3. Where a person who is required to register has failed to do so.

4. As the result of an amended return being submitted by the MPST supplier

In the first case most of the assessments will be issued centrally when a taxpayer fails to submit a return by the due date. To produce an assessment the GCT can either arrange for a desk audit (carried out in the GTC office), a field audit (at the taxpayer's premises) or base it on information already on file such as previously submitted returns.

In the second two categories the assessment will result from an audit. All assessments will include details of the tax or additional tax considered to be due or, in less frequent cases, tax overpaid. They will also show the amounts of any penalties and interest considered to be due.

An assessment will specify the reasons for its issue. The onus of disproving an assessment is the taxpayer's. Once issued the amount shown as due on the assessment becomes payable and recovery action by the GCT can be started after 30 days if no payment is received. No assessment may be issued later than five years after the tax, penalties and interest became due.

Interest

Any amount of tax not paid by the due date, an underpayment of tax or an amount of tax assessed as due is subject to interest at the rate of 5% plus the rate of interest imposed by the bank on current accounts for each month during which the tax remains unpaid.

Penalties

Liability to a penalty at the rate shown arises in the following cases.

1. Failure to file a return on time; each month or part month,.5% of the tax shown as due but not exceeding 5 million ID .

2. Incorrect return; 25% of the undeclared tax.

3. Failure to keep, retain or produce records, invoices or other accounting documents in the prescribed form; 15% of the amount of tax estimated to be involved.

4. Failure to give access to books, records and accounts; one million ID for each failure.

5. Failure to register; 5 million ID.

The GCT has power to waive penalties wholly or partly if sufficient cause can be shown why they should not apply.

Appeals

An appeal may be made by a taxpayer if it is considered that there is reason to dispute the amount of an assessment. In the first instance it is recommended that the taxpayer should ask the GCT to review the assessment and take the opportunity to give reasons why it is considered to be incorrect. If agreement is not reached the formal appeals procedure set out in the Income Tax Law may be adopted. Before an appeal can be accepted by the Appeal Commission the amount shown as due on the assessment must be paid.

Tax collection

Enforcement of debt

For the purpose of collection the tax debt shall include any interest and penalties remaining unpaid in addition to the tax due. Collection action may commence after 30 days have elapsed since the issue of an assessment or other formal demand. The GCT may adopt one or more of the following methods.

1. Seizure of movable and immovable property of the taxable person.

2. Auctioning all or part of the taxpayer’s assets.

Security

If there is reason to believe that a taxpayer may not make payments of tax, penalties or interest due from them the GCT has power to require that the taxpayer shall provide a guarantee, security or cash deposit in an amount equivalent up to their estimated annual tax liability.

ADVICE TO TAXPAYERS

The operation of any tax system can give rise to a number of difficulties that need to be resolved. One of the functions of the GCT is to give advice to taxpayers and help solve any problems that arise. The best way to do this is by discussion between taxpayers and tax authority.

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MOBILE PHONE TAX ADMINISTRATION HANDBOOK

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INTRODUCTION

This handbook is to be read in conjunction with the Guide provided to taxpayers to explain the operation of the tax. The Guide describes all the main features of the operation of the tax and is based on the provision in the Law and Regulations on Mobile Phone Service Tax (MPST). It also sets out what taxpayers must do to comply with the law. The following paragraphs specify the action to be taken by officers of the General Commission for Taxes (GCT) to administer the tax effectively.

REGISTRATION

General

Registration of taxpayers is the first stage of bringing them under official control. In the case of mobile phone service providers (MPSP) they are few in number and well known. It is very likely that they will be already registered for tax in respect of their wage with-holding and corporate income tax liabilities. It is expected therefore that, once the introduction of the tax is announced, they will apply to the GCT to amend their registration to cover their Mobile Phone Tax liability. However, if they do not do so in good time they are to be contacted and reminded that they must submit either an application for registration or to amend their existing registration

Registration process

The registration process explained in the Registration Handbook is to be followed. This will result in a taxpayer being recorded in the tax system and a taxpayer file set up for each taxpayer.

If the mobile phone business is already registered for other taxes the form to be used is the Form 9903, amendment of registration. If it is a completely new registration, Form 9902 will need to be completed and will result in a Taxpayer Identification Number (TIN) being allocated to the business. The appropriate UN activity code is 6420.

Changes in Registration details

The processes described in the Registration Handbook are to be followed as far as they apply. This procedure should be carried out carefully because it is very important that the correct details of a taxpayer are recorded in the file. There are two main possibilities.

1. The details of the business change but not the legal entity. A simple example is a change of address. This only requires making sure that the correct new details are recorded. The taxpayer should submit a modification registration Form 9903 which should be processed in accordance with the Registration Handbook.

2. A business changes its legal entity. For example a limited company decides to turn the business into a joint stock company. This will involve canceling the registration of the limited company and registering the joint stock company.

De-Registration

De-registration normally takes place when a business ceases for whatever reason. The procedure to be followed is set out in the Registration Handbook. It is very important to ensure that there is no outstanding tax, either declared on a return or assessed, interest, penalties or future tax liability due or uncollected before de-registration is completed.

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TAX RETURNS & PAYMENT

Mobile Phone Tax Service providers are required to make a return every month to reach the GCT by the 15th of the following month. If the 15th is a Friday or a holiday, the latest date for submission is extended to the next working day. Payment of the tax declared as due on the return will normally be made with the return but may be submitted earlier or later.

The Mobile Phone Tax returns have detailed notes to explain how they are to be completed. It will be noted that separate details for taxable sales and sales made to customers entitled to exemption need to be provided.

If payment is late, liability to pay interest on the amount declared on the return is triggered at the rate of 5% plus interest at the rate imposed by a bank on current accounts for each month during which the tax remains unpaid.

Returns submitted to the GCT will be processed by the Taxpayer Service Unit and entered in computer system. Afterwards they will be filed in the archives available for audit or any other purpose.

TAX REFUNDS & CREDIT

Bad Debts

The Law provides for relief from bad debts that are more than six months old. A bad debt arises when a supplier supplies and bills something to a customer for which no or only part payment is received despite attempts to get the customer to pay. Where tax such as MPST has been charged and accounted for in a previous tax return it means that the registered taxpayer has not only lost money due to him but has lost the amount of tax involved.

To enable the taxpayer to recover the tax component of the amount of the debt the arrangements are as follows.

Once a debt is considered to be bad i.e. it has not proved possible to recover the amount owing either in full or in part, in accordance with normal accounting practice, it is transferred to a bad debt suspense account. If the taxpayer is intending to claim relief for the tax component of a bad debt, a separate record for tax purposes must also be maintained.

At the expiry of six months details of the debt showing the amount of tax concerned is to be transferred to a summary account for the purpose of calculating the amount of MPST to be claimed as a bad debt. The taxpayer must also ensure evidence is held to demonstrate that attempts were made to collect the debt and that they were unsuccessful. This will normally consist of copies of correspondence requesting the taxpayer to pay or relating to legal action taken to recover the debt with details of the result. The evidence must also include a copy of the original sales invoice showing the amount of tax charged.

The total amount of tax contained in the bad debt or debts if there is more than one, is to be entered in the box designated for that purpose on the MPST return for the month. The declaration on the return relating to bad debt relief is to be completed. This states that, if any payment is received by the taxpayer in payment for the debts or debts claimed, an amount proportionate to the tax will be repaid on the tax return for the period in which the payment is received.

If a taxpayer eventually receives a payment relating to a bad debt claim, in addition to entering it in the records of the business, the details will need to be entered in the record set up for bad debt claims. If full payment of a debt is received the amount to be repaid to the Tax Department will be the amount

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of tax charged originally. If only part payment is received it will be necessary to calculate the tax element. Assuming that the tax rate is 10% this is represented by the following formula.

Amount of payment received X one eleventh = amount to show as repayment due to GCT

The final amount whether payment of the debt has been received in full or in part will then be entered in the relevant box of the Tax Return.

Claims for Refunds or Credit

If a taxpayer considers that any payment made for tax or in respect of a penalty or interest was too great a claim for refund or repayment of the overpaid amount may be made. Any claim must be made within two years of payment of the tax, penalty or interest. No refund may be made or credit given later than two years after the date of payment of the tax penalty or interest. If an amended return has been made and the amount of tax penalty or interest or both has changed, the two years limit runs from the date of the amended return.

A claim must be made on the form specified for the purpose of claiming refunds or credits setting out full details of the amount claimed and provide justification for the claim.

The claim form is to be submitted first to the section dealing with refunds and processed as follows.

i. Record the claim in a permanent Claims Register and allocate a sequential number; all subsequent action and movements of the claim must be recorded to enable its progress to be tracked.

ii. Check that the claim gives sufficient information to consider its justification. If not, contact the taxpayer and ask for more details.

iii. If the claim is large or if there is reason to doubt its correctness or justification, pass to the Audit Division for priority action (monitor prompt return).

iv. As soon as checking action, either in office or by Audit Division, is complete consider the claim at the levels of Instruction set in the office.

v. If rejected at this stage inform the claimant and at the same time explain the right of appeal. Send papers to Corporate Service Department to place in taxpayer’s file.

vi. If the claim is accepted either partly or in full, certify it for refund.

vii. Pass certified claim to Office Processing Division to update the taxpayer’s file and request them to forward it to the Cashier to make payment.

viii. Cashier to return to Repayments Division to close entry in Claims Register and send papers Persons exempted from tax under any other special laws [CPA Order No.17 (Revised) and other bilateral agreements between individual countries and the Government of Iraq] using a mobile phone for business purposes.

ix. to Corporate Service Department to place in taxpayer’s file.

Exemption from tax for Diplomatic Missions and International Organisations

Because this is an aspect of the tax which is very sensitive and could give rise to difficulties in application the material from the Guide has been copied in its entirety.

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Legal Basis

Section 14 of the Mobile Phone Tax Law provides for exemption from the tax for the following classes of persons.

1. Foreign diplomatic and consular representative offices and international organisations together with the staff of these offices provided that they are not Iraqi citizens.

2. Persons exempted from tax under special laws who must provide a certificate to prove they are entitled to exemption.

The first group is governed by the provisions of the Vienna Conventions 1961 and 1963 either explicitly in the case of diplomatic missions or by implication in the case of International Organisations. The Conventions limit the exemption to the extent that tax cannot be recovered if it is included in the price charged for goods and services.

The second group, which consists largely of contractors and consultants officially sponsored by a country providing assistance to Iraq are entitled to claim a refund of any tax charged as part of the price of goods or services purchased. This arrangement does not extend to locally established contractors and citizens of Iraq.

Arrangements for relief from MPT

This will be done by a system of authorisation for tax-free invoicing as explained below. To enable mobile phone service providers to issue invoices without tax being charged to a customer entitled to exemption from tax the supplier must be in possession either of a letter from a diplomatic mission or organisation of equivalent status or, in the case of a contractor, an authority issued by the Iraqi government. The requirements to be followed are given below.

Issue of invoices without charging tax for mobile phone services supplied under a contract or for bulk supplies of pre-paid phone cards

Diplomatic and Consular Missions and International Organisations

Evidence of entitlement to exemption from the tax will be a formal letter signed by a senior official (First Secretary or above) at the post confirming their status and entitlement to be exempt from a charge to tax. In the case of an International Organisation the letter must signed at the level of the head or deputy head of the post to confirm that they have equivalent status to a diplomatic mission and quote the justification for it. This will be the protocol signed between the Iraqi authorities and the organisation. The letters will be filed by the GCT for future reference.

Contractors and consultants officially sponsored by a country providing assistance to Iraq

These organisations and persons are covered by the Coalition Provisional Authority Order Number 17 (Revised) which provides for exemption from taxes such as the tax on mobile phones services where they are for official use or to be used for the performance of contracts in Iraq. Essentially this includes the following.

Contractors, subcontractors, international consultants and private security companies who are non-Iraqi legal entities or personnel who are not Iraqi citizens, providing services, equipment, provisions, supplies, material, other goods or construction work to: the CPA, the MNF or for international humanitarian or reconstruction efforts in Iraq or do so for a State arranging the provision of all these supplies.

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In all these cases the customer must possess an authorisation of tax-free status from [ ] To obtain the authorisation the applicant must provide a formal letter signed by the head or deputy-head of the organisation stating briefly the nature of their activities together with a letter from the agency of the sponsoring foreign country (for example USAID, DFID or equivalent) confirming that the contractor or other person is operating under a contract agreed with them. The letters should specify entitlement to exemption from taxes under the above-quoted Order and the date of expiry of the contract.

Details of the method for applying for tax-free authorisation can also be obtained from the tax administration web-site of the General Commission for Taxes, http://www.iraqtax.org

Conditions applying to the issue of invoices without tax being charged

- A copy of the documentation referred to above the invoice must be held by the mobile phone service supplier and the reference number quoted on each invoice.

- The tax-free invoice must state clearly the nature of the supply. In the case of a supply of services it must not extend beyond the period of the contract with the sponsoring agency. In the case of bulk supplies of prepaid cards, these are not to be invoiced without tax being charged within one month of the end of the contract.

- In the case of bulk supplies of pre-paid cards the tax component, at the current rate of tax of 10%, on one eleventh of the face value of the cards. The amount charged is therefore to be reduced accordingly.

Sales to diplomatic missions and accredited contractors of mobile telephone pre-paid cards other than on an invoice

No reduction is to be made for the tax component in the face value of the cards

TAXPAYER AUDIT

Audit is another very important component of tax administration and, if carried out properly, helps to encourage taxpayer compliance. Put very simply it is a method of ensuring that a taxpayer is paying the correct amount of tax according to the Law. It is also a means of helping taxpayers to understand the effect of the taxation system on them.

There are two main types of audit, desk audit and field audit. In the case of Mobile Phone Service Tax, desk audit is of limited effect because the tax derives from continuous flows of very large numbers of individual and constantly occurring transactions. Also, particularly in the early stages of the taxes, it is important that the mobile phone service providers (MPSPs) understand the tax system and apply it correctly. It is essential therefore that tax assessors or auditors visit them regularly to check that they are accounting correctly for the tax.

The first visit should be designed to examine how the MPSP arranges the accounting of the business. Auditors must remember that the MPSP will be concerned that it is maximizing income from all the calls that are made on its network. The MPSP will also have substantial overheads in maintaining the system.

The first visit should be designed to obtain as much information about the business as possible and to set it out systematically in the taxpayer's permanent file. A flow chart method is suggested as the best way to describe both the activities of the business and its accounting systems. This is a diagrammatic method showing activity, information and accounting flows.

If a computerised system of accounting is employed that will be the opportunity to check that it accounts properly for the tax. Any deficiencies are to be discussed with he taxpayer to get them

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rectified. If necessary, consult line management and seek technical advice. Keep detailed notes of action taken and the outcome achieved

The following notes give guidance on the main things to look for and examine during an audit visit.

The two main sources of income for a MPSP will be contract accounts and pre-paid systems using phone cards.

Contract accounts

Under this system a customer pays a fixed or variable amount, usually monthly, in return for specified services which may vary from unlimited calls on the network to specified numbers at different times of the day and other variations.

The MPSP will have a system in place to monitor what customers receive so as to maximize profitability. Some contracts will provide for additional charges if the customer exceeds the contracted number of calls and the MPSP's equipment will enable this to be done.

There will also be many calls that either originate in Iraq and are transmitted to other countries and vice versa. Such calls involve charges between the Iraq network and the foreign originator or receiver. These charges are passed on to the domestic customer and will be taken into account in the charging system.

The other variation which will represent a large proportion of calls in Iraq will be those made (and received) by organisations that qualify for exemption from the tax. It will be important to verify that the MPSP's arrangements for accounting correctly for these is satisfactory and that the necessary documentation authorising exemption are obtained, held on file and the reference number quoted on invoices to these customers.

Invoices to non-exempt customers will show a charge of tax whereas invoices to properly authorised exempt customers will not. It will be expected that the mobile phone service provider will differentiate these in the accounting system.

Pre-pay cards

These are in common usage with millions sold annually. They have a face value of USD10, USD20 or USD30 and permit the purchaser to make calls to that value. They are sold to users at retail outlets where the quantity of stock held will vary depending on the owner or manager's estimation of the level of trade. They are either purchased outright or on consignment. Either way they represent a cash outlay for the retailer and therefore purchases will be kept to a minimum consistent with expected sales.

Consignment terms are normally only available to retailers who deal in larger quantities. "On consignment" means that, although the value of the amount of cards is paid when they are delivered from the MPSP, the terms of contract under which they are obtained allows the retailer to return any that are unsold within a specified period. Some contracts may also allow delivery to be made on credit without prior payment. This is helpful for the retailer's cash flow but normally credit terms will be granted only where the MPSP is confident that the retailer will pay promptly and that the quantities of cards sold through that outlet are substantial.

Both of the above categories will be sold on invoices and the accounting will include the use of delivery notes by which means the retailer acknowledges receipt of the cards to the MPSP. Comparison of delivery notes and copy invoices is a useful audit tool.

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On the matter of value, sales of cards either outright or on consignment terms will be sold at a discount to provide the retailer with an operating margin and profit. Tax however is due on the full retail face value of the cards. This, with a tax rate of 10%, is 1/11th of the face value. This is calculated as follows.

$$\frac{\text{Tax rate (10\%)}}{\text{Value 100\% + Tax rate (10\%)}}$$

Because the face value of telephone cards cannot be altered, the commercial effect of the introduction of the tax is that MPSPs will need to adjust their pricing structure. The four components are the cost of providing the service represented by the card, their own profit margin, the retailer's profit margin and either the length of time per call or the number of calls per card allowed to customers. How they adjust these is a matter for commercial judgment.

Sales of prepaid cards to diplomatic missions and other persons entitled to exemption from the tax may only be made at a tax exclusive price if sold in bulk quantities on an invoice. The detailed arrangements are explained in the Guide for Mobile Phone Service Operators. Tax is to be accounted for on other sales in the usual way

MPSP's own use of its services

An MPSP will utilise the services of its own network. This may be done either by a direct linkage equivalent to a contract supply or by the use of pre-pay cards. Use of the service by either means represents a taxable service on which tax is due. The MPSP will exercise some control over this usage if only to prevent misuse by employees and will operate a system to do so. Mobile telephones have a unique number and can therefore be identified with the system. Audit officers must ascertain what this system is and ensure that it is also used to account for tax on calls made by the MPSP management and employees.

Stock Accounts

As noted earlier, telephone cards have a monetary value and therefore attract misappropriation and theft. It is important for the MPSP that they are controlled in the same way as currency. A MPSP will maintain stock records of cards as described earlier. These can be used by a tax auditor to carry out very effective checks against purchases and sales.

ASSESSMENT

An almost inevitable outcome of an audit is the need to make an assessment. This will arise due to various reasons; the most common of which are as follows (this list is of examples and not to be taken as exclusive).

1) Simple mistakes of calculations and omissions.
2) Failure to include batches of material in calculating tax liability.
3) Incorrect understanding of tax liability.
4) A computer programme that fails to assemble tax accounting data correctly.
5) Deliberate omission of transactions from the tax base.

A tax auditor must be alert to all these possibilities several of which can result in large under-declarations of tax. An incorrect computer programme, item 4 above, if left uncorrected, will produce continuing errors. Deliberate omissions, item 5, if serious and persistent, are indications of fraud and need to be investigated.

In all cases, the tax auditor will need to identify the extent of the errors, calculate the amount of additional tax due, make sure that any systems or procedural errors will be corrected and issue an

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assessment to the taxpayer giving details of the amount to be paid. This calculation must take account of the interest due under Article 14 of the Law and the possibility of a penalty of 25% of the non-declared tax. A separate report should be made to the head of the LTU as to whether a penalty should be imposed and, if so, the percentage. Account should be taken of the degree of carelessness or culpability giving rise to the under-declaration.

AUDIT REPORTS

To enable a full report to be made in the taxpayer's file after each audit has been completed, careful notes must be kept during the course of an audit. The report will describe the work done, the records inspected and the extent of the checks made in them. If errors were discovered they must be described together with a note of the corrective action taken. The issue of any assessment and the details of it will also be recorded in the file. An important section of the report, as noted earlier, will be a clear description of the business activities and the accounting system. These can be used both for preparation for the next audit visit and as a permanent record for reference. It is most important that it is kept up to date.

Any difficulties expressed by the taxpayer and discussed with the audit officer are to be reported together with the outcome of the discussions and the solutions agreed. Building a good relationship with taxpayers is an important duty of audit officers and will encourage better compliance with the requirements of the tax administration.

Audit managers and senior managers are to examine audit reports to ensure that a high standard of audit is maintained

ENFORCEMENT

This activity is included to complete the control cycle that applies to any tax. Enforcement is the series of activities to ensure that taxpayers submit their tax declaration within the time cycle required by the law and pay in full the tax that they are due to pay. The tax that they are due to pay will consist of the tax declared together with any additional tax discovered as the result of an audit and ensuing assessment.

It is not the purpose of this note to enlarge on the principles and methods of enforcement but to emphasise that efficient and prompt enforcement action is a powerful means of ensuring good compliance by taxpayers with the tax law. It also supports the integrity of the tax because the taxpayers see that the tax system is being strongly administered.