Siegen/Germany, November 10th 2010.

News for shipments to Iraq

Dear clients,

Please see below the latest news related to logistic services to Iraq.

I.) Basrah Oil & Gas Fair – 25th till 28th Nov 2010.

For the first time ever, there will be an Oil & Gas Fair in Basrah from 25th till 28th Nov 2010. We will join the Basrah Oil & Gas fair with a small booth and it will be our pleasure to assist you in regard of any logistic matters.

II.) Eid Holidays in Iraq

Please consider that due to the EID AL ADHA Holidays, all Ministries, the customs and most of the private companies are closed from 16th till 21st November 2010. We expect curfews in certain areas in Iraq.

III.) Taxation for Iraq Shipments

Please find attached (page 4-9) a fresh article prepared by "Amereller Legal Consultants" given more details about the Taxation for Iraq Shipment. In case of questions, please feel free to contact them or us.

IV.) Umm Qassr Port Procedure

We like to draw your attention on the complex procedure for shipment via the port of Umm Qassr.

- Shippers own containers.

  As already reported in our previous Newsletters, Iraqi customs is asking for duties based on the value of the container, beside the tax on the goods. The average duties are: USD 300,00/20 ft, USD 600,00/40 ft.

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- Physical inspection of goods.

  Currently the scanning system at Umm Qassr port is out of order. Therefore, customs authorities are checking randomly containers manually. If customs is asking for an inspection, we have to shift the container to the inspection area, unload the container partly or completely and reload it after the customs inspection. Due to this additional costs will occur for account of the shipper.

- Sampling of goods

  Iraqi Customs has started again to take samples of certain goods. This applies mainly for private receivers but also for contracts without duty exemption approval (e.g. imports for the Intern. Oil Companies).

V.) Border situation

a.) Al Karameh / Trebil (Jordan/Iraqi border)

The flow of cargo via Jordan into Iraq is still limited as well as the number of Iraqi trucks entering Jordan on a daily basis (average 40-50 per day max). Still no Iraqi reefer trucks are allowed to enter Jordan. Therefore, all reefer cargo has to be transhipped from Jordan to Iraqi reefer trucks at the border.

Current waiting time at the border approx 2-3 days.

b.) Syrian/Iraqi borders

The traffic via the Syrian gateway into Iraq is slightly increasing. As a border point, so far, only the border point of "Al Waleed" remains open (except the railway border).

c.) Habour / Zakho (Turkish / Iraqi border)

The Trade Volume between Turkey and Iraq as well as the Transit cargo volume has again increased substantially. Furthermore, Freight charges are increasing due to longer waiting times for the border crossing. The current waiting time for trucks from Turkey to Iraq is up to 4 days and from Iraqi back to Turkey is up to 10 days.

d.) Umm Qassr port

The productivity of Umm Qassr port is still affected by fuel and power shortages. During the EID holidays the working hours in the port will be limited. Right now, there is already a congestion for container vessel as well as a congestion inside the terminal to take cargo out of the port.

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e.) Safwan/ Abdali commercial border point (Kuwait / Iraqi border)
The situation is normal again. Approx 100-200 trucks with commercial cargo are crossing this border point daily. All cargo has to be transhipped from Kuwaiti to Iraqi trucks. Currently there are talks between the governments to set up dedicated border crossing points for the international oil companies to ensure a relatively smooth operation for the import of oil equipment. However, so far no improvement on the border process has been implemented.

In case of any questions, do not hesitate to contact us.

Yours faithfully,

M.G. International Transports GmbH

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Iraq Tax Outline

The following is our short summary of the main aspects of Iraqi income tax law as it may be relevant to A foreign company's' activities in Iraq. However, this survey is just a summary of the important features of Iraqi tax law and practice and does not constitute comprehensive tax advice.

As a general rule, it is worth mentioning that tax practice often differs considerably from legal provisions, and the exact tax liability would largely depend on negotiations with the competent authority, in particular if activities are combined with an investment in Iraq under the Investment Law of Iraq. Unlike a normal construction and service contract the advantages of the Investment Laws will not be applicable.

The income tax is governed by Income Tax Law No. 113/1982 amended by CPA Order No. 37 which introduced a reduction in the tax rate not to exceed 15% and CPA Order No. 49 which fixed the tax rate for corporate taxpayers at the rate of 15%. Other administrative regulations provided for in CPA Order No. 49 are also still in force unless amended by CPA Order No. 84 or later administrative regulations. On 15 February 2010 the Iraqi Parliament ratified Income Tax Law No. 19/2010 which provides for an increased tax rate of 35% imposed on income generated from contracts with foreign oil and gas companies. Other provisions of the Income Tax Law remain unchanged. At certain intervals the Ministry of Finance publishes Instructions which provide for further details and administration of the legal provisions of the Law. The Instructions for Law 19/2010 have not been issued yet.

Under the Income Tax Law **all business performed in Iraq** is subject to tax. There is a legal distinction between **business *in* Iraq** and **business *with* Iraq** (further defined below). However, the administrative practice is that all contracts which have at least some portion to be performed

in Iraq will be characterized as **business in Iraq** and thus will be subject to income tax on the full amount of the contract.

Therefore, all contracts with offshore portions (supplies and services produced or performed outside Iraq) and on-shore portions (supplies and services produced or performed inside Iraq) are completely taxed on the profit generated from the entire contract. Pure offshore supply contracts, pure offshore service or training contracts and offshore remote service contracts without any involvement of a local branch office will not be reported and are tax free. If software has to be supplied, this will be considered offshore supply if the software is regularly imported and is not contractually connected with any other onshore contract.

2.1 Income from Business in Iraq

Under Instruction No. 2/2008 the Iraqi tax administration provided clearer distinction between **business *in* Iraq** and **business *with* Iraq**. However, the Instructions are not valid in the region of Kurdistan-Iraq which has the tendency to choose an independent and separate interpretation of almost the same law that is applied in Iraq as a whole. Since Kurdistan-Iraq did not provide its own detailed clarification of the difference between doing business *in* Iraq and doing business *with* Iraq the interpretation provided by the Central Government may be used.

2.1.1 Revenues Subject to Tax

Article 1 of the First Chapter of Instruction No. 2/2008 enumerates cases and activities which are considered to constitute trading in Iraq. This article applies to supply and mixed supply/service contracts of a foreign contractor with public as well as with private customers and is independent from the place of delivery or the place of business of the foreign contractor. A business activity will be considered trading *in* Iraq if

(1) the non-resident foreign contractor has a branch or a representative office in Iraq, and any representative or employee of the branch or representative office signs the contract;

(2) the contract was signed outside Iraq by representatives or employees from the head office of the supplier and the supplier has taken over all legal and handling activities like Letters of Credit, customs and import handling, whether if conducted by branch or head office personnel;
(3) the contract value was paid partially or totally inside Iraq;
(4) the compensation for the supplies has been paid to the supplier in context of a barter deal;
(5) the contract has been signed by a resident of Iraq or a local agent according to the instructions of the supplier; then the supplier and the agent, the latter for his commission, shall be subject to tax;
(6) the complementary services to any supply including installation, supervision, maintenance and engineering works shall be subject to tax irrespective if performed under the same or a separate contract; and
(7) the compensation is paid for any services of experts or any other employee's or Iraqi or foreign experts' or labourer's activities, even if paid outside Iraq.

2.1.2 Revenues not Subject to Tax

Article 2 of the Instruction defines those situations which are considered trading *with* Iraq and, therefore, do not incur any Iraqi income tax. A business activity will be considered trading *with* Iraq if:

(1) the supplier has its place of business outside Iraq, the contract was signed outside Iraq and all legal and handling activities like Letter of Credit shipping, documentation processing, customs and similar tasks were carried out by the Iraqi party;
(2) the supplier has a branch or representative office in Iraq but the contract was signed outside Iraq without the involvement of the branch or representative office in which case the branch, representative office or agent shall be taxed only on the commissions due them;
(3) services or expert activities are performed and paid for outside Iraq.

Although the Instruction provides more clarification it still does not answer all open questions. For example, when comparing Articles 1 and 2 of the Instruction it is still not clear if offshore services paid offshore will generally be tax free or will obtain a tax exemption only if there is a separate offshore service contract.

2.2 Tax Exemptions

Resolution 767/1987 provides for tax exemptions in the following case: foreign companies, which are implementing development projects in Iraq, may be exempted from all duties and taxes accrued thereon, including tax on income earned by their non-Iraqi personnel.

Any tax exemption under this Resolution should already be part of the tender documents inviting contractors to submit their bids. In any case this exemption has to be initiated by the customer. The customer should present the project to the Council of Ministers and apply for an approval of the exemption. The application should specify in detail the kind of taxes and the persons who will be covered by the exemption. It is recommended that the exemptions extend to all taxes, levies and duties connected with the performance of the contract. It should cover the contractor and subcontractors by name and all of their employees.

Although Resolution 767/1987 is still in force tax exemptions under this law are currently not available since the policy encompassing the interpretation of the administrative exemptions has been replaced by the new provisions of the Investment Law. In practice, public customers currently do not apply for any tax exemption for development projects. On the other hand the tax exemption under the Investment Law is limited to genuine investment projects developed by foreign parties and is not subject to the foreign contractors' construction or installation projects. Therefore, in practice there is no income tax exemption currently applied on construction contracts.

2.3 Tax Rates

Profits of Iraqi and foreign companies doing business in Iraq are taxed at a flat rate of 15%. A higher rate of 35% is applied on Iraqi income from contracts with foreign oil and gas companies, their branches, offices and sub-contractors active in the production or extraction of oil and gas and related industries.

2.4 Tax Audit of Books of Account and Tax Return

Books of Account shall be audited by a registered auditor and certified. A tax return – including a statement of zero income – has to be filed with the tax authorities before the first day of June in the following calendar year. An extension may be granted upon application if the authorities are satisfied with the existence of a lawful excuse.

If the authorities are not satisfied with the profits shown in the ledgers they will estimate a profit margin. The margin currently is between 20% and 22% of the amount invoiced for supply and construction or erection contracts and up to 40% for consultation and research contracts. Taxes will be assessed at that rate of 15%. Thus, the tax burden for supply and trading contracts will be 3% to 3.3% and for consultation and research contracts up to 6% of the contract value.

After tax assessment a tax clearance certificate will be issued to be presented to purchasers in order to obtain release of any sums withheld from a contract's final payment.

2.5 Retention and Withholding Tax

Any government entity is obliged by law to retain up to 10% from payments due to contractors until the contractor provides evidence of tax payment by submitting a tax clearance certificate (Art 28 of Law No. 113 of 1982). The Financial Authority may also require private sector entities to follow this procedure as well. Instruction No. 2/2008 and Instruction of 26 January 2009 provide more details. The withholding obligation also applies to private entities. The percentage to be withheld and transferred to the tax authority is 3% to 6% on every payment. The withholding of the final payment is in addition to the withholding on current payments. A contractor or subcontractor in the supply or service contract chain has the same withholding obligation with respect to payments to his respective subcontractor.

It is important to note that the customer – or the contractor for its subcontractors – will be held liable for the tax of its contractual partners and will be released only after the contract partners have presented the tax clearance certificate from the tax authorities.

Any tax withheld will be credited against a contractor's or subcontractor's final tax obligation. If the amount withheld exceeds the liability, the difference shall be refunded by the customer or contractor, and if already transferred to the Tax Authority by that authority respectively. We do not have current experience so as to be able to reliably advise on whether the refund process will function without difficulties. It also has been reported that the withholding process so far has only been applied to public entities.

Paragraph 1 of Article 19 of the Iraqi Tax Law provides for a withholding tax of 15% on all amounts payable to non-residents due to interest on debentures, mortgages, loans, deposits, and advances, as well as on annual allowances, pension salaries or other yearly payments. The withholding tax system has been extended to other forms of income by Ministerial Instructions. These Instructions are internal documents and are not usually disseminated publicly. A foreign company's should check with us in specific cases to see if we are aware of an internal Instruction that may apply to A foreign company's' operations.

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