RLS

LEGAL

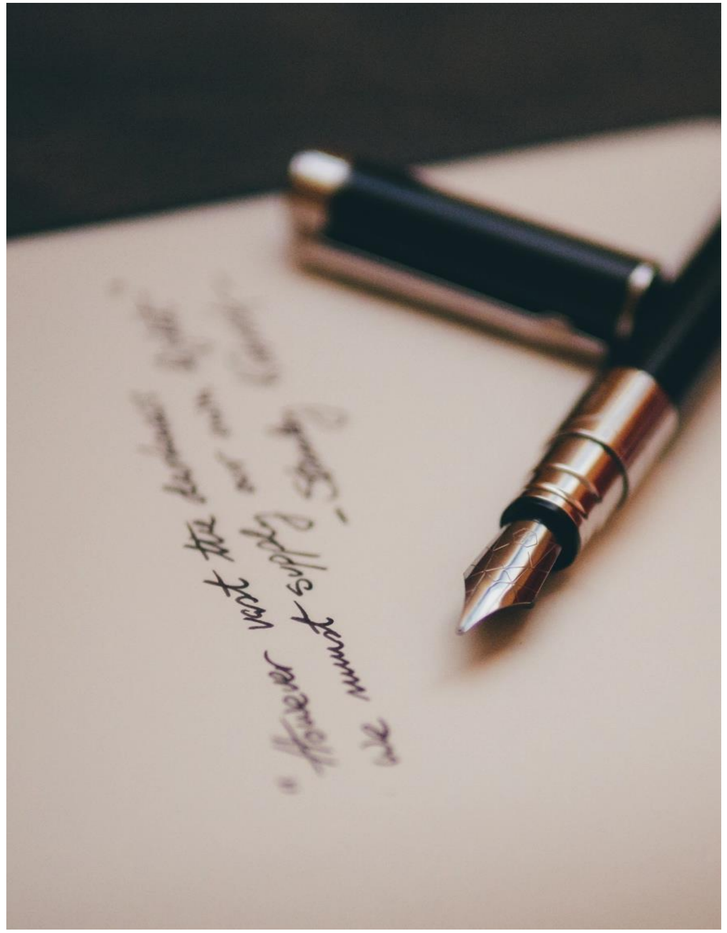
Introduction

- Rosenstock Legal Services (“RLS”) is a legal consulting practice founded in Kabul in 2008.

- RLS advises clients in transactional matters, dispute resolution, and on matters of Afghan law, including registration, taxation, employment law and other interaction with Afghan government departments.

- RLS is able to give is in the form of consulting advice rather than legal advice. RLS works with local counsel who are qualified to practice in Afghanistan and can review any advice as required.

- RLS’s core principles are:
    - Providing organizations with international calibre legal services applicable to the Afghan environment;
    - Helping Afghan organizations transact with the international community on an equal footing; and
    - Contributing to the development of the legal sector in Afghanistan.



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Import Duties and Taxation on NGOs

Import Duties and Taxation on NGOs

Customs Duty & Import Taxes

What are customs duties and import taxes and do they apply to NGOs?

Recent Changes to Tax Law & Practice

Extension of of penalty amnesty, making cash payments, coming changes to the Income Tax Law

General Issues

General issues pertinent to NGOs as seen from practice

Questions

Not Legal Advice

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Customs Duty & Import Taxes

1. General principle of exemption of NGOs:

- Non-profit organizations established and operated exclusively for educational, cultural, literary, scientific, or charitable purposes are exempt from having to pay income tax (Article 10(1)(1) of the ITL)
- Must be properly registered with the MoE
- Must obtain tax exemption ruling from the ARD

Exceptions:

- Commercial enterprises owned by not-for-profit organizations are not exempt from income tax (Article 10.4 ITL Manual)
- Tax exemptions under international donor agreements

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Customs Duty & Import Taxes

2. General principle of taxation of imported goods:

- Fixed tax of 2% on value of goods, including import duty (Article 70(1) of the ITL)
- Business Receipts Tax (”BRT”) of 4% of value of goods (Presidential Decrees No. 58 and 149)
- Import duty (in accordance with Income Tax Tariff)

Note:

- Fixed Tax on imported goods is treated as a credit towards annual income tax payable (Article 70(1) of the ITL)
- BRT paid on imported goods is treated as an advance payment for BRT payable (Presidential Decrees No. 58 and 149)

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Customs Duty & Import Taxes

3. Exemption of NGOs from import duty and taxes:

NGOs **should be exempt** from import duty and tax and for a number of reasons:

- NGOs are generally exempt from income tax: Fixed tax on imported goods is in lieu of income tax, and treated as prepayment of income tax
- NGOs are exempt from BRT: BRT only applies to limited liability companies, corporations, general partnerships, and profitable organizations, and BRT on imported goods is a credit to general BRT liaability
- NGOs are exempt from tax and customs duty on the importation of material and equipment necessary for non-profit and charitable purposes (Article 30(1) of the NGO Law)
- NGOs are exempt from customs duty on imported goods, pursuant to Customs Department ruling from 1394

HOWEVER: Conflict of Laws – ITL and Customs law say they prevail. Customs Law doesn’t specifically say how NGO imports are taxable; hinges on interpretation.

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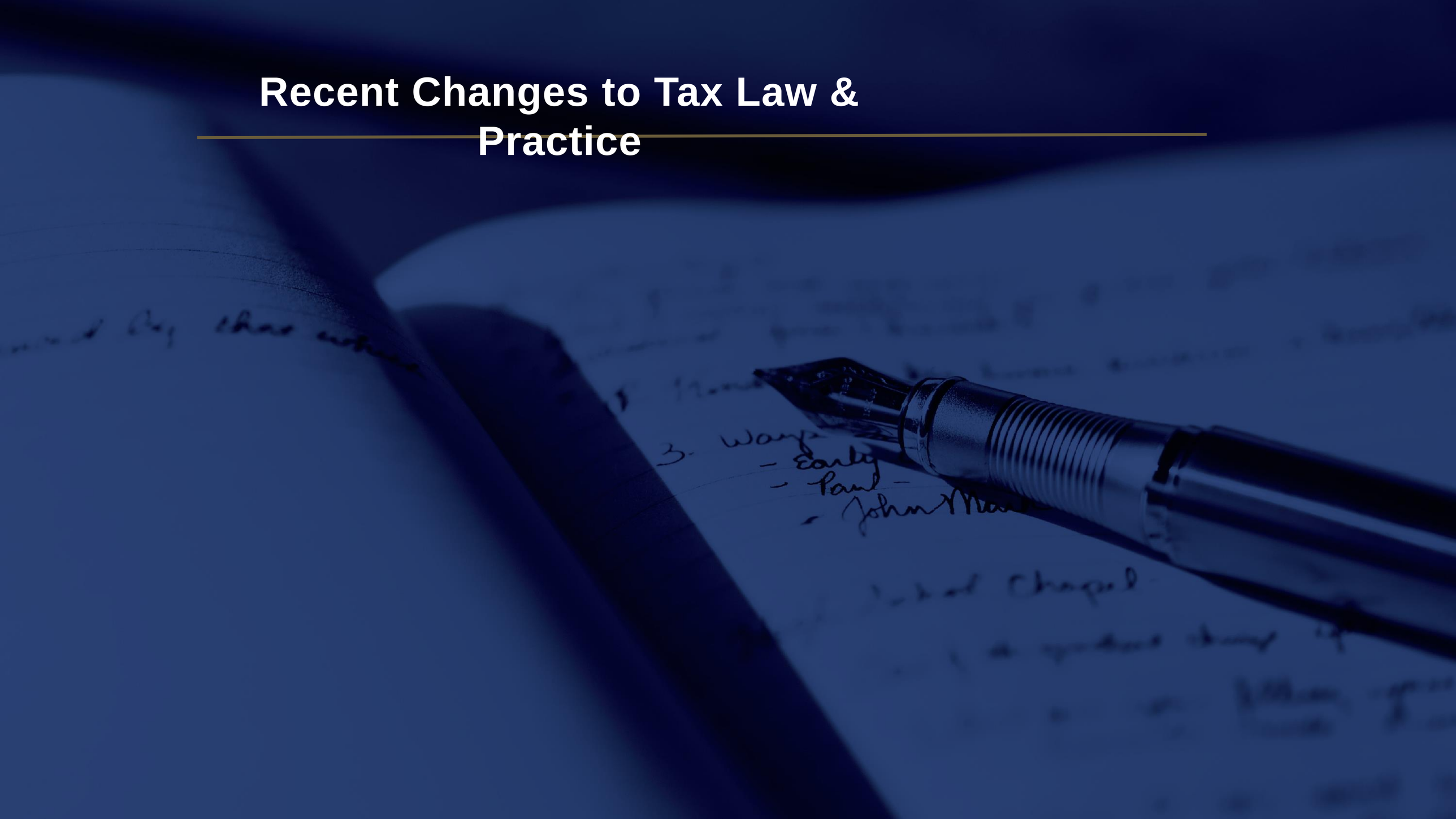
Recent Changes to Tax Law & Practice



Recent Changes to Tax Law & Practice

- **Amnesty**: taxpayers who have not paid/cleared their tax obligations for the 1381 - 1396 fiscal years, can receive:
  - a 90% amnesty on penalties for arrear taxes paid between the first day of Jadi 1397 (December 22, 2018) and the end of Hut 1397 (March 20, 2019); and
  - an 80% amnesty on penalties for arrear taxes paid between the first day of Hammal 1398 (March 21, 2019) and the end of Jawza 1398 (June 21, 2019)

- **Cash Payments**: Payments over AFN 50,000 against government tariffs or tax payments have to be made electronically
  - Effective in Da Afghanistan Bank's Kabul based branches from January 21, 2019
  - Effective in Balkh, Kunduz, Nangarhar, Paktia, Herat, and Kandahar from February 20, 2019

- TAL Law: Amended ITL in 2015, amended by Official Gazette No. 1310, dated 2 October 2018

- Further proposed changes to ITL law

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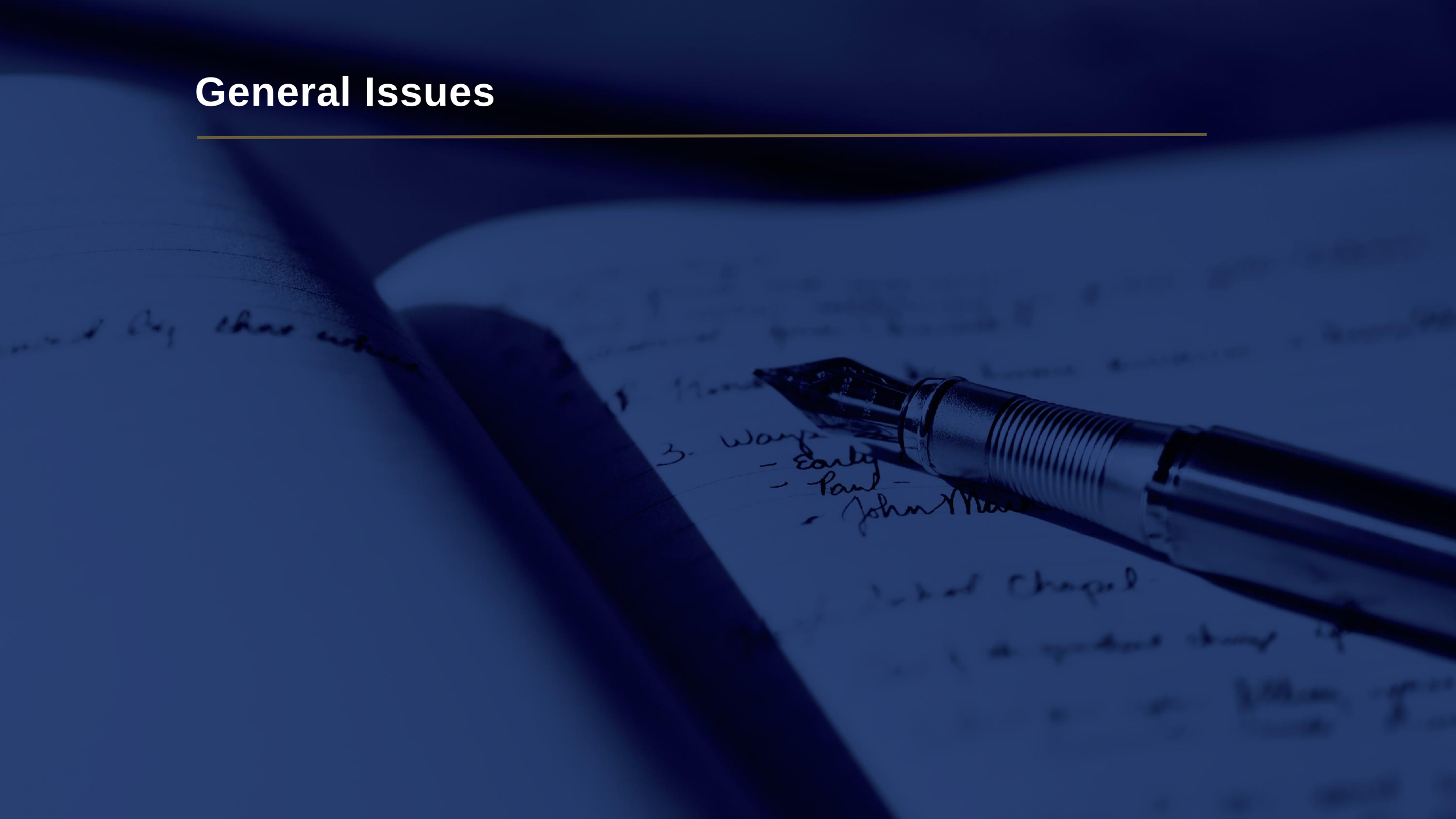
General Issues



General Issues

1. Preparing annual filings for Afghanistan vs. project financials vs. financial statements vs. external audit

2. Withholding is important to get right:
   - Salaries (Articles 17, 46 and 58 of the ITL)
   - Vendors/Suppliers (Article 72 of the ITL)
   - Landlords (Article 59 of the ITL)

3. Treatment of Insurance

4. Treatment of Depreciation

5. “Cashing” forms

6. Obtaining tax clearances

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Questions

About Us

Dirk Hanekom

Partner

Dirk is admitted as an Attorney and Conveyancer of the High Court of South Africa, with and MBA from the University of Cape Town and an LLB from the University of Pretoria. Dirk has been with RLS since 2010, where he has been advising clients in a variety of commercial matters, including employment, taxation, contracts and entity formation.

Chantal Grut

Partner

Chantal is admitted to practice in New Zealand and the State of New York, with an LL.M. from Columbia Law School. She has worked in the Afghan legal sector since 2012, and heads RLS's tax practice, and has served as a Board Member for the Afghanistan Dispute Resolution Centre

Tom Rosenstock

Partner

Tom is admitted to practice law in the State of New York, where he began his legal career in the New York office of Paul, Weiss, Rifkind, Wharton & Garrison. Mr. Rosenstock came to Afghanistan in 2008 and since then has been advising clients in commercial and transactional matters and dispute resolution.

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