



VAT NEWSLETTER

EU Commission proposes VAT exemption in order to strengthen the common security and defence policy

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1 Background

The existing VAT system provides for various exemptions for acquisitions, imports and supplies to troops carried out for the purposes of the common defence effort. However, the exemptions in accordance with Articles 143 and 151 of the VAT Directive only apply to NATO troops. Recognised international organisations (including organisations for common defence efforts) can also benefit from them. On the other hand, supplies to troops of other EU member states are not yet exempt from VAT. The Common Security and Defence Policy (CSDP) initiated by the Treaty of Lisbon in 2009 is not yet reflected in VAT law. The same applies to the Excise Duty Directive 2008/118/EC.

2 Commission proposal

The Commission regards its proposal as being complementary to the VAT Action Plan. The proposal provides that the existing exemptions in favour of NATO troops (Article 143 para. 1 letter h and Article 151 para. 1 letter d of the VAT Directive) shall also apply to troops of EU Member States. However, this requires that the respective troops serve the common defence effort, within the framework of the CSDP. According to the Commission's explanatory memorandum, the exemptions do not apply where armed forces are deployed solely for security purposes, for humanitarian and rescue tasks or other operations, which have no defence implications. Further, the respective supply (in accordance with the existing



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VAT exemptions for NATO troops) must be intended for the use of those forces, for their accompanying civilian staff or for supplying their canteens or messes.

In addition, the draft directive also restricts the application of the exemption for supplies of goods and other services, as provided in Article 151 para. 1 letter ba and bb of the VAT Directive, to geographical areas. Only armed forces that are not stationed in their home country can benefit from it. On the one hand, the exemption applies only to local supplies rendered to the armed forces of other Member States (letter ba). On the other hand, cross-border supplies to armed forces are only VAT-exempt if they are not armed forces of the country of destination (letter bb).

3 Evaluation

The proposal is in line with the overall defence policy situation. The CSDP of the EU has now been in existence for approximately ten years. However, the CSDP has not yet managed to exert any particular influence. Efforts have only been intensified in the recent past. The call for a strengthening of the CSDP has been made not least because NATO's importance has declined significantly in recent years.

The Commission itself demonstrates in its proposal that the fiscal effect of the proposed VAT exemption is limited. Even if the equal tax treatment of defence efforts, within the framework of NATO and the CSDP, may seem necessary and meaningful, the present proposal is initially to be understood as a political statement. Accordingly, in its explanatory memorandum to the proposal, the Commission also stresses the coherence of the proposal with the EU's Global Strategy for Foreign Affairs and Security Policy.

All this does not make the proposal bad per se, nevertheless, a "good" law requires more. In order to enable the companies concerned to interpret and apply the new regulations in a legally secure manner, it would, from a practical point of view, be desirable to clarify the provisions. This concerns, in particular, the condition to serve the common defence effort and the provision of the necessary proof thereof. Therefore, within the framework of the legislative procedure, the regulations on the exemption of supplies to NATO armed forces should be revised in order to clarify them.