



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**REQUEST SUBMITTED BY THE GOVERNMENT OF
THE UNITED KINGDOM FOR AUTHORIZATION TO MAINTAIN SPECIAL
MEASURES PURSUANT TO ARTICLE 30 OF THE SIXTH COUNCIL
DIRECTIVE (77/388/EEC) AND ARTICLE 23 (2) OF COUNCIL DIRECTIVE
92/12/EEC**

Introduction

By letter registered at the Secretariat General of the Commission on 29 July 1996, the British Government, acting on the basis of Article 30 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment and Article 23 (2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, requested authorization to maintain special measures derogating from the said Directives.

In accordance with Article 30 of the Sixth Council Directive and Article 23 (2) of Council Directive 92/12/EEC, the other Member States were informed of the British request by letter of 29 August 1996. Under the said Articles, the Commission or the Member States may request that the matter be raised before the Council.

Description of the measure

The United Kingdom would like to continue affording relief from VAT and excise duty to visiting non-NATO Commonwealth forces and their personnel similar to the one granted to NATO forces. Since the late 1940s, such relief has been granted on the basis of bilateral agreements concluded between the United Kingdom and many of the Commonwealth countries.

Currently, 6 non-NATO Commonwealth forces with personnel serve in the United Kingdom claiming reliefs. These forces are Australia, Bangladesh, India, Malaysia, New Zealand and Pakistan. In total, approximately 400 personnel are presently serving in the United Kingdom.

The British request covers:

- a) import of goods by Commonwealth forces and their personnel.**

Presently, Commonwealth forces enjoy relief from customs duties along the same lines as NATO forces. Personnel of visiting Commonwealth forces may import their household effects for use while in the United Kingdom without payment of customs duties. The personnel are furthermore, under existing warehouse arrangements, granted a ration of duty and VAT free alcohol and tobacco products each month;

- b) domestic purchases of goods and services by Commonwealth forces and their personnel.**

For goods and services purchased for official use, visiting Commonwealth forces are at the moment enjoying relief from VAT and excise duty without any fixed limitation. The personnel of such forces only enjoy relief from tax(es) when purchasing consumer durables with a minimum value of 10 £. As consumer durables are considered goods capable of at least one year of sustained use and of being exported at the end of a tour of duty. The personnel also enjoy relief from taxes on fuel purchased for use on official duty journeys.

Relief is given by means of a refund of tax(es). All claims for refund of tax(es) on purchases are forwarded by the visiting forces to the customs authorities. When purchase is made by personnel of visiting forces, the claim for refund has to be routed through the force authorizing it prior to forwarding to the authorities;

- c) intra-Community purchases of goods and services by Commonwealth forces and their personnel.

Commonwealth forces are not currently making purchases in other Member States. However, it is the intention to extend the relief facilitated to Commonwealth forces to purchases from other Member States.

Legal situation

Community legislation does not, at present, allow for VAT and excise duty exemption to be afforded to Commonwealth forces.

At importation, relief from VAT is only granted for goods falling within the scope of Article 14 (1)(d) of the Sixth VAT Directive as set out in Council Directive 83/181/EEC of 28 March 1983. Importations by Commonwealth forces do not qualify for exemption in this respect.

Domestic supplies, including intra-Community purchases, are exempted from VAT pursuant to Article 15 (10) of the Sixth Directive which does, however, only cover NATO forces which take part in the common defence effort. Supplies to Commonwealth forces cannot be exempted under this provision.

Products which are subject to excise duty are exempted from payment of tax under Article 23 (1) of Directive 92/12/EEC where these products are intended for certain beneficiaries. This exemption does not cover supplies to Commonwealth forces.

Commission's opinion

The procedure provided for in Article 30 of the Sixth Directive and Article 23 (2) of Directive 92/12/EEC permits Member States to conclude with non-member countries or organizations an agreement containing derogations from the said Directives. Such derogations are however only justified while complying with the basic principles of the common system of value added tax and of the general arrangements for excise products.

The British Government has requested for this procedure to be applied in relation to the relief from VAT and excise duty afforded to visiting Commonwealth forces and their

personnel. The request covers both import and domestic supplies of goods, including intra-Community supplies.

In the Commission's opinion, the procedure must however be applied with constraint. The British request, where authorization is sought to allow Commonwealth forces to be treated the same way as NATO forces, does not take this into consideration.

Giving authorization to such a request in fact means that Commonwealth forces would benefit from a VAT exemption on supplies of goods and services similar to the one under Article 15 (10) of the Sixth Directive. It has to be mentioned that the same applies to importations of goods by these forces which are not covered by Article 14 (1)(d) the scope of which is set out in Directive 83/181/EEC. It follows that, in an internal market, such an exemption would not be restricted to one Member State but would have to be applied throughout the Community, subject to the limitations laid down by the United Kingdom as host Member State. Consequently, an authorization to apply an exemption to Commonwealth forces would result in a de facto extension of the scope of the exemption under Article 14 (1)(d), as this has been set out in Directive 83/181/EEC, and Article 15 (10) of the Sixth Directive. An extension of that sort would require a change of the relevant directives which would have effect for all Member States. In this respect, the derogation procedure is not seen by the Commission as an appropriate measure.

On these ground, the Commission considers it inappropriate to submit a proposal for a Council Decision authorizing the United Kingdom to apply measures derogating from the common VAT system.

The Commission considers it essential to assure coherence between VAT and excise duty provisions governed by Community legislation. Since it gives rise to fundamental objections applying a derogative measure to exempt Commonwealth forces from VAT, the Commission urges the United Kingdom to reconsider its request for such a measure in the excise duty field.

Conclusion

Since it gives rise to fundamental objections to apply the derogation procedure to the arrangements in question, the Commission requests that the matter be raised before the Council in accordance with Article 30 of the Sixth Council Directive and Article 23 (2) of Council Directive 92/12/EEC.

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