

VAT – The European Commission requests Poland to modify its legislation regarding the exemption for aircraft

The European Commission has formally requested Poland to amend its legislation governing the VAT exemption for transactions related to aircraft, since it is based on criteria different from, and inconsistent with, those employed in the VAT Directive. The request is communicated in the form of a 'reasoned opinion' (second step of the infringement procedure provided for in article 258 of the Treaty on the Functioning of the EU). If, within two months, the relevant national rules are not amended in order to comply with the reasoned opinion, the Commission may decide to refer the matter to the European Court of Justice.

Article 148 of the VAT Directive exempts from VAT certain supplies of goods and services related to aircraft. The essential condition for those exemptions to apply is that the aircraft must be "used by an airline operating for reward chiefly on international routes". In Case C-382/02 the European Court of Justice ruled that the exemptions apply even for an aircraft operating on domestic routes, as long as it is used by such an airline.

However, Poland applies the exemptions to the aircraft of the weight over 12 tonnes. Any aircraft under 12 tonnes is not exempted even where it is used by an airline meeting the relevant conditions. Conversely, aircraft of a weight over 12 tonnes is exempted even where the aircraft is not used by an airline operating for reward chiefly on international routes. Moreover, Poland grants the exemption for the aircraft which are used mainly in international transport" and not to aircraft "used by airlines operating for reward chiefly on international transport. Such situation allows for the exemption to be applied to aircraft which is used either by an airline not meeting the condition of the VAT Directive or by a person or entity other than an airline.

In view of the above, the Commission has formally requested Poland to change its national rules.

The Commission's reference number is 2008/4970.

For press releases on infringement cases in the taxation or customs field see:

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

For the latest general information on infringement measures against Member States see:

http://ec.europa.eu/community_law/index_en.htm