

VAT: The Commission calls on Austria to amend its legislation on VAT exemptions for transactions relating to aircraft used by State institutions

Austria exempts certain supplies and services related to aircraft used by State institutions from VAT. The Austrian VAT exemption is not in line with the provisions of the VAT Directive. Exemptions applied by one Member State with no basis in the VAT Directive could lead to distortions of competition and would make it impossible to ensure that Member States contribute on an equal basis to the EU's own resources. The European Commission has given Austria two months to amend its legislation.

Under the VAT Directive all supplies of goods and services for consideration by a taxable person, intra-Community acquisitions and importations of goods into the territory of the EU are subject to VAT. Member States are allowed to deviate from that general principle of the Common VAT system and exempt from VAT only those transactions, which fall within the categories of goods and services expressly listed in the VAT Directive.

The current Austrian law provides for the application of a VAT exemption to the supply, modification, repair, maintenance, chartering and hiring of aircraft used by State institutions including equipment incorporated or used in such aircraft, the intra-Community acquisition and the importation of goods relating to such transactions.

Member States are allowed granting an exemption to supplies to aircraft which are used by an airline operating for reward on international routes. The Austrian legislation is not covered by that rule. Member States belonging to the EU on 1 January 1978 which at that date exempted various activities set out in an Annex to the VAT Directive may continue to exempt those activities from VAT during a transitional period. However, Austria only joined the EU on 1 January 1995. With the Act of Accession, certain exemptions are granted to Austria. It does not contain any exemption, in favour of Austria, for activities relating to the transactions concerned. Nor does the VAT Directive which integrates the derogations granted to Austria upon accession, make any mention of an exemption of this kind.

The Commission has therefore formally requested that Austria amends its legislation within 2 months. This request was sent in the form of a reasoned opinion, second step of the infringement procedure (Article 258 TFEU).

The Commission's case reference number is 2008/2328.

Press releases on infringement proceedings in the field of taxation or customs can be consulted at:

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

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