



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
The Director-General

Brussels, 03/04/2020
TAXUD/SQ/ [REDACTED]
taxud.c.1(2020)2198021

**NOTE TO
DIRECTORS GENERAL OF THE MEMBER STATES' AND THE UK'S TAX AND CUSTOMS
ADMINISTRATIONS**

Subject: VAT treatment of supplies of goods needed to combat the COVID-19 outbreak

I am pleased to inform you that the Commission adopted on 3 April 2020 Decision C(2020)2146 authorising Member States to grant relief from import duties and VAT exemption on importation for goods needed to combat the effects of the COVID-19 outbreak during 2020.

Following a number of requests for clarification on VAT related issues raised in my letter of 26 March 2020 (Ares(2020)1779256), my services have developed the attached guidance note concerning the goods needed to combat the COVID-19 outbreak.

This note notably clarifies that:

- The exemption referred to in the Commission Decision of 3 April 2020 is applicable from 30 January until 31 July and could be extended should the need arise.
- This short period has been retained in order to avoid distortions of competition against EU producers in the context where EU production of this type of goods is being developed at the current time.
- This exemption only applies to importation of goods and does not cover intra-community acquisitions of similar goods. As regards intra-Community acquisitions and domestic supplies of such goods, current VAT rules do not permit the application of reduced or zero rates to this type of products. However, the Commission proposal¹ currently on the table of Council would make it possible, if adopted. The Commission has, in its 2016 Communication on enforcement of EU Law, indicated that it will not

¹ Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax (COM(2018)20 final)

normally launch infringement procedures when a legislative proposal which would make the conduct in question lawful is pending before the Council.

Yours sincerely,

e-signed
Stephen Quest

Annex: 1. Guidance note on the VAT treatment of supplies of goods needed to combat the COVID-19 outbreak
 2. Indicative list of goods

c.c.: Fiscal and Customs Attaches
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Annex 1: Guidance Note on the VAT treatment of supplies of goods needed to combat the COVID-19 outbreak

1. Importation of goods needed to combat the COVID-19 outbreak

a) Application of the measure

The competent authorities in the Member States should take all appropriate measures at national level for the application of this measure, in particular:

- To establish the list of goods for which the relief from import duties and exemption from VAT is granted (please see in Annex 2 an indicative list of goods prepared by DG TAXUD).

The list in Annex 2 is based on the existing WCO list for COVID-19 medical supplies and on the most referred products in the import duty/VAT relief requests submitted by Member States. This list is meant to serve as guidance to Member States, but it is not exhaustive and leaves discretion for Member States to act according to their particular national needs.

- To establish a list of organisations eligible for the relief from import duties and exemption from VAT for imported goods:
 - i) State organisations including State bodies, public bodies and other bodies governed by public law
 - ii) other charitable or philanthropic organisations approved by the competent authorities

In terms of the beneficiaries of exemption, the Decision also provides for an extended scope in the sense that imports done *on behalf of* the authorised organisations in Article 1(1)(c) and Article 1(2) will qualify for the relief/exemption.

The Commission considers that when a company imports the goods for the immediate benefit of the authorised organisations in Article 1(1)(c) and Article 1(2), this will be covered by the present Decision. The competent national authorities should, however, take the necessary measures to ensure that the goods imported duty and VAT free are in fact being delivered to bodies eligible for exemption.

Finally, it is important to note that the additional procedure code C26 (“Goods imported for the victims of disaster victims – article 74 of the Council Regulation (EC) No 1186/2009”) should be declared in DE 1/11 of the customs import declaration (Additional procedure - TITLE II of the Commission Implementing Regulation (EU) 2015/2447).

b) Period of application

The Decision is applicable from 30 January 2020 until 31 July 2020. Given that the Decision covers all Member States, the Commission established the date of 30 January 2020, the date on which the World Health Organisation (WHO) declared the COVID-19 outbreak a public health emergency of international concern.

In what regards the envisaged ending date of 31 July 2020, several Member States expressed that the period covered should have been longer. The Commission listened to these requests and accommodated for a possible extension in recital 5 of the Decision.

We count on Member States to keep the Commission informed on the development of the situation in their country and where needed, the period may be extended.

We also recall that there are clear indications coming from all Member States that domestic and EU production of the goods covered by the present Decision will be increased (for the VAT treatment of the domestic/intra-Community acquisitions please see section 2 below).

c) Member States' reporting to the Commission

The Member States should inform the Commission of:

- i) the nature and quantities of the various goods admitted free of import duties and VAT with a view to combatting the effects of the COVID-19 outbreak,
- ii) the organisations they have approved for the distribution or making available of those goods, and
- iii) the measures taken to prevent the goods from being used for purposes other than combating the effects of this outbreak.

Member States should report this information by 30 November 2020 at the latest. The Commission will provide a template to be used for reporting to all Member States. If the application period of the Decision were to be extended, the reporting period will also be extended.

2. VAT treatment of domestic and intra-Community supplies of goods needed to combat the COVID-19 outbreak

a) Intra-Community supplies: Application of Article 140(b) of the VAT Directive

Several Member States inquired whether the provisions of Article 140(b) are applicable to the intra-Community supplies of goods needed to combat the COVID-19 outbreak, since if they were imported under disaster relief they would be exempt from payment of VAT.

Article 140 refers to exemptions of intra-Community acquisitions of goods the supply of which by a taxable person or the importation of which would **in all circumstances** be exempt either in their territory or under Article 143(1)(a), (b), (c) and (e). This for instance would be relevant for the intra-Community acquisitions or importation of goods the supply of which is exempt (without right of deduction) under Article 132.

The purpose of Article 140 and Article 143(1)(a) and (b) is to ensure the equal treatment of cross-border transactions and domestic transactions. Thus, if the supply of goods is exempt in domestic trade, then intra-Community acquisitions and importations are also exempt. This understanding was confirmed by the Court of Justice of the European Union in the joined Cases C-144/13, C-154/13 and C-160/13.

The reciprocal situation is not valid and if an exemption is granted upon importation under specific circumstances (disaster relief), this is not to be extended to domestic supplies and intra-Community acquisitions of similar goods. In the present situation, if Article 140 were to be interpreted to allow exemption of intra-Community acquisitions of the disaster relief goods in question, then the only thing that would remain subject to VAT is the domestic supply of the respective goods. This is not the intention of the VAT Directive, as explained above.

Moreover, disaster relief under Article 143(1)(b) is to be interpreted in a restrictive way (as is the case with all exemptions), that is the exemption at importation is allowed only in very specific circumstances, for a given period of time and in relation to imports made by State bodies or charitable organisations.

b) Domestic supplies: Temporary relaxation in rates applied

We have received queries from certain Member States on the possibility to allow for exceptional VAT treatment of goods supplied in connection with COVID-19 that are not eligible for reduced VAT rates.

As a follow-up to my note of 26 March (Ares(2020)1779256), let me clarify the following:

- Annex III of the VAT Directive which lists goods eligible for a reduced VAT rate does not cover all goods intended for general use, which may be used to protect individuals from or prevent the spread of COVID-19 (e.g. personal protective equipment, medical devices etc.).
- The 2018 Commission proposal to amend the VAT Directive as regards VAT rates, if adopted by the Council based on its original approach i.e. with a negative list, would allow all Member States to apply a reduced or even zero rate to the supply of such goods (provided that such supply only benefits the final consumer and pursues an objective of general interest).
- As regards intra-Community acquisitions and domestic supplies of such goods, current VAT rules do not permit the application of reduced or zero rates to this type of products. However, the Commission proposal currently on the table of Council would make it possible, if adopted. The Commission has, in its 2016 Communication on enforcement of EU Law, indicated that it will not normally launch infringement procedures when a legislative proposal which would make the conduct in question lawful is pending before the Council.