



MOD Private Finance Unit Guidance Note

Suspension of Import Duty for PFI Projects

Version 2

September 2010

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This document can be found on the MOD PFU website at :

<http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/FinanceandProcurement/PFU/PrivateFinanceUnit.htm>

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DOCUMENT CHANGE RECORD

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Issue No	Details Of Amendments Made	Amended By	Date
1.0a	Original DPA PFG Publication	I Mawdsley	Sep 2000
1.1	Complete re-write to reflect latest guidance from DGDC CS, DES Fin FA and HMRC	S Browne	Aug 2010
2.0	Final Version including comments from AAC and DFM Tax & Duty	S Browne	Sep 2010

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Import Duty Waiver

Constraints

1. Goods imported from non-EU countries are normally subject to import duty. EC Council Regulation 150/2003 (the "Regulation") allows for certain weapons and military equipment to benefit from a suspension of import duty. In order to qualify for such relief under this scheme importers, amongst other things, must:
 - be importing goods listed within the Regulation for use by or on behalf of the Armed Forces of a EU Member State;
 - hold a 'Certificate For Military Equipment' (Waiver Certificate) issued by the MOD that may cover a contract involving a number of consignments over a period of time; and
 - be authorised for and compliant with the requirements for End Use Relief.
2. When considering the suspension of import duty in relation to a PFI project acquisition teams must read and comply with the requirements and constraints of
 - The [Overseas Procurement](#) topic in the Commercial Managers Toolkit;
 - [Joint Service Publication \(JSP\) 462](#) (Chapter 14) in respect of EC Council Regulation 150/2003; and
 - Her Majesty's Revenue and Customs (HMRC) Customs Notice 770 which gives guidance on End-Use relief including the application of EC Regulation 150/2003.

Purpose

3. The purpose of this guidance note is to provide acquisition teams with guidance on the applicability of the suspension of Import Duty to PFI projects.

Guidance

4. Goods imported from outside the EU for use in a PFI project may be entitled to the suspension of import duty. However, it should not be assumed that the suspension of import duty will be value for money if 3rd Party Usage of the service is contemplated, but not

necessarily certain. Acquisition teams should seek advice from MOD PFU and [DES Fin AAC] before considering the suspension of import duty.

5. When considering whether or not to seek to suspend import duty (or apply for an import duty Waiver Certificate) for a PFI project acquisition teams will need take into account:
 - Whether the end-user of the PFI service (that embodies the imported goods) will be:
 - MOD (i.e. MOD civilians and members of the UK armed forces) and/or other EU military personnel only for the duration of the contract; OR
 - Might include 3rd Parties (i.e. non-EU military personnel and/or non-MOD civilians) at some point during the contract term;
 - That, if import duties are suspended, the end-user of the service will be monitored for:
 - The first 3 years after the first use of the service by MOD; and
 - a further 3 years each time further goods imported from non-EU countries are embodied into the service (e.g. spares and modifications)
 - Whilst the end-user of the service is subject to monitoring, if there is any 3rd Party use of the service, the import duty Waiver Certificate will be revoked and the PFI Contractor (as importer) will be liable for the payment of any import duties due;
 - If the terms of the PFI Contract guarantees 3rd Party Revenue, requires the PFI Contractor to seek 3rd Party usage opportunities, or share the revenue from 3rd Party usage, then the end-user is likely to be deemed to include non-MOD civilians or non-EU military personnel and the issue of a Waiver Certificate will be deemed to be inappropriate;
 - The likely value of any import duties, taking into account the import duties applicable to the goods imported, which should be verified in consultation with HMRC Classification Helpline on 01702 366 077.
 - The anticipated value of any 3rd Party Usage during the contract term.

- The use of training equipment under International Defence Training Agreements, where non-EU military or civilian personnel might use the training equipment, does not qualify for the suspension of Import Duty.
6. If the suspension of Import Duty is deemed appropriate consideration will need to be given to:
- The inclusion in the Invitation to Participate in Dialogue or Invitation to Negotiate that bidders should submit pricing and commercial proposals be on the basis (1) inclusive of applicable import duties and (2) the suspension of import duties; and
 - The allocation of liability to pay import duties if the Waiver Certificate is revoked caused by acts or omissions of either the MOD or the Contractor.