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Mission Assistance

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DAU Lunch and Learn

☰ Value Added Tax (VAT) for International Acquisition



Purpose / Objective

- Introduce Value Added Tax (VAT)
- Describe VAT exemption and the primary processes and stakeholders involved
- Identify common issues and best practices
- Share references and resources
- Q & A



Lunch and Learn Admin

- One and a half hour event (1100-1230 CST)
- DAU will have a presenter and moderator
- Type questions as they arise into WebEx (moderator will share with presenter for a timely response)
- Follow-up with presenter if you have questions or need further assistance (contact info at end of presentation)

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Presenter Background

- Managed VAT efforts for the Missile Defense Agency on international efforts
 - Romania (Aegis Ashore – NATO effort)
 - Poland (Aegis Ashore – NATO effort)
- Provide VAT support and consultation to DoD entities and industry partners on international efforts
- Create and maintain VAT-related content and tools for DAU



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Value Added Tax (VAT)



What is VAT?

- A consumption-based tax charged by foreign countries on purchases for products/services within a specific country (source of revenue)
- A tax that may be charged on products imported into a specific country

Why is VAT of particular importance to the DoD?

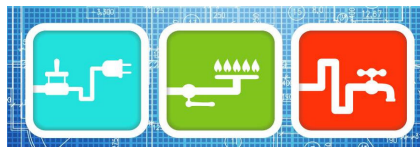
- Can represent a major cost element of any international effort
- Can allow for cost savings or cost avoidances for the US taxpayer (if exempted)
- Can cause complex and costly administrative issues if not managed properly

- DoD's international efforts (\$\$\$) have grown in recent years
- National Security Strategy and National Defense Strategy focuses on the importance of cooperations and partnerships with allied nations

VAT Application

VAT may be charged for:

- Materials
- Equipment
- Fuel
- Services (construction, engineering, base operations support, utilities, communications, administrative, rental vehicles, leases, etc.)
- Materials and equipment imported into a foreign country



VAT Application

VAT may apply to the following types of efforts:

- International Armaments Cooperations
- International Military Education and Training
- Building Partner Capacity
- Foreign Military Sales
- Direct Commercial Sales
- International Deployments



Current VAT Rates per Country*

Country	VAT Rate	Country	VAT Rate
Australia	10%	New Zealand	15%
Bahrain	0%	Poland	23%
Belgium	21%	Qatar	0%
Egypt	14%	Romania	19%
Finland	24%	Saudi Arabia	5%
France	20%	South Africa	15%
Germany	19%	South Korea	10%
Greece	24%	Spain	21%
Hungary	27%	Sweden	25%
Israel	17%	Turkey	19%
Italy	22%	United Arab Emirates	5%
Japan	10%	United Kingdom	20%

*Represents VAT rates for select countries (as of October 2019)



VAT Exemption

- Customer's ability to complete purchases without paying VAT (aka "VAT-exempt")
- Requires authorization or approval from a foreign country's government:
 - Status of Forces Agreement (SOFA)
 - Foreign Military Sales (FMS) Letter of Offer and Acceptance (LOA)
 - International Cooperative Program International Agreement
 - Acquisition Cross-Service Agreement (ACSA)
- Two general methods:
 - Time of Sale – exemption at the point of purchase or for an entire contract (purchaser never pays VAT)
 - Reimbursement – recapture of VAT by purchaser after purchase
- Potential Options:
 - Exemption for all purchases associated with a contract
 - "Bundling"

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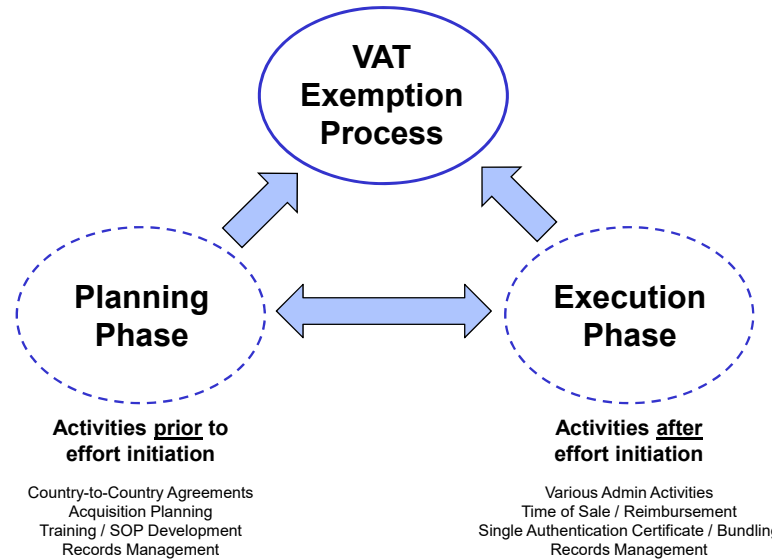
VAT Exemption Policy*

- **Basic DoD Policy:** "It is DoD policy to secure, to the maximum extent practicable, effective relief from all foreign taxes" (DoD Instruction 5100.64)
 - Application: Appropriated funds and non-appropriated funds
 - Responsibilities: DoD General Counsel, Office of the Undersecretary of Defense (Comptroller), Office of the Under Secretary of Defense for Policy, Secretaries of the Military Departments, Directors of the Defense Agencies, Geographic Combatant Commanders
 - "De Minimis" Rule: Tax relief shall be sought only if economic benefits exceed associated administrative burdens

*Consider organization-specific policy or guidance on VAT, if it exists

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VAT Exemption Process



VAT Exemption (Planning)

- Includes all of the activities that occur between countries and stakeholders before an international effort begins and associated purchases take place
- Should begin years before an international effort starts
- Requires extensive involvement by and with various stakeholders
- Can vary between efforts (different projects and different countries)
- Activities can include:
 - Negotiating government agreement(s)
 - Incorporating VAT exemption within acquisition plan and contract-related efforts/products
 - Developing an SOP
 - Developing training event and records management system



VAT Exemption Planning Considerations

- **48 CFR § 52.229-6 – Taxes – Foreign Fixed-Price Contracts**
 - “Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States”
 - “The Contractor shall take all responsible action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor...are exempt”
 - “The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys’ fees.”
- **FAR 31.205-41 – Taxes**
 - “The following types of costs are not allowable: taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefit accruing to the Government”

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VAT Exemption Planning Considerations (cont.)

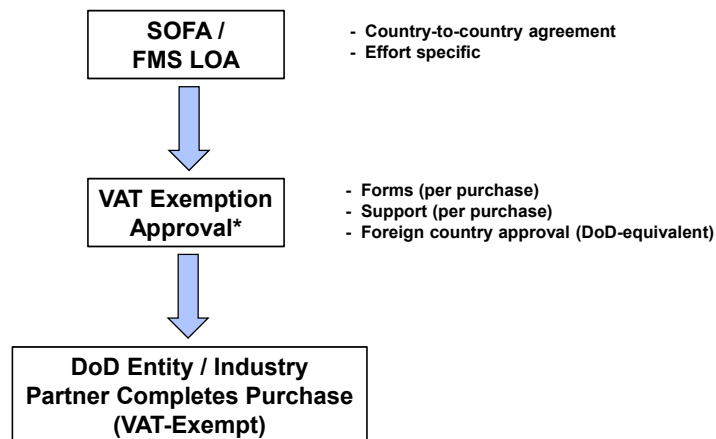
- **DFARS 252.229-7000 – Invoices Exclusive of Taxes or Duties**
 - “Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available”
 - **DFARS 252.229-7011 – Reporting of Foreign Taxes – U.S. Assistance Programs**
 - “Commodities acquired under this contract shall be exempt from all value added taxes and customs duties imposed by the recipient country. This exemption is in addition to any other tax exemption provided through separate agreements or other means”
 - “The Contractor shall inform the foreign government of the tax exemption, as documented in the Letter of Offer and Acceptance, country-to-country agreement, or interagency agreement”
-
- **For FMS Cases (Security Assistance Management Manual and DSCA Policy):**
 - “Any articles, equipment, materials, supplies, goods, or other commodities purchased...in support of this Letter of Offer and Acceptance...shall be exempt from all value added taxes and customs duties imposed by the recipient country or the full amount of the tax or customs duties must be reimbursed by the Purchaser”

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VAT Exemption (Execution)

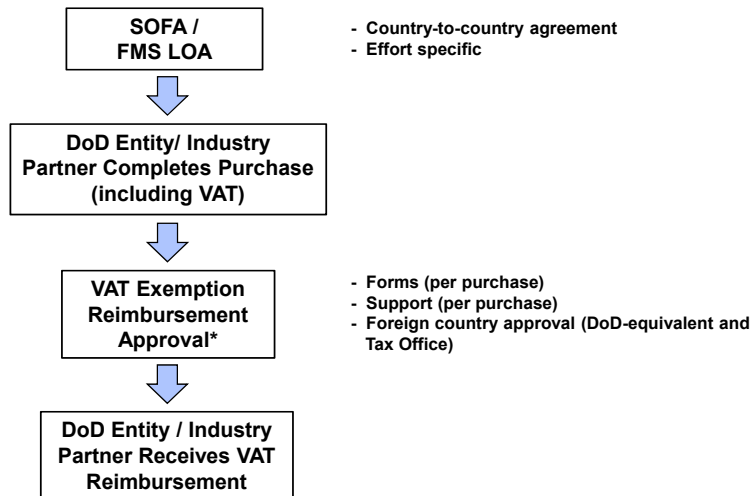
- Includes all of the activities that occur between countries and stakeholders after an international effort begins and associated purchases take place
- Requires extensive involvement by and with various stakeholders
- Can vary between efforts (different countries and different projects)
- Activities can include:
 - Administrative requirements and actions
 - Purchasers completing purchases, producing supporting documents, and completing forms to obtain VAT exemption
 - Reporting on VAT exemption

VAT Exemption (Time of Sale Method)



*For an entire contract effort or an individual purchase

VAT Exemption (Reimbursement Method)



*For an individual purchase

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VAT Exemption Examples

Example 1: The US Army plans to execute a \$500M international deployment effort in Italy. Of the total \$500M effort, \$300M is estimated to be spent (without consideration of VAT) on products/services within Italy. What is the maximum amount of VAT exemption possible?

$$\text{\$300M} \times 22\% (0.22) = \text{\$66M}$$

Example 2: The US Navy contracted for 30 apartment leases for 60 sailors to support a new MILCON facility in Germany. The 30 leases costed \$720K for one year (\$605K for service and \$115K for VAT). The Navy did not seek VAT exemption prior to purchase; however, the Navy will submit a request for VAT reimbursement since the effort in Germany is covered by a SOFA. What is the maximum amount of VAT exemption possible?

$$\text{\$115K (VAT portion of transaction)}$$

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Key Stakeholders (US)

Stakeholder	Responsibility
Department of State (DoS)	Negotiate/create/maintain SOFAs with foreign countries (SOFAs typically provide top-level VAT exemption)
COCOMs	Oversee/coordinate DoD's international efforts within a specific geographic region
DoD Acquisition Teams	Manage/execute international acquisition efforts in/with foreign countries (responsible for managing VAT exemption process during life of program or effort)
Defense Security Cooperation Agency (DSCA)	Support US national security and foreign policy interests (FMS)
Industry Partners	Execute VAT-exempt purchases of goods/services in foreign countries that support DoD international acquisition efforts



Key Stakeholders (Foreign)

Stakeholder	Responsibility
DoS Equivalent	Negotiate/create/maintain SOFAs with the US' DoS (SOFAs typically provide top-level VAT exemption)
DoD Equivalent (Ministry of Defense)	Serve as authoritative body to approve VAT exemption requests on specific purchases or eligible contracts supporting efforts covered by a SOFA
Tax Office	Oversee/manage foreign country's VAT exemption activities (create VAT exemption documents, coordinate with foreign country vendors, and reimburse DoD or industry partners VAT exemption)
Vendors	Support foreign country's SOFA or FMS case with the US to ensure eligible stakeholders receive VAT exemption on eligible purchases



Common VAT-Related Issues

- **Incomplete acquisition planning (by DoD team)**
- **Ineffective contracting activities (source selection / request for proposals / instruction to offerors)**
- **Failure to incorporate appropriate contract clauses**
- **DoD personnel approving vendor invoices inclusive of VAT**
- **Purchasers not timely or proactively completing VAT exemption activities, which can result in purchasers:**
 - **A) not receiving VAT exemption**
 - **B) receiving VAT exemption well after transactions took place**
- **A DoD entity does not take lead on international effort with multiple DoD entities involved**
- **Foreign countries experience liquidity issues that affect VAT reimbursement**

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Common Causes of VAT-Related Issues

- **Poor communication between:**
 - **Government entities**
 - **Industry partners**
 - **Countries**
- **Failure to plan for/consider VAT exemption and processes**
- **Lack of personnel (resources) available to manage activities**
- **Lack of training or trained personnel**
- **Lack of SOPs**
- **Ineffective and inconsistent processes**
 - **Government entities**
 - **Industry partners**
- **Ineffective monitoring and records management (documentation)**
- **Lack of foreign country support (Government/vendors)**

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VAT Best Practices

- 1) Over-communicate with ALL stakeholders throughout life of project
- 2) Complete VAT exemption planning and considerations at the start of every effort
- 3) Ensure personnel are available and trained to manage VAT exemption activities (treated like other necessary administrative efforts)
- 4) Ensure an SOP is created and available for all stakeholders involved
- 5) Pursue the time of sale method, if available
- 6) Pursue VAT exemption approval for entire contracts, if available
- 7) Consider “De Minimis” Rule (cost-benefit analysis)
- 8) Apply sound documentation practices (all stakeholders)
- 9) Develop records management system
- 10) Contact DoD or DoS leadership for support, if needed

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VAT References

- DoD I 5100.64 “DoD Foreign Tax Relief Program,” April 2018
- 48 CFR § 52.229-6 – Taxes – Foreign Fixed-Price Contracts
- FAR 31.205-41 – Taxes
- DFARS 252.229-7000 – Invoices Exclusive of Taxes or Duties
- DFARS 252.229-7011 – Reporting of Foreign Taxes – U.S. Assistance Programs
- Security Assistance Management Manual, Figure C5.F4 “Letter of Offer and Acceptance Standard Terms and Conditions”
- DSCA Policy Memorandum, “Prohibition on Taxation of U.S. Assistance” (DSCA Policy 04-32), August 2004

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- **Magazine Publications**

- “VAT Is Where It’s At” – Defense Acquisition Magazine (January/February 2019)
- “Exemptions for Value Added Taxes Often Overlooked” – National Defense Magazine (July 2019)



- **DAU Mission Assistance**

- Unique VAT training and support per customer request
- Contact me or missionassistance@dau.edu

- **DAU Online Tools & Resources**

- “Value Added Tax (VAT) Exemption Calculation Tool”
- Search for “DAU VAT Exemption Tool” in any search engine

- **DAU ACQuipedia Article**

- “Value Added Tax (VAT)”

- **COMING SOON → DAU VAT Online Course**

- BFM 0010 – “VAT for International Business Efforts”
- Expected release in March 2020



Questions???

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