COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.06.2006
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Proposal for a

COUNCIL DECISION

authorising the United Kingdom to introduce a special measure derogating from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(Only the English text is authentic)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Pursuant to Article 27(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from that Directive in order to simplify the procedure for charging the tax.

By letter registered with the Secretariat-General of the Commission on 7 April 2005, the United Kingdom requested authorisation to replace an existing derogation measure in relation to the calculation of the VAT due on fuel expenditure for business cars which are also partly used for private purposes. In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 26 October 2005 of the request made by the United Kingdom. By letter dated 27 October 2005, the Commission notified the United Kingdom that it had all the information it considered necessary for appraisal of the request.

- **General context**

The United Kingdom obtained an authorisation in 1986 to apply a flat-rate scheme for determining the amount of VAT as regards fuel expenditure in relation to the private use of business cars (Council Decision 86/356/EEC).

Under this system, the United Kingdom allowed an initial full deduction of VAT on the purchase of fuel for business cars. Subsequently, VAT was charged on the fuel which related to the private use of the car. The average overall price of the fuel for the private use of the business cars was calculated on a macro-economic basis and then charged according to a scale which corresponded to the engine capacity and fuel type of the vehicle. This average price was adjusted annually in line with the changes in the average cost of fuel.

The system represented a simplification, both for the tax authorities and for taxpayers. In particular, it relieved taxpayers of the need to keep detailed mileage records. At the same time, it should be noted that this system was optional for taxpayers, who could follow the normal VAT rules if they so wished and comply with record keeping obligations.

The United Kingdom now envisages changing its system. The basic principles would remain the same but the new proposed system would apply a "scale charge" linked to the CO_2 emissions of a vehicle. As there is a direct correlation between CO_2 emission and fuel consumption, the higher the CO_2 emission, the higher the fuel consumption and therefore the higher the amount of VAT which should be paid to account for the fuel used for private motoring.

The Commission understands that the existing arrangement has effectively enabled the United Kingdom to simplify the charging of the tax over the years and that the new

system, which will continue to be optional for taxpayers, will have a similar effect. The United Kingdom has also explained that a charge geared to a higher number of bands based on CO_2 emissions will more accurately reflect private consumption than the existing bands based on engine sizes and types of fuel.

The Commission therefore considers it appropriate for the United Kingdom to be authorised to apply the altered special measure.

In this context, the initial Council Decision 86/356/EEC will have to be abolished. However, in order to allow a smooth transition, this Decision will only be repealed on 30 April 2007 and, in any case, not later than the entry into force of the relevant national measures.

- **Existing provisions in the area of the proposal**

Council Decision 86/356/EEC of 21 July 1986 authorising the United Kingdom to apply flat-rate measures in respect of the non-deductible value added tax charged on fuel expenditure in company cars.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposed Decision relates to simplification measures for the charging of VAT on fuel for business cars in the United Kingdom and has therefore a potential positive economic impact.

Impact will in any case be limited because of the narrow scope of the derogation.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Authorisation for the United Kingdom to derogate from Articles 5(6) and 11(A)(1)(b) of the Sixth Council Directive 77/388/EEC in order to apply special measures for determining the proportion of VAT relating to expenditure on fuel used for private purposes in business cars on the basis of CO_2 emissions.

- **Legal basis**

Article 27(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

This Decision concerns an authorisation granted to a Member State on its own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

Under Article 27 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual Member State.

4) BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

5) ADDITIONAL INFORMATION

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **Review/revision/sunset clause**

The proposal includes a sunset clause.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment[1], and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) By letter registered by the Secretariat-General of the Commission on 7 April 2005, the United Kingdom requested authorisation to derogate from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC.

(2) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 26 October 2005 of the request made by the United Kingdom. By letter dated 27 October 2005, the Commission notified the United Kingdom that it had all the information it considered necessary for appraisal of the request.

(3) The United Kingdom wishes to replace the derogation, provided for by Council Decision 86/356/EEC of 21 July 1986 authorizing the United Kingdom to apply flat-rate measures in respect of the non-deductible value added tax charged on fuel expenditure in company cars[3], which authorised special simplification measures in order to determine on a flat-rate basis the proportion of value added tax (VAT) relating to expenditure on fuel in business cars partly used for private purposes. This procedure relieves taxable persons of the need to keep detailed mileage records in order to calculate, for each car, the exact amount of VAT related to private and business motoring. Like this system, the proposed new system will be optional for taxable persons.

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1 OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

2 OJ C , , p. .

3 OJ L 212, 2.8.1986, p. 35.

(4) The current system is based on the type of fuel used and the engine size of the car. The United Kingdom wishes to amend this system and base it on the level of carbon dioxide (CO_2) emissions from the car, as there is a proportional correlation between emissions and fuel consumption and therefore with expenditure on fuel. This means that a flat-rate scale system based on CO_2 emissions could achieve the same objective of taxing fuel expenditure incurred by a business for private motoring. At the same time, the United Kingdom also expects to achieve greater accuracy in determining the charge for private consumption by increasing, and therefore refining, the number of scale bands in comparison with the existing bands.

(5) This arrangement has effectively enabled the United Kingdom to simplify the procedure for charging tax in relation to expenditure on fuel for business cars and the proposed system, based on CO_2 emissions, will have a similar effect. Private consumption should be more accurately reflected under the new system.

(6) The authorisation should be limited in time, so that in the light of the experience gained up to that date an assessment may be made as to whether or not the derogation is still justified.

(7) Decision 86/356 should be repealed after a certain period but in any case at the entry into force of the national provisions introducing the new special measure, in order to avoid a situation in which authorisations for both systems exist at the same time.

(8) The United Kingdom should inform the Commission of the national provisions introducing the new special measure as soon as they have been adopted and should ensure that this measure will not enter into force before 30 April 2007.

(9) The derogation has no negative impact on the Community's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC, the United Kingdom is authorised, from 1 May 2007 until 31 December 2015, to fix on a flat-rate basis the proportion of value added tax relating to expenditure on fuel used for private purposes in business cars.

Article 2

The proportion of the tax referred to in Article 1 shall be expressed in fixed amounts, established on the basis of the CO_2 emissions level of the type of vehicle, that reflect fuel consumption. The United Kingdom shall adjust these fixed amounts annually to reflect changes in the average cost of fuel.

Article 3

The system set up on the basis of this Decision shall be optional for taxable persons.

Article 4

Council Decision 86/356 is repealed on 30 April 2007.

The United Kingdom shall inform the Commission of the national provisions referred to in Article 1 as soon as they have been adopted.

Article 5

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

For the Council
The President