COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.11.2003
COM(2003) 724 final

Proposal for a

COUNCIL DECISION

amending Council Decisions 92/546/EEC of 23 November 1992, 95/252/EC of 29 June 1995 and 97/375/EC of 9 June 1997 authorizing the United Kingdom to apply measures derogating from Articles 28e (1), 6 and 17 of the Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Under Article 27 of the Sixth Council Directive 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] the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of the Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

2. As a rule, such authorisations are given on a temporary basis, so that an assessment can be made after a few years as to whether the special measures are appropriate and effective.

3. The Decisions 92/546/EEC of 23 November 1992[2], 95/252/EC of 29 June 1995[3] and 97/375/EC of 9 June 1997[4] taken by the Council under Article 27 of the Sixth Directive authorised the United Kingdom to apply measures derogating from Articles 28e (1), 6 and 17 of the Directive.

4. The measures authorised under Decision 92/546/EEC allow the United Kingdom to combat tax evasion and tax fraud for intra-Community acquisitions between related parties. Council Decision 2000/435/EC[5] extended this derogation to 31 December 2003, when it will expire.

5. The measures authorised under Decision 95/252/EC enable the United Kingdom to restrict to 50% the right of the hirer or lessee to deduct input tax on charges for hire or lease of a business passenger car where the car is used for private purposes and not to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person. The derogation removes the need for the hirer/ lessee to keep records of private mileage travelled in business cars and to account for tax on the actual mileage of each car and is therefore a simplification. Council Decision 2000/747/EC[6] extended this derogation to 31 December 2003, when it will expire.

6. The measures authorised under Decision 97/375/EC allow the United Kingdom to operate a special optional scheme in which tax is accounted for on the basis of the cash paid and received (cash accounting); the scheme is a simplification for small and medium enterprises. Council Decision 2000/435/EC[7] extended this derogation to 31 December 2003, when it will expire and increased the turnover limit for the simplified cash accounting from 400.000 GBP to 600.000 GBP.

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1 OJ L 145, 13.6.1977, p.1. Directive last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p.8).
2 OJ L 351, 2.12.1992, p. 34
3 OJ L 159, 11.7.1995, p. 19
4 OJ L 158, 17.6.1997, p. 43.
5 OJ L 172, 12.7.2000, p.24.
6 OJ L 302, 1.12.2000, p.63.
7 OJ L 172, 12.7.2000, p.24.

7. By letter received by the Secretariat-General on 22 October 2003, the United Kingdom requested authorisation to extend application of these measures by further three years and to increase the turnover limit for the simplified cash accounting authorised by Decision 97/375/EC from 600.000 GBP to 660.000 GBP.

8. In accordance with Article 27(3) of the Sixth Directive, the Commission informed the other Member States by letter of 30 October 2003 of the request made by the United Kingdom.

9. In the Commission's view, the matters of law and of fact which justified the application of the special measures in question have not changed and still pertain. The requested increase of the turnover limit for the simplified cash accounting under Decision 97/375/EC from 600.000 GBP to 660.000 GBP is in line with inflation and therefore justified.

10. However, the measures authorised under Decision 95/252/EC allowing the United Kingdom to restrict to 50% the right of the hirer or lessee to deduct input tax on charges for hire or lease of a business passenger car where the car is used for private purposes and to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person, might be affected by a Bundesfinanzhof request for a preliminary ruling (Case C-17/01), which the Court has yet to deliver. Subject of this Court proceeding is the German practise to limit to 50% the right to deduct the VAT charged on all expenditure relating to vehicles (purchase, hire, running costs). The outcome of this preliminary ruling might therefore be of a considerable importance for the question whether such measures could be authorised in future under Article 27. For these reasons the extension granted to Germany for a comparable scenario by Council Decision 2003/354/EC[8] was prolonged by another year only. Therefore also in the present case a prolongation should only be granted for one year.

11. In view of the above, the Commission considers that the request for extension made by United Kingdom should be granted and that the Decisions 92/546/EEC and 97/375/EC referred to above should therefore be extended to 31 December 2006. The measures authorised under Decision 95/252/EC should be extended to 31 December 2004. The requested increase of the turnover limit from 600.000 GBP as stipulated in Decision 97/375/EC to 660.000 GBP corresponds to inflation and should therefore be authorised.

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[8] OJ L 123, 17.5.2003 p. 47

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amending Council Decisions 92/546/EEC of 23 November 1992, 95/252/EC of 29 June 1995 and 97/375/EC of 9 June 1997 authorizing the United Kingdom to apply measures derogating from Articles 28e (1), 6 and 17 of the Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes

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,[9] and in particular Article 27 paragraph 1 thereof,

Having regard to the proposal from the Commission[10],

Whereas:

(1) By letter received by the Secretariat-General of the Commission on 22 October 2003 the United Kingdom requested the extension of Decisions 92/546/EEC of 23 November 1992[11], 95/252/EC of 29 June 1995[12] and 97/375/EC of 9 June 1997[13] authorising it to apply measures derogating from Articles 28e (1), 6 and 17 of the Sixth Directive. The United Kingdom also requested to increase the turnover limit for the simplified cash accounting authorised by Decision 97/375/EC from 600.000 GBP to 660.000 GBP.

(2) Decision 92/546/EEC authorises the United Kingdom to combat tax evasion and tax fraud for intra-Community acquisitions between related parties until 31 December 2003.

(3) Decision 95/252/EC allows the United Kingdom to restrict to 50% the right of the hirer or lessee to deduct input tax on charges for hire or lease of a business passenger car where the car is used for private purposes and not to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person. The derogation removes the need for the hirer/ lessee to keep records of private

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9 OJ L 145, 13.6.1977, p.1. Directive last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p.8).

10 OJ C , , p. .

11 OJ L 351, 2.12.1992, p. 34 as last amended by Council Decision 2000/435/EC of 29.6.2000 (OJ L 172, 12.7.2000, p.24.)

12 OJ L 159, 11.7.1995, p. 19 as last amended by Council Decision 2000/747/EC of 27.11.2000 (OJ L 302, 1.12.2000, p.63.)

13 OJ L 158, 17.6.1997, p. 43 as last amended by Council Decision 2000/435/EC of 29.6.2000 (OJ L 172, 12.7.2000, p.24.)

mileage travelled in business cars and to account for tax on the actual mileage of each car and is therefore a simplification; it applies until 31 December 2003, when it will expire.

(4) Decision 97/375/EC authorises the United Kingdom to operate a special optional scheme in which tax is accounted for on the basis of the cash paid and received (cash accounting) with a turnover limit set at 600.000 GBP; the scheme is a simplification for small and medium enterprises and applies until 31 December 2003, when it will expire.

(5) The matters of law and of fact which justified the application of the special measures in question have not changed and still pertain. However, the measures authorised under Decision 95/252/EC allowing the United Kingdom to restrict to 50% the right of the hirer or lessee to deduct input tax on charges for hire or lease of a business passenger car where the car is used for private purposes and to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person, might be affected by a preliminary ruling (Case C-17/01), which the Court has yet to deliver. Subject of this Court proceeding is the practise to limit to 50% the right to deduct the VAT charged on all expenditure relating to vehicles (purchase, hire, running costs). The outcome of this preliminary ruling might therefore be of a considerable importance for the question whether such measures could be authorised in future under Article 27. The requested increase of the turnover limit for the simplified cash accounting in Decision 97/375/EC from 600.000 GBP to 660.000 GBP, is in line with inflation.

(6) The authorisation granted by Decisions 92/546/EEC of 23 November 1992 and 97/375/EC of 9 June1997 should therefore be extended until 31 December 2006. The prolongation of the authorisation granted by 95/252/EC of 29 June 1995 should be extended until 31 December 2004. This maximum period will allow the derogation to be evaluated in the light of the ruling on Case C-17/01. The requested increase of the turnover limit to 660.000 GBP corresponds to inflation and should therefore be authorised.

(7) The derogation in question has no impact on the European Communities' own resources from valued added tax,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 92/546/EEC the date "31 December 2003" is replaced by 31 December 2006. In Article 3 of Decision 95/252/EC the date 31 December 2003 is replaced by "31 December 2004".

Article 2

Article 1 of Decision 97/375/EC shall be replaced by the following:

"Article 1

By way of derogation from the provisions of Article 17(1) of Directive 77/388/EEC, the United Kingdom is hereby authorised, until 31 December 2006, to provide, within an optional scheme, that enterprises with an annual turnover not higher than GBP 660000 must postpone the right of deduction of tax until it has been paid to the supplier."

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels,

For the Council
The President