COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.06.1995
COM(95) 275 final

Proposal for a

COUNCIL DECISION

authorizing the United Kingdom to apply a measure derogating from Articles 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

By registered letter sent to the Secretariat-General of the Commission on 22 March 1995, the United Kingdom Government, acting on the basis of Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment,[1] requested authorization to apply a measure derogating from Articles 6(2) and 17 of that Directive.

In accordance with Article 27(3) of the Directive, the other Member States were informed of the United Kingdom's request by letter dated 20 April 1995.

The measure requested is part of a thorough recasting of the rules on the deduction of input tax on cars. United Kingdom tax legislation provides for a general restriction on the right to deduct input tax on the purchase of cars, except in a limited number of cases.

In order to increase the transparency of its VAT system, the United Kingdom Government intends to amend the national provision concerned by allowing full deduction of input tax on the purchase of cars which are to be used only for the purposes of transactions subject to VAT.

Under existing legislation, input tax on cars purchased for long-term hire or leasing is not deductible. Input tax on car hire or leasing services is, on the other hand, deductible under the standard rules of the common VAT system. According to the United Kingdom, this restriction, which is applied at the time when cars are purchased by hire or leasing companies, is a proxy for taxing the private use of such cars by the hirer or lessee.

However, the amendment planned by the United Kingdom, in allowing car leasing or hire companies to deduct input tax on cars purchased wholly for business purposes, would not in itself ensure taxation of private use.

Accordingly, the United Kingdom Government wishes to introduce a new measure which would arrive at an equivalent result, i.e. flat-rate taxation of the private use of hire or leased cars.

To that end, the United Kingdom has submitted a request under Article 27 of the Sixth Directive to apply a measure making the charge to the lessee or hirer of a car subject to a 50% input tax restriction where there is private use. This restriction would replace the VAT due on the use of the car for private motoring.

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[1] OJ No L 145, 13.6.1977, p. 1. Directive as last amended by Directive 95/7/EC (OJ No L 102, 5.5.1995, p. 18).

According to the United Kingdom Government, this input tax restriction would enable the private use of cars leased or hired by taxable persons to be taxed in the simplest possible manner. Moreover, the United Kingdom considers that this flat-rate restriction is justified since, overall, about half the motoring in business cars is private motoring.

This provision will also minimize the administrative burden on traders, who are not required to keep records distinguishing between business mileage and private mileage. In addition, it facilitates administration of the tax.

Under Article 27 of the Sixth Directive, any Member State may be authorized to introduce into its national legislation special measures derogating from the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

According to the standard rules of the common VAT system, a taxable person may deduct input tax on car hire or leasing charges provided that he uses the vehicle for an activity conferring the right to deduct input tax. VAT is, however, payable on the private use of such a vehicle. To that end, the trader's accounts must contain the particulars required to calculate the amount of VAT payable.

The measure planned by the United Kingdom Government, which is aimed at restricting the right to deduct input tax with a view to taxing the private use of a car, derogates, firstly, from Article 17 of the Sixth Directive (by introducing a restriction on the right to deduct) and, secondly, from Article 6(2), which treats as supplies of services for a consideration the use of goods forming part of the assets of a business for private use (by not levying VAT on the private use of the cars in question). Since this measure eliminates the need for traders to meet certain administrative obligations, the Commission considers that it does indeed simplify the procedure for charging the tax within the meaning of Article 27.

Moreover, it should be pointed out that, in abolishing the input tax restriction on purchases of cars used solely for an activity subject to VAT, such as the hire or leasing of cars, United Kingdom tax legislation will be brought more closely into line with the general principles of the Community VAT system, as laid down in the Sixth Directive.

The amendment in question will also eliminate the cases of double taxation which can occur under the existing rules when the hirer or lessee of a car is a private individual or a taxable person carrying on activities which do not confer the right to deduct input tax. In such cases, the person concerned is liable for the VAT payable on the services invoiced by the leasing or hire companies, while this tax is calculated on the basis of an amount that implicitly includes the amount of VAT those companies were unable to deduct at the time of purchasing the vehicles.

In introducing a restriction on the right of the hirer or lessee to deduct input tax, the United Kingdom would continue to achieve its objective of taxing at a flat rate the private use of hire or leased cars while complying to the greatest possible extent with the principles of the common VAT system.

Accordingly, the Commission considers that the derogation requested is justified by the fact that it forms part of a thorough recasting of the rules on the deduction of input tax on cars the results of which are largely positive.

In addition, the measure envisaged will have no adverse impact on the European Communities' own resources accruing from VAT.

The Commission, therefore, considers it appropriate for the United Kingdom to be authorized to apply the planned special measure.

However, it should be pointed out that the first subparagraph of Article 17(6) of the Sixth Directive lays down that the Council, acting unanimously on a proposal from the Commission, will decide what expenditure is not eligible for a deduction of VAT. Consequently, the Commission considers that the authorization to apply a measure derogating from Article 17(2) and (3) the effect of which is to restrict the right to deduct input tax should be granted only temporarily, i.e. until such time as the Community rules laid down by the Council enter into force and until 31 December 1997 at the latest if the Community rules in question have not entered into force by that date.

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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 harmonization 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 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27(1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas, by registered letter to the Commission dated 22 March 1995, the United Kingdom requested authorization to introduce a measure derogating from Articles 6(2) and 17 of the Sixth Directive;

Whereas, in accordance with Article 27(3) of the Sixth Directive, the other Member States were informed on 20 April 1995 of the request made by the United Kingdom;

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[1] OJ No L 145, 13.6.1977, p. 1. Directive as last amended by Directive 95/7/EC (OJ No L 102, 5.5.1995)

Whereas the derogation in question, which forms part of a thorough recasting of the legislation governing the deduction of input tax on cars, aims, firstly, to restrict to 50% the right of the hirer or lessee to deduct input tax on car hire or leasing transactions where the car is used for private purposes and, secondly, to waive the value added tax payable on the private use of the car in question;

Whereas the objective of this input tax restriction is to introduce a flat-rate tax for the private use of cars hired or leased by taxable persons;

Whereas the measure, by reducing the administrative burden on traders, who are not required to keep records of private mileage, constitutes a simplification of the procedure for charging the tax within the meaning of Article 27 of the Sixth Directive;

Whereas the authorization requested by the United Kingdom can be granted only temporarily, either until the entry into force of the Community rules determining what expenditure will not be eligible for a deduction of value added tax pursuant to the first subparagraph of Article 17(6) of the Sixth Directive or by 31 December 1997 at the latest;

Whereas the derogation in question has no adverse impact on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 17(2) and (3) of the Sixth Council Directive (77/388/EEC) of 17 May 1977, the United Kingdom is hereby authorized to restrict to 50% the right of the hirer or lessee to deduct input tax on charges for the hire or lease of a car where the car is used for private purposes.

Article 2

By way of derogation from Article 6(2)(a) of the Sixth Council Directive, the United Kingdom is hereby authorized not to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person.

Article 3

This authorization shall expire on the date of the entry into force of the Community rules determining what expenditure is not to be eligible for a deduction of value added tax, pursuant to the first subparagraph of Article 17(6) of the Sixth Directive, but not later than 31 December 1997.

Article 4

This Decision is addressed to the United Kingdom.

Done at Brussels,

For the Council
The President

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