COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.02.1997
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REPORT FROM THE COMMISSION TO THE COUNCIL

presented in accordance with Article 2 of
Council Decision 93/109/EEC of 15 February 1993
(application of a measure derogating from Article 17 of
the Sixth Directive 77/388/EEC on the harmonization
of the laws of the Member States relating
to turnover taxes)

Proposal for a

COUNCIL DECISION

authorizing the French Republic to extend the
application of a measure derogating from Article 17
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

(presented by the Commission)

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I. INTRODUCTION

By Decision 89/488/EEC of 28 July 1989,[1] the Council authorized France, on the basis of Article 27 of the Sixth Directive, to take special measures derogating from Article 17(2) of that Directive. The authorization was valid until 31 December 1992.

The derogation consists in excluding altogether from the right to deduct VAT that charged on expenditure on goods and services in cases where non-business use of those goods and services accounts for more than 90% of their total use.

On the basis of a Commission report on the application of this derogation, the authorization was extended until 31 December 1996 by Council Decision 93/109/EEC[2] of 15 February 1993. Under the terms of the authorization, any proposal to extend it has to be accompanied by a report on its application.

The purpose of this report is to give an account of this derogation from the time of its extension to the present date and to examine the application for an extension submitted by France by letter registered by the Secretariat-General on 19 November 1996.

II. APPLICATION OF THE DEROGATION

As indicated above, the application of the derogation has already been the subject of a Commission report drawn up at the end of 1992,[3] which described in detail the background, objectives and operation of the derogation. As these aspects have not changed in the meantime, the present report simply outlines a number of developments which have occurred since the previous report.

First of all, following the Commission's comments in the previous report, France has amended its national legislation relating to the derogation to make it clear that the special measure covers any non-business use that exceeds 90% of the total use of the goods and services (the legislation governing the initial derogation covered only private use).

France also points out in its request for an extension that no special difficulty in applying the derogation has been reported to the French tax authorities over the period from 1993 to 1996.

On the contrary, experience has confirmed that the arrangements introduced have simplified the administration of the tax both for the tax authorities and for taxpayers.

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1 OJ No L 239, 16.8.1989, p. 22.

2 OJ No L 43, 20.2.1993, p. 42.

3 COM(92) 591, 22.12.1992.

France is therefore requesting that the authorization be extended until the new common VAT system is adopted.

III. OPINION OF THE COMMISSION DEPARTMENTS

The Court of Justice has ruled that a taxable person who uses goods for the purposes of an economic activity is entitled to deduct the input tax paid in accordance with the rules laid down in Article 17, however small the proportion of business use. A rule imposing a general restriction on the right of deduction in cases where there is limited business use constitutes a derogation from Article 17 and is valid only if the requirements of Article 27 of the Sixth Directive are met (see judgment of 11 July 1991 in Case C-97/90).

Article 27 permits special measures derogating from the Sixth Directive to be introduced either to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

As already indicated in the previous report, the Commission's departments consider that the introduction of the special measure in question, which is designed to prevent "consumption without taxation", is justified under Article 27 of the Sixth VAT Directive because it simplifies administration of the tax by relieving the tax authority of the need to oversee exercise of the right to deduct the VAT charged on expenditure on goods and services in cases where non-business use of those goods and services accounts for more than 90% of their total use.

As regards the period of validity of the authorization, the Commission's departments would point out that on 10 July 1996 the Commission adopted a work programme[4] for the introduction of a common VAT system which provides for step-by-step progress towards the new system.

As the final package of proposals is scheduled for presentation in mid-1999, the Commission's departments take the view that no derogation should be extended beyond 31 December 1999.

It would seem appropriate to assess then whether the derogation is consistent with the approach adopted under the new common system of VAT.

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[4] COM(96)328, 22.7.1996.

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EXPLANATORY MEMORANDUM

By letter registered by the Commission's Secretariat-General on 19 November 1996, the French Government submitted a request for an extension of the derogation initially authorized up to 31 December 1992 by Council Decision 89/488/EEC of 28 July 1989[1] and extended until 31 December 1996 by Council Decision 93/109/EEC of 15 February 1993.[2]

This derogation from Article 17(2) of the Sixth VAT Directive consists in excluding altogether from the right to deduct VAT that charged on expenditure on goods and services where the use of such goods and services for the private purposes of the taxable person or his staff or more generally for non-business purposes exceeds 90% of their total use.

Article 2 of the above-mentioned Decision 93/109/EEC states that, in the light of a Commission report on France's application of the Decision, the Council may, on the basis of a Commission proposal, authorize the extension of that Decision.

The Commission's report on the application of the Decision over the period from 1993 to 1996 concludes that it is appropriate for the application of its provisions to be extended until 31 December 1999.

On 10 July 1996 the Commission adopted a work programme for the introduction of a common VAT system[3] which provides for step-by-step progress towards the new system. As the final package of proposals is scheduled for presentation in mid-1999, it would seem appropriate not to extend the period of validity beyond 31 December 1999 so as to enable an assessment to be made of the necessity of the derogation and its consistency with the overall approach adopted under the new common system of VAT.

In accordance with Article 27(3) of the Sixth VAT Directive, the other Member States have been informed by letter of 18 December 1996 of the French request.

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1 OJ No L 239, 16.8.1989, p. 22.

2 OJ No L 43, 20.2.1993, p. 42.

3 COM(96)328, 22.7.1996.

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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 previous Council Decisions 89/488/EEC of 28 July 1989[2] and 93/109/EEC of 15 February 1993,[3]

Having regard to the Commission report on the application of the above-mentioned Decision over the period from 1993 to 1996,

Having regard to the Commission proposal arising from that report,

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

Whereas, by letter registered by the Secretariat-General of the Commission on 19 November 1996, the French Government requested authorization to extend the application of the derogation previously granted to it for limited periods by Council Decisions 89/488/EEC and 93/109/EEC;

Whereas the other Member States were informed on 18 December 1996 of the request for an extension submitted by the French Government;

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[1] OJ No L 145, 13.6.1977, p. 1; Directive last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

[2] OJ No L 239, 16.8.1989, p. 22.

[3] OJ No L 43, 20.2.1993, p. 42.

Whereas the said measure consists in excluding altogether from the right to deduct VAT that charged on expenditure on goods and services in cases where the use of such goods and services for the private purposes of the taxable person or his staff or more generally for non-business purposes exceeds 90% of their total use;

Whereas the special measure combats certain forms of consumption without taxation while at the same time simplifying the VAT treatment of certain transactions;

Whereas the said measure constitutes a derogation from Article 17(2) of the Sixth Directive under which a taxable person is entitled to deduct the VAT charged on goods and services used for the purposes of his taxed transactions;

Whereas the Commission adopted on 10 July 1996 a work programme and a timetable of proposals providing for gradual, step-by-step progress towards a common VAT system for the single market;

Whereas, as the final package of proposals is scheduled for mid-1999, the authorization is to be granted until 31 December 1999 so as to enable an assessment to be made of the derogation's consistency with the overall approach of the new common system of VAT;

Whereas this derogation will not have a negative effect on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 17(2) of Directive 77/388/EEC, the French Republic is hereby authorized to exclude from the right to deduct VAT that charged on expenditure on goods and services in cases where the use of such goods and services for the private purposes of the taxable person or his staff or more generally for non-business purposes exceeds 90% of their total use.

Article 2

This authorization shall be granted until 31 December 1999.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council

The President

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DOCUMENTS

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