



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

**REQUEST SUBMITTED BY THE REPUBLIC OF AUSTRIA  
FOR AUTHORIZATION TO INTRODUCE SPECIAL MEASURES  
PURSUANT TO ARTICLE 27 OF THE SIXTH COUNCIL DIRECTIVE  
ON VALUE ADDED TAX**



REQUEST SUBMITTED BY THE REPUBLIC OF AUSTRIA FOR  
AUTHORIZATION TO INTRODUCE SPECIAL MEASURES PURSUANT TO  
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(Communication from the Commission to the Council)

**Introduction**

By letter registered at the Secretariat-General of the Commission on 26 April 1995, the Austrian 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,<sup>1)</sup> requested authorization to apply five measures derogating from that Directive.

In accordance with Article 27(3) of the Directive, the other Member States were informed of the Republic of Austria's request by letter dated 23 May 1995. Under Article 27(4), the Commission or the Member States may request that the matter be raised by the Council.

**Description of the measures**

A. Transport operations carried out by Austrian railway authorities on foreign feeder lines

Under the derogation, transport operations carried out on foreign feeder lines operated by the domestic railway authorities and those carried out on foreign transit lines are deemed to form part of the domestic portion of the journey, provided that the goods are subject to a single customs clearance procedure at domestic rates.

This measure facilitates the taxation of transport services supplied by domestic railway authorities, which are not obliged to provide a breakdown of their services to take account of distances covered on foreign feeder or transit lines.

Furthermore, the Austrian authorities point out that double taxation does not occur since the other country does not tax the transport operations concerned.

B. Tax exemptions in respect of operations carried out by railway undertakings on behalf of foreign railways

The object of this measure is to exempt domestic supplies provided by railway undertakings to foreign railways in connection with the handling of passenger and

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<sup>1)</sup> 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).

goods traffic at jointly managed and interchange stations and on frontier lines, with input tax paid at the preceding stage being deductible.

It should be pointed out that foreign railway undertakings do not carry out taxable operations on Austrian territory as the Austrian network is run by domestic railway undertakings.

The Austrian Government considers this measure to be justified in that it reduces the administrative burden on foreign operators by sparing them the practical difficulties deriving from the procedures for refunding VAT.

C. No deduction of input tax where more than 90% of the supplies are intended for private use

The measure in question is aimed at excluding input tax on goods and services from the right to deduct where the percentage intended for business purposes is less than 10% of the total. This measure constitutes a derogation from Article 17(2) and (3) of the Sixth Directive.

The Austrian authorities consider that this measure prevents disputes over the percentage of private use of goods and services which are used only incidentally for business purposes.

D. Deduction of input tax in respect of travel expenses

The object of this measure is to calculate at a flat rate deductible input tax payable on subsistence expenses and accommodation expenses during business trips or temporary periods of employment elsewhere. The rate is based on the amounts laid down under income tax or wages tax arrangements. Input tax is calculated by applying a tax rate of 10% to these amounts.

However, this measure applies only to domestic travel, which is the only type of travel subject to Austrian VAT.

E. Exchange rates

This measure lays down that, where factors determining the taxable amount of a transaction other than an import transaction are expressed in a foreign currency, the conversion must be carried out at the official rate laid down as the average rate by the Federal Minister for Financial Affairs. This average rate is also used to determine the customs value of goods. However, the taxable person is entitled to carry out the conversion at the current rate of exchange where the individual amounts are evidenced by a communication issued by a bank or by an official list of rates.

According to the Austrian Government, the requested measure, which derogates from the second subparagraph of Article 11(C)(2) of the Sixth Directive, simplifies

the procedure for charging the tax within the meaning of Article 27 of the Directive.

### **Commission's opinion**

The procedure provided for in Article 27 of the Sixth Directive permits Member States to introduce special measures derogating from that Directive in order to simplify the arrangements for charging the tax or to prevent certain types of tax evasion or avoidance.

A special measure may not, however, be authorized under Article 27 unless that measure, while derogating from certain rules of the common system of value added tax, complies with the basic principles and key provisions of the system.

Furthermore, a derogation under Article 27 is justified only on condition that it falls within the scope of the objectives referred to in that Article, namely simplification of the arrangements for charging the tax or prevention of tax evasion or avoidance.

The request submitted by the Austrian Government contains five separate special measures. Each, therefore, requires a detailed examination to determine whether a derogation is justified on the basis of Article 27.

The Commission finds that the information supplied on certain measures by the Austrian Government in its request for authorization does not provide an overall view of the scope and impact of the measures. In these circumstances, the Commission considers that it is unable to decide whether the requests are justified.

In addition, in view of the extent of the requested derogations, which affect some key areas of the common VAT system, such as the scope of the tax, the taxable amount and the right to deduct input tax, the Commission is of the opinion that a discussion within the Council is essential at this stage.

The Commission considers that such a discussion will enable it to assess more clearly, if necessary, the extent to which a proposal for a Council Decision authorizing the Republic of Austria to apply measures derogating from the common VAT system is feasible given the objectives and scope of the measures concerned.

### **Conclusion**

In view of the foregoing, the Commission requests that the matter be raised by the Council in accordance with Article 27(4) of the Sixth Directive.

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