



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.03.1998

COM(1998) 184 final

Proposal for a

COUNCIL DECISION

**authorising the Kingdom of Spain to apply
a measure derogating from Articles 2 and 28a(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**

(presented by the Commission)

EXPLANATORY MEMORANDUM

By letter registered with the Secretariat-General of the Commission on 23 January 1998, the Spanish Government requested authorisation - under Article 27 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 for assessment¹ - to apply a special measure as regards trade in used and waste materials.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed of the Spanish request by letter dated 18 February 1998.

The special measure that Spain intends to introduce contains the following provisions:

- exemption from value added tax of the supply and intra-Community acquisition of used and waste materials, in the case only of taxable persons whose sales of ferrous metals in the previous year were worth not more than PTA 200 million or whose sales of waste paper, board or glass were worth not more than PTA 50 million. In addition, the exemption for non-ferrous metals would apply regardless of the quantities involved. If the above limits are exceeded during the current year, the exemption ceases to apply from the time when the limits are exceeded;
- taxable persons whose transactions are exempt under the above paragraph can be authorised to pay the VAT on their supplies and intra-Community acquisitions of used and waste materials.

According to the Spanish Government, the purpose of the measure is to simplify the charging of tax in this sector and to combat tax fraud.

In this connection, the Spanish Government would point out that many of the administrative provisions applicable to this sector are inadequate, that invoicing is often seriously deficient, that the traders concerned - i.e. smaller traders, who are difficult to trace and investigate - often do not pay the VAT due and that major practical difficulties arise in the course of collection.

Under the first provision referred to above, small traders in used and waste materials other than non-ferrous metals, whose turnover does not exceed the thresholds laid down on the basis of goods sold, need not pay value added tax on sales of the goods in question or show it on their invoices.

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

The purpose of determining the thresholds on the basis of products is to prevent the exemption from also applying to large traders.

Traders in non-ferrous metals may qualify for the exemption even if their total turnover exceeds PTA 200 million, the reason being that, since non-ferrous metals are normally traded at appreciably higher prices than other used and waste materials, the threshold would be reached relatively quickly in the case of trade in non-ferrous metals.

The taxable persons concerned will not have to pay VAT on their intra-Community acquisitions, which means that the corresponding intra-Community supplies will have to be taxed in the country of origin.

Traders are not entitled to deduct input tax in respect of the transactions exempted under this measure.

Under the second provision, traders in used and waste materials who in principle should be exempt may seek authorisation for making their transactions subject to VAT and hence for exercising the right to deduct input tax. Making this exception subject to authorisation will provide a strong enough guarantee that taxable persons will discharge their tax obligations. What is more, the fact that being subject to tax supervision is "rewarded" by the right to deduct input tax should help to make traders more willing to pay the tax.

The Commission considers that exemption of the supplies and intra-Community acquisitions effected by small firms both simplifies matters and helps to combat fraud since a category of taxable persons where checks and efforts at collection would be disproportionate to the revenue generated can be excluded from the VAT system.

The specific rules on supplies and intra-Community acquisitions of non-ferrous scrap metals are justified because they provide a secure basis for transactions involving a greater risk of fraud on account of the value of the materials in question.

Giving taxable persons the option of applying to the authorities in order to make their - in principle exempt - transactions subject to VAT ensures improved monitoring by the authorities.

Consequently, the Commission considers that the Kingdom of Spain may be authorised to apply the proposed derogation until 31 December 2000.

On 10 July 1996 the Commission adopted a work programme for the phased introduction of a common system of VAT.² It therefore seems appropriate to allow implementation of the proposed measure only until 31 December 2000, so that an assessment can then be made of its compatibility with the approach developed within the framework of the new common system of VAT.

² COM(96) 328 final, 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 harmonisation of the laws of the Member States relating to turnover taxes: common system of value added tax, uniform basis for assessment,³ and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise 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 and avoidance;

Whereas, by letter registered with the Secretariat-General of the Commission on 23 January 1998, the Kingdom of Spain requested authorisation to introduce a measure derogating from Articles 2 and 28a(1) of Directive 77/388/EEC;

Whereas, in accordance with Article 27(3) of that Directive, the other Member States were informed on 18 February 1998 of the request submitted by the Kingdom of Spain;

Whereas the first purpose of the special measure is to exempt the supply and intra-Community acquisition of used and waste materials consisting of glass, paper and board, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 50 million;

³ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

Whereas the second purpose of the measure is to exempt the supply and intra-Community acquisition of used and waste material consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 200 million;

Whereas the third purpose of the measure is to exempt the supply and intra-Community acquisition of non-ferrous metals, irrespective of the turnover for sales of such goods;

Whereas traders are not entitled to deduct VAT in respect of transactions exempted under these special measures;

Whereas the taxable persons whose transactions are covered by the above exemptions may, subject to the conditions laid down by the Kingdom of Spain, be authorised not to apply that measure to their transactions;

Whereas this measure both simplifies matters and helps to combat fraud since a category of taxable persons where checks and efforts at collection would be disproportionate to the revenue generated can be excluded from the VAT system;

Whereas, consequently, the special measure satisfies the conditions laid down in Article 27 of the Sixth Directive;

Whereas the Commission adopted on 10 July 1996 a work programme, together with a timetable, for the phased introduction of a common system of VAT for the single market;⁴

Whereas authorisation is being granted until 31 December 2000 so that an assessment can then be made of the compatibility of the measure with the overall approach adopted for the new common system of VAT;

Whereas this derogation will have no impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

⁴ COM(96) 328 final, 22.7.1996.

Article 1

The Kingdom of Spain is hereby authorised until 31 December 2000 to apply a special measure for the taxation of used and waste materials that contains provisions derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977.

The provisions in question are laid down in Articles 2, 3 and 4 below.

Article 2

By way of derogation from Article 2(1) of the Sixth Directive (77/388/EEC), the following shall be exempt from VAT:

- the supply of used and waste materials consisting of paper, board or glass, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 50 million
- the supply of used and waste materials consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 200 million;
- the supply of non-ferrous metals.
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Article 3

By way of derogation from Article 28a(1)(a) of the Sixth Directive (77/388/EEC), the following shall be exempt from VAT:

- the intra-Community acquisition of used and waste materials consisting of paper, board or glass, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 50 million;
- the intra-Community acquisition of used and waste materials consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 200 million;
- the intra-Community acquisition of non-ferrous metals.

Article 4

Taxable persons whose transactions are covered by the exemptions laid down by the special measure may, subject to the conditions laid down by the Kingdom of Spain, be authorised not to apply that measure to their transactions.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels,

For the Council,

The President

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