



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1999  
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Proposal for a

**COUNCIL DECISION**

**authorising the Kingdom of the Netherlands to apply a measure derogating from  
Article 11 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the  
harmonisation of the laws of Member States relating to turnover taxes**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### INTRODUCTION

In a letter registered by the Commission's Secretariat General on 1 September 1999, the Government of the Kingdom of the Netherlands requested authorisation on the basis of Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977, on the harmonisation of the laws of Member States relating to turnover taxes - common system of value added tax: uniform basis of assessments<sup>1</sup>, to apply a measure derogating from Article 11(A)(1)(a) of the Directive.

In accordance with Article 27, the other Member States were informed of the Netherlands' request by letter on 28 October.

### LEGITIMACY OF THE REQUEST

This request was made in line with the first statement entered in the minutes of the Council meeting of 12 October 1998, when Directive 98/80/EEC (special scheme for investment gold)<sup>2</sup> was adopted. This statement says that "*the Council and the Commission agree that they will examine with an open mind any request for a derogation under paragraphs 1 to 4 of Article 27 of Directive 77/388/EEC*".

This examination should be based on the following principle:

*"In cases where a taxable person makes a supply of services comprising work on non-taxed investment gold belonging to another person and that work results in the gold ceasing to be investment gold, the taxable amount on the supply of those services shall not be limited to the amount charged by the taxable person for those services but shall also include the value of the gold contained in the finished product."*

### AIM OF THE MEASURE

The aim of the measure envisaged by the Netherlands is to avoid the non-payment of VAT on non-taxed investment gold used as a raw material for making consumer goods (jewellery). The derogation also aims to avoid distortions of competition that could otherwise affect direct deliveries of gold products.

### DESCRIPTION OF THE MEASURE

The measure would mean that in cases where a taxable person supplied a service consisting of work on investment gold belonging to another person and that work resulted in the gold ceasing to be investment gold, the taxable amount (currently consisting only of the consideration received by the provider of the service for their work) would be increased by the value of the gold contained in the finished product based on the purchase price for the investment gold.

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<sup>1</sup> OJ L 145, 13.6.1977, p.1. Directive last amended by Directive 1999/85/EC (OJ L 277, 28.10.1999, p.34);

<sup>2</sup> OJ L 281, 17.10.1998, p.31.

## OPINION OF THE COMMISSION

Directive 98/80/EC of 12 October 1998 established a special system of VAT on investment gold, to be implemented throughout the European Union on 1 January 2000, which consists of exempting investment gold transactions from tax.

As stated in the Directive's second and third recitals, the aim of the special arrangements for investment gold is to facilitate its use as a financial investment and to enhance the international competitiveness of the Community gold market.

The Directive also says, in the seventh recital, that Member States are to take effective control measures to counter new opportunities for tax fraud and tax evasion that the dual use of gold may entail.

Article 27 of the Sixth Directive provides for the possibility of derogations in order to avoid certain forms of tax fraud and evasion.

The measure envisaged by the Netherlands comes into this category, in that it aims to prevent abuse of the exemption for investment gold when the gold is in fact being used as a raw material for consumer goods.

Applying to the finished product a taxable amount that includes, in addition to the consideration paid in return for transformation work, the value of the investment gold used cancels out retroactively the exemption for the consignment of investment gold and ensures treatment equal to that for direct sales of gold jewellery, where VAT is charged on total value.

In the Commission's view, this measure will deter people from purchasing investment gold for other purposes, in order to avoid paying VAT.

The measure will take the form of a derogation from Article 11(A)(1)(a) of the Sixth Directive, factoring into the taxable amount the value of the investment gold used as a raw material for making consumer goods.

The Commission considers that the derogation should extend to 31 December 2004 only, so that an assessment can then be made as to whether it is appropriate in the light of changes in the practical application of the special system for investment gold established by Directive 98/80/EC.

Proposal for a

## COUNCIL DECISION

### **authorising the Kingdom of the Netherlands to apply a measure derogating from Article 11 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of 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 Member States relating to turnover taxes<sup>3</sup> - common system of value added tax: uniform basis of assessments, and in particular Article 27 thereof,

Having regard to the proposal from the Commission<sup>4</sup>,

Whereas:

- (1) In a letter registered by the Commission's Secretariat General on 1 September 1999, the Government of the Kingdom of the Netherlands requested authorisation on the basis of Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977, on the harmonisation of the laws of Member States relating to turnover taxes - common system of value added tax: uniform basis of assessments, to apply a measure derogating from Article 11(A)(1)(a) of the Directive;
- (2) Under Article 27(1) of the Sixth VAT Directive, 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;
- (3) In accordance with Article 27, the other Member States were informed of the request from the Kingdom of the Netherlands by letter of 28 October 1999;
- (4) Article 11(A)(1)(a) of the Sixth Directive states that, in principle, the taxable amount in respect of supplies of goods and services shall be everything which constitutes the consideration which has been or is to be obtained by the supplier for such supplies from the purchaser, the customer or a third party;
- (5) The Kingdom of the Netherlands, by way of derogation from these provisions, has requested authorisation to include in the taxable amount for a service of working investment gold the value of the raw material provided by the purchaser of the service and used to make the finished product;

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<sup>3</sup> OJ L 145, 13.6.1977, p.1. Directive last amended by Directive 1999/85/EC (OJ L 277, 28.10.1999, p.34);

<sup>4</sup> OJ C , , p..

- (6) The aim of the derogation is to avoid abuse of the exemption for investment gold and thus to prevent certain types of tax evasion or avoidance; it therefore meets the conditions set out in Article 27 of the Sixth Directive;
- (7) The forms of tax evasion or avoidance in question consist mainly of the purchase of VAT-exempt investment gold which is then worked to make jewellery, with VAT being paid only on the work carried out;
- (8) The derogation will expire on 31 December 2004, so that an assessment can then be made as to whether it is appropriate in the light of changes in the practical application of the special system for investment gold established by Directive 98/80/EC;
- (9) The derogation will have no negative impact on the European Communities' own resources provided from value added tax,

HAS ADOPTED THIS DECISION:

*Article 1*

The Kingdom of the Netherlands is authorised, by derogation from Article 11(A)(1)(a) of Directive 77/388/EEC, to include in the taxable amount in respect of the supply of services involving the working of non-taxed investment gold the value of the gold contained in the finished product, based on the purchase price for the investment gold.

*Article 2*

The authorisation shall expire on 31 December 2004.

*Article 3*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

*For the Council  
The President*