



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC on the common system of value added tax - transitional provisions granted to the Republic of Austria and the Portuguese Republic

(presented by the Commission)

EXPLANATORY MEMORANDUM

AUSTRIA

1. Article 2(e) of Annex XV (part IX, "Taxation") to the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Community¹ authorised Austria to derogate from Article 28(2) of the Sixth VAT Directive 77/388/EEC² and to apply a reduced rate to the letting of immovable property for residential use until 31 December 1998, provided that the rate was not lower than 10%.
2. Under Article 13(B)(b) of the Sixth VAT Directive, the letting of immovable property for residential use in Austria has been exempt from VAT since 1 January 1999 without the right to deduct input tax. However, under Article 13(C)(a) of the Directive Austria may allow taxpayers the right to opt for taxation. In that case the normal VAT rate applies, as do the usual rules for the right to deduct.
3. However, Austria considers that the derogation is still essential, mainly because the transitional VAT regime is still in force and the situation has not really changed since the negotiation of its act of accession. Austria therefore wishes to continue taxing the letting operations in question at a reduced VAT rate, as dispensing with the reduced rate of 10% (replaced either by the normal rate of 20% or by an exemption without the right to deduct) would inevitably lead to an increase in the price of property rental for the final consumer, which would run counter to Austria's housing policy.
4. Given the information provided by Austria and as no complaint has been made against the derogation granted to it, the Commission considers that the risk of distortion of competition in the letting of immovable property for residential use can be considered non-existent.
5. In the light of the foregoing, the Commission proposes an extension of the derogation provided that its application is limited to the transitional period referred to in Article 281 of the Sixth Directive.

PORTUGAL

6. Portugal applied a reduced rate of 8% to restaurant services before 1991. Under Article 28(2)(d) of the Sixth Directive, introduced by Directive 92/77/EEC³ of 19 October 1992, Portugal was permitted to continue applying that rate.
7. However, after a comprehensive amendment of the rates and for political and budgetary reasons, the normal rate was applied to restaurant services from 1992.
8. Following complaints from representatives of the sector, Portugal wanted to re-introduce a reduced rate on restaurant services from 1 July 1996 on the basis that maintaining the normal rate had had adverse consequences.

¹ OJ C 241, 29.08.1994, p. 335.

² OJ L 145, 13.06.1977, p. 1. Directive last amended by Directive 99/85/EC (OJ L 277, 28.10.1999, p. 34).

³ OJ L 316, 31.10.1992, p. 1.

9. Portugal considers that taxing restaurant services at the normal rate leads to an increase in the price of restaurant services for the final consumer and a particular risk of severe job cuts in the sector. A reduced VAT rate could contribute significantly to Portugal's policy to combat unemployment.
10. Application of the normal rate to restaurant services was also likely to encourage the enterprises concerned to join or remain in the black economy, taking on people with few or no qualifications who are willing to accept undeclared employment.
11. However, Article 28(2)(e) of the Sixth Directive, which provides that Member States that applied a reduced rate at 1 January 1991 may apply a reduced rate not lower than 12% to restaurant services, no longer permits this, as Portugal dispensed with the reduced rate in 1992.
12. In the light of the information provided by Portugal and as no complaint has been made against application of the reduced rate, the Commission considers that the risk of distortion of competition in restaurant services can be considered non-existent, since the measure applies to Portugal only.
13. In the light of the foregoing, the Commission proposes granting a derogation under the transitional measures provided for by Article 28 of the Sixth Directive allowing Portugal to introduce a reduced rate for restaurant services, provided that application of the derogation is limited to the transitional period referred to in Article 28I of the Directive.

COMMENTS ON THE ARTICLES

Article 1

This article adds two new points to Article 28(2) of Directive 77/388/EEC: point (j), which authorises Austria to maintain a reduced rate on the letting of immovable property for residential use; and point (k), which allows Portugal to apply a reduced rate to restaurant services.

Articles 2 to 4

These articles contain provisions on the entry into force of the Directive.

Proposal for a

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amending Directive 77/388/EEC on the common system of value added tax - transitional provisions granted to the Republic of Austria and the Portuguese Republic

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,⁴

Having regard to the opinion of the European Parliament,⁵

Having regard to the opinion of the Economic and Social Committee,⁶

Whereas:

- (1) Article 2(e) of Annex XV (part IX "Taxation") to the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Community⁷ authorised Austria to derogate from Article 28(2) of Council Directive 77/388/EEC⁸ 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 of assessment, last amended by Directive 1999/85/EC⁹ and to apply a reduced rate to the letting of immovable property for residential use until 31 December 1998, provided that the rate was not lower than 10%.
- (2) Under Article 13(B)(b) of the Sixth VAT Directive, the letting of immovable property for residential use in Austria has been exempt from VAT since 1 January 1999 without the right to deduct input tax. However, under Article 13(C)(a) of the Directive Austria may allow taxpayers the right to opt for taxation. In that case the normal VAT rate and the normal rules for the right to deduction apply.
- (3) Although the derogation has expired, Austria considers that the measure is still essential, mainly because the transitional VAT regime is still in force and the situation has not really changed since the negotiation of its act of accession.
- (4) Austria also considers that dispensing with the reduced rate of 10% would inevitably lead to an increase in the price of immovable property rental for the final consumer.

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ C 241, 29.08.1994, p. 335

⁸ OJ L 145, 13.06.1977, p. 1.

⁹ OJ L 277, 28.10.1999, p. 34.

- (5) Portugal applied a reduced rate of 8% to restaurant services at 1 January 1991. Under Article 28(2)(d) of Directive 77/388/EEC, introduced by Directive 92/77/EEC¹⁰ of 19 October 1992, Portugal was permitted to continue applying that rate. However, after a comprehensive amendment of the rates and for political and budgetary reasons, restaurant services were made subject to the normal rate from 1992.
- (6) Portugal wishes to re-introduce a reduced rate on these services on the basis that maintaining the normal rate had adverse consequences, in particular job losses and an increase in undeclared employment, and that application of the normal rate increased the price of restaurant services for the final consumer.
- (7) As the derogations in question concern supplies of services within a single Member State, the risk of distortion of competition can be considered non-existent.
- (8) In these circumstances, return to the previous situation may be considered for both Austria and Portugal, provided that application of the derogations is limited to the transitional period referred to in Article 281 of Directive 77/388/EEC. However, Austria must take the necessary steps to ensure that the introduction of a reduced rate under the derogation has no adverse effects on the European Communities' own resources accruing from VAT, the basis of assessment for which must be reconstituted in accordance with Regulation (EEC, EURATOM) No 1553/89,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is amended as follows:

The following points are added to Article 28(2) of Directive 77/388/EEC:

"

- (j) The Republic of Austria may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) to the letting of immovable property for residential use, provided that the rate is not lower than 10%;
- (k) The Portuguese Republic may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) to restaurant services, provided that the rate is not lower than 12%."

Article 2

1. The Member States referred to in Article 1 shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

¹⁰ OJ L 316, 31.10.1992, p. 1.

When the Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The methods for making such a reference shall be laid down by the Member States.

2. The Member States referred to in Article 1 shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

It shall apply as from 1 January 1999 and until the end of the transitional period referred to in Article 281 of the Sixth Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the Council
The President