COMMISSION OF THE EUROPEAN COMMUNITIES



Brussels, 14.05.1997 COM(97) 215 final

COMMISSION REPORT TO THE COUNCIL

presented in accordance with Article 2 of
Council Decision 92/544/EEC of 23 November 1992
(application of measures derogating from Article 17 and Article 22(3), (4) and (5)
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 measures derogating from Article 17 and Article 22(3), (4) and (5) 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 92/544/EEC of 23 November 1992,¹ the Council authorized France, on the basis of Article 27 of the Sixth Directive, to take special measures derogating from Article 17 and Article 22(3), (4) and (5) of that Directive. The authorization was valid until 31 December 1996.

This derogation allowed a special scheme to be applied the purpose of which was to reduce the obligations of authors who receive royalties paid by publishers, royalty collection and distribution companies or producers.

The special scheme involves withholding at source the tax payable by authors and the calculation of deductible input tax on a flat-rate basis.

Article 2 of the said Decision lays down that the Commission should present to the Council a report on its application accompanied, where appropriate, by a proposal for a Decision extending its validity.

The purpose of this report is to give an account of the application of this derogation and to examine the request for an extension submitted by France by letter registered by the Commission's Secretariat-General on 14 February 1997.

II. APPLICATION OF THE DEROGATION

1. Historical background to the derogation

Up to 1 October 1991, France made use of the option provided for in Article 28(3)(b) of the Sixth Directive to continue exempting the services of authors, artists and performers from VAT (Annex F, point 2 of the said Directive).

Out of a concern to bring its legislation into line with the general rules of the common system of VAT, France made the services of authors and performers subject to VAT with effect from 1 October 1991.

However, application of the Community rules governing the collection of tax proved difficult, in particular as far as authors were concerned.

This was because the persons concerned made it known that application of the tax in their respect did not procure any revenue to the Treasury because the tax was always deductible by publishers, producers, etc., and that the only purpose of the new administrative obligations imposed on them would, in the absence of any revenue, be the formal one of bringing the rules into line with Community legislation.

OJ No L 351, 2.12.1992, p. 32.

In order to make tax liability more acceptable to authors, France introduced the special scheme in question.

2. Essential characteristics of the scheme

Under the scheme, the tax payable by authors is charged by being withheld at source where royalties are paid by publishers, royalty collection and distribution companies or producers. In other words, it does not apply unless the payer is a taxable person identified by the tax authorities.

Authors' deductible input tax is calculated by applying a 0.80% flat rate to their royalties. The amount determined in this way is exclusive of any other deduction.

An enterprise paying royalties to an author must pay to the Treasury the VAT due on royalties minus the VAT deductible from that amount calculated on the basis of this flat rate.

For transactions carried out under this scheme, authors are exempted from the obligation to issue an invoice, submit a return and pay the tax.

Finally, any author may waive his inclusion in the scheme by opting for application of VAT in accordance with the general rules.

3. Opinion of the French administration on the application of the scheme

The French authorities consider that the scheme offers the best guarantees for the proper charging of VAT owed by persons who can be expected to know little about the formalities relating to turnover taxes (musicians, writers, composers, etc.).

In addition, the scheme has the massive support of authors since only 5% of them have expressed a wish to be excluded from it by exercising the option referred to above.

Finally, the French authorities note that the tax authorities have observed no anomaly in the scheme's application.

III. OPINION OF THE COMMISSION

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

The Commission takes the view that the scheme in question allows administrative obligations to be reduced in a very specific sector and that, consequently, it meets the criterion of simplification of the procedure for charging the tax laid down by Article 27.

Moreover, the possibility which authors have of opting for taxation in accordance with the general rules allows them to exercise fully their right to deduction where they consider that the flat-rate deduction provided for under the special scheme is not appropriate to their specific situation.

The Commission therefore considers that it would be justified to extend application of the special scheme on the basis of Article 27 of the Sixth Directive.

As regards the period of validity of the authorization, the Commission's would point out that, on 10 July 1996, it adopted a work programme² 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 takes 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.

² COM(96) 328 final, 22.07.1996.

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EXPLANATORY MEMORANDUM

By letter registered with the Commission's Secretariat-General on 14 February 1997, the French Government submitted a request for an extension of the derogation authorized by Council Decision 92/544/EEC of 23 November 1992.¹

Article 2 of the above-mentioned Decision states that, in the light of a Commission report on France's application of the derogation, 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 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 system² 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 at that time of the derogation's 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 13 March 1997 of the French request.

OJ No L 351, 2.12.1992, p. 32.

² COM(96) 328 final, 22.07.1996.

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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, and in particular Article 27 thereof.

Having regard to the previous Council Decision 92/544/EEC of 23 November 1992,2

Having regard to the Commission report on the application of the above-mentioned Decision,

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 14 February 1997, the French Government requested authorization to extend the application of the derogation previously granted to it for a limited period by Council Decision 92/544/EEC;

Whereas the other Member States were informed on 13 March 1997 of the request for an extension submitted by the French Government;

OJ No L 145, 13.06.1977, p. 1; Directive last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

² OJ No L 351, 2.12.1992, p. 32

Whereas the Commission's report on the application of the derogation indicates that the special measures meet the conditions for application of Article 27 of the said Directive;

Whereas the Commission adopted on 10 July 1996 a work programme³ and a timetable of proposals providing for gradual, step-by-step progress towards a common VAT system for the single market;

Whereas, as presentation of 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 at that time of the derogation's consistency with the overall approach of the new common system of VAT;

Whereas this derogation will not have any effects on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

³ COM(96) 328 final, 22.07.1996.

Article 1

By way of derogation from Article 17 and Article 22(3), (4) and (5) of Directive 77/388/EEC, the French Republic is hereby authorized, until 31 December 1999,

- to apply arrangements for withholding at source the tax payable by authors where the royalties they receive are paid by publishers, royalty collection and distribution companies or producers,
- to calculate authors' deductible input tax by applying a flat rate of 0,80 % to their royalties. The amount determined in this way shall be exclusive of any other deduction.

Article 2

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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