COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Application of Article 27(1 to 4) of the Sixth Council Directive of 17 May 1977 on value added tax: request for a derogation submitted by the Netherlands Government

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Communication from the Commission to the Council concerning the application of Article 27(1 to 4) of the Sixth Council Directive of 17 May 1977 on value added tax[1] : request for a derogation submitted by the Netherlands Government

1. In its request of 22 March 1982 the Netherlands Government, acting under the abovementioned provisions, informed the Commission of its intention to introduce into its national legislation a measure for derogation from the Sixth Directive designed to combat certain fraudulent activities on the part of subcontractors and persons providing labour which exist in the building, structural steelwork and shipbuilding industries.

2. The extent of the derogation is to render the principal contractor liable for the tax chargeable on the work carried out by the subcontractor, who would normally be liable. The Netherlands Government's comments on the proposal are attached to this communication.

3. The Commission, in its letter of 18 april, 1982 informed the other Member States of the request from the Netherlands Government.

4. In accordance with Article 27(4) of the Sixth Directive the Council's decision will be deemed to have been adopted if within two months of receipt of the information mentioned at 3 above, neither the Commission nor any Member State has requested that the matter be raised by Council.

5. Insofar as the derogatory measure envisaged by the Netherlands Government is limited to the scope outlined at 1 and 2 of this communication the Commission does not intend to request that the matter be raised by the Council.

Annex 1

[1] OJ No L 145, 13.6.1977

Annex

Notes on the proposed rules on shifting VAT in the building industry, the structural steelwork industry and shipbuilding

Introduction

In August 1979, the Dutch Government tabled a Bill on joint and several liability for the payment of social insurance premiums, wages tax and value added tax in the case of subcontracting and the provision of labour. The rules set out in the Bill are aimed at preventing fraud in such cases by making the contractor jointly and severally liable for the social insurance premiums, wages tax and VAT owed by his subcontractor(s) or by those who have provided him with labour. However, during the Bill's passage (now completed) through the Dutch Parliament, a number of provisions were added which, on closer inspection, have been found to be a major obstacle to proper administrative implementation of the rules as far as VAT is concerned. Consequently, it is now proposed that the system of joint and several liability should not apply to VAT and that instead, by analogy with the rules applying in Belgium to construction firms, provision should be made for the levying of VAT to be shifted from the subcontractor, or from the person providing labour, to the contractor. These arrangements are to enter into force simultaneously with the rules on joint and several liability (which will then apply only to social security premiums and wages tax) on 1 July 1982.

Scope of the proposed rules on shifting the liability

The statutory rules on joint and several liability apply to all cases of subcontracting and provision of labour, irrespective of the sector

concerned. For practical reasons, it has been decided that for the time being application of the rules on shifting VAT should be confined to certain sectors. The sectors concerned are those in which subcontracting and the provision of labour occur most frequently and in which it was felt that there was the greatest need for rules to combat fraud, i.e. the building industry, the structural steelwork industry and shipbuilding. It is intended that, in due course - after sufficient experience has been acquired with the rules in these three sectors - the situation will be reviewed to see whether the rules on shifting liability should also be applied in other sectors of the economy. If as a result it is planned in future to extend these rules, the Commission of the European Communities will be informed in accordance with Article 27(2) of the Sixth Directive with a view to obtaining the necessary authorization.

So as to ensure that the two sets of rules are along parallel lines, the definition of "contracting", "sub-contracting" and "provision of labour" has generally been modelled on the statutory provisions on joint and several liability. The term "work of a material nature" used in connection with "contracting" and "subcontracting" should be interpreted broadly. In the three sectors in which the rules on the shifting of liability are to apply, the term "work of a material nature" would include such things as the laying out of roads, civil engineering works, pavements, the laying of mains, tillage, cleaning activities, the maintenance of houses and buildings, the laying of floors, roofing, the demolition and breaking up of buildings and ships, repair activities of all kinds, insulation activities, plumbing, plastering, and the construction of refinery columns and drilling platforms.

Text of the proposed rules on the shifting of liability

The new rules are to be incorporated into the 1968 Turnover Tax Implementing Decree. The text of the rules is given below in its present

draft from. It is possible that the text may undergo a number of amendments on minor points.

Article X.1. For the purposes of this Article:

(a) "employer", "employment" and "party responsible for deduction" mean the same as for the purposes of the Wages Tax Act 1964 (Stb. 521);

(b) "contractor" means a person who undertakes to another person, the principal, on the basis of a relationship that is not one of employment, to carry out for a price to be paid work of a material nature relating to immovable property or ships within the meaning of Chapter 89 of the Import Duty Tariff, with the exception of pleasure craft;

(c) "subcontractor" means a person who undertakes to a contractor, on the basis of a relationship that is not one of employment, to carry out in whole or in part, for a price to be paid, the work referred to in subparagraph (b).

2. For the purposes of this Article, the subcontractor is deemed to be a contractor in relation to his subcontractor.

3. For the purposes of this Article, any person who, without having been so instructed by a principal, carried out, in the normal exercise of his business, on the basis of a relationship that is not one of employment, work within the meaning of paragraph 1(b) shall also rank as a contractor.

4. For the purposes of this Article, the seller of an object yet to be constructed shall, insofar as the purchase and sale results from or is connected with work referred to in paragraph 1(b), be deemed to be a subcontractor in relation to the contractor.

5. By way of derogation from Article 12 of the Act, the tax on the work carried out by a subcontractor shall be collected from the contractor.

6. Where an employee who maintains his relationship of employment with the party responsible for deduction is provided by such party to a contractor or subcontractor in order to work under the supervision or management of such contractor or subcontractor, the tax shall, by way of derogation from Article 12 of the Act, be collected from the contractor or subcontractor as the case may be.

7. By way of derogation from Article 15 of the Act, the tax which is to be deducted by the contractor or subcontractor shall be the tax which has become chargeable during the tax period on the basis of paragraphs 5 and 6.

8. By way of derogation from Article 35(1)(g) of the Act, the invoice to be issued should, where paragraph 5 or 6 is applicable, bear the statement "turnover tax shifted".

9. The Minister may lay down further provisions concerning the implementation of this Article.