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Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 507/77) for an eighth directive on the harmonization of the laws of the Member States relating to turnover taxes – arrangements for the refund of value added tax to taxable persons not established in the territory of the country

Rapporteur: Mr H. NOTENBOOM

1.2.1

PE 55.860/fin.

By letter of 19 January 1978 the President of the Council of the European Community requested the European Parliament, pursuant to Articles 99 and 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for an eighth directive on the harmonization of the laws of the Member States relating to turnover taxes - arrangements for the refund of value added tax to taxable persons not established in the territory of the country.

The President of the European Parliament referred this proposal to the Committee on Economic and Monetary Affairs.

On 3 February 1978 the Committee on Economic and Monetary Affairs appointed Mr Notenboom rapporteur.

It considered this proposal at its meetings of 21 and 22 March and of 18 December 1978.

At its meeting of 18 December 1978 the Committee on Economic and Monetary Affairs adopted the motion for a resolution and explanatory statement unanimously.

Present: Mr Pisani, chairman; Mr Notenboom, rapporteur; Mrs Dahlerup, Mr De Keersmaeker, Mr Glinne, Mr Normanton, Mr Porcu, Mr Schwörer, Mr Spinelli, Mr Starke and Mr Zywietz.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal for an eighth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes - arrangements for the refund of value added tax to taxable persons not established in the territory of the country

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council (Doc. 507/77),
 - having regard to the report by the Committee on Economic and Monetary Affairs (Doc.543/78),
 - whereas the VAT system is a neutral Community-wide system, and refunds should only be used to prevent cumulative taxation,
1. Considers that wide differences in the present arrangements for refunding VAT to taxable persons in the Community give rise to distortions of competition and double taxation that are detrimental both to the persons concerned and to a sound Community economy;
 2. Notes that the proposal for an eighth directive introducing Community rules for refunding VAT, is a constructive step, especially as regards taxable persons established in the Community, and will help achieve a genuine common market;
 3. Considers that the proposed directive constitutes no more than a first measure implementing the principle of the refunding of VAT to all non-resident taxable persons and calls on the Commission to submit, as soon as possible, a proposal for settling, by Community arrangements, the problem of refunding VAT to taxable persons resident in third countries;
 4. Feels that by making a distinction between taxable persons established in the Member States and those resident in third countries, Article 8 of the proposed directive introduces an element of cumulation in the levying of the tax contrary to the principle of the VAT system;

¹ OJ No. C 26, 1.2.1978, p. 5

5. Also notes that the formalities required under the proposed directive to obtain a VAT refund considerably simplify matters for taxable persons, but feels that greater prominence should be given to certain cases where the refund is virtually automatic;
6. Requests the Commission to submit in the near future, pursuant to Article 17(6) of the Sixth Directive, a proposal defining the expenditure not eligible for a deduction in order to complete the harmonization of the conditions governing VAT refunds;
7. Approves, with the above reservations, the Commission's proposal for a directive and invites the Commission to adopt the following modifications pursuant to the second paragraph of Article 149 of the Treaty establishing the EEC.

Proposal for an eighth Council Directive
on the harmonization of the laws of the
Member States relating to turnover taxes -
arrangements for the refund of VAT to taxable
persons not established in the territory of
the country

Preamble and

first six recitals unchanged

Whereas, under Article 17(4) of the
Sixth Council Directive of 17 May 1977,
Member States may refuse the refund or
impose supplementary conditions in the
case of taxable persons not established
in the territory of the Community;
whereas steps should, however, also
be taken to ensure that such taxable
persons are not eligible for tax
refunds on more favourable terms than
provided for in respect of Community
taxable persons,

Whereas, pending the adoption of complete Community arrangements, the Member States may, under Article 17(4) of the Sixth Council Directive of 17 May 1977, Member States may refuse the refund or impose supplementary conditions in the case of taxable persons not established in the territory of the Community; whereas steps should, however, also be taken to ensure that such taxable persons are not eligible for tax refunds on more favourable terms than provided for in respect of Community taxable persons.

Articles 1 and 2 unchanged

Article 3

- (a)
- (b) produce evidence, in the form of a certificate issued by the relevant official department of the State in which he is established, that he ranks as a taxable person for the purposes of VAT in that State;

unchanged

- (b) produce evidence, in the form of a certificate issued by the relevant official department of the State in which he is established, that he ranks as a taxable person for the purposes of VAT in that State; where, however, the tax authority of the Member State is already in possession of such evidence, the taxable person shall no longer be required to furnish further evidence for a period of one year.

(c)

unchanged

Articles 4 to 7 unchanged

Article 8

Member States may, in the case of taxable persons not established in the territory of the Community, refuse the refund or impose special conditions.

The refund cannot be granted on more favourable terms than those applied in respect of taxable persons established in the territory of the Community.

Article 8

Member States may, in the case of taxable persons not established in the territory of the Community, refuse the refund or impose special conditions, without prejudice to subsequent Community provisions.

The refund cannot be granted on more favourable terms than those applied in respect of taxable persons established in the territory of the Community.

Articles 9, 10 and 11 unchanged

EXPLANATORY STATEMENT

Article 17(4) of the sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (77/388/EEC) specifies that the Council must adopt Community rules laying down the arrangements under which VAT refunds are to be made to taxable persons not established in the territory of the country.

The proposal for an eighth directive fulfils this particular objective. We will consider in turn the purpose and usefulness of the proposal, the arrangements it proposes for paying refunds to taxable persons established in the Community or resident in third countries and the refund formalities.

I. PURPOSE AND USEFULNESS OF THE PROPOSAL FOR AN EIGHTH DIRECTIVE(a) a highly variable situation

1. The situation of taxable persons in the Community as regards the arrangements for refunding VAT varies considerably depending on the Member State in which expenditure attracting VAT is incurred.

Similar variations are to be found in the relationship between the individual Member States and third countries. The Council therefore provided in Article 17(4) of the sixth directive for the early adoption of Community rules laying down arrangements governing tax refunds.

(b) the consequences of the situation

2. The lack of Community rules could lead to deflections of trade giving rise to distortions of competition to the detriment of countries that applied less generous arrangements.

Refusal to grant a refund would give rise to economic double taxation that would generally be passed on in the price of the goods or services provided.

The same danger of deflection of trade arises as a result of the different relations between Member States and third countries.

3. In general terms, therefore, the purpose of the proposal for an eighth directive is to allow persons, goods and services to move more freely within the Community with the aid of Community rules.

By making relatively simple Community arrangements for refunding VAT (no security payment or involvement of the tax authorities that would add unnecessarily to the cost of the refund), the proposal for a directive

offers undeniable practical advantages, especially as regards VAT payments for vehicle repairs carried out in a Member State other than that in which the taxable person is resident. The proposal for a directive also helps to combat various types of fraud and tax evasion.

II. ARRANGEMENTS FOR THE REFUND OF VAT TO TAXABLE PERSONS ESTABLISHED IN THE COMMUNITY

The proposal for an eighth directive includes various provisions determining to whom and on what terms refunds may be made.

(a) recipients of refunds

4. Within the meaning of Article 4(2) of the sixth directive, taxable persons established in the Community to whom refunds may be granted are those whose economic activities are carried on outside the country (Article 1).

Refunds may be granted only in respect of taxes due on goods and services purchased or imported goods used by the foreign taxable person for the activities listed in Article 17(3) of the sixth directive, i.e.:

- where the taxable person exercises no activity either taxed or untaxed in the country of refund (e.g. participation in international fairs);
- in the case of transport services supplied by carriers established abroad (since the transport services in question do not necessarily give rise to invoicing in respect of the distance covered in the country of refund).

5. The country of refund may not plead the existence of any exemptions for small undertakings in the taxable person's country of origin in order to refuse the refund. In fact, as the foreign taxable person does not carry out any taxable activity in the country of refund he cannot compete with 'national' taxable persons.

Similarly, the danger of deflection of trade to the detriment of taxable persons in the country of origin is to be excluded since goods purchased by the foreign taxable person in the country of refund have to be taxed upon importation into the country of origin.

The refund arrangements apply in the same way to foreign taxable persons supplying transport services in the country of refund whether or not any exemption exists for small undertakings in the country of origin. If for instance the tax charged for repair work in the country of refund was not refunded, this would give rise to a residual tax and consequently to a distortion of competition vis-à-vis the carriers of the country of refund.

(b) refund requirements

6. In order to preclude the possibility of fraud and abuse, Article 5 lists various conditions that must be satisfied before VAT can be refunded, especially the deductions excluded under Article 17 of the sixth directive (e.g. the tax charged on travel costs and entertainment expenditure and total or partial exclusion of the deduction for cyclical economic reasons, Article 17(6) and (7)).

The Commission should, with this in view, draw up as quickly as possible a list of expenditure not eligible for a deduction in order to harmonize the VAT refund requirements as fully as possible, as it is invited to do under Article 17(6) of the sixth directive.

The second paragraph of Article 5 also excludes from the refund system goods purchased with a view to resale within a business and the third paragraph excludes purchases not 'entailed' by a transport service carried out in the country of refund.

III. ARRANGEMENTS FOR THE REFUND OF VAT TO TAXABLE PERSONS ESTABLISHED IN A THIRD COUNTRY

7. Following the example given by the Council in the sixth directive, the Commission distinguishes between foreign taxable persons resident in a Member State and those resident in a third country (Article 17(4) of the sixth directive).

The Commission made no such distinction in its proposal for the sixth directive. In paragraph 18 of its resolution¹ Parliament welcomed the fact that the Member States would grant reimbursement of VAT to taxable persons established abroad in cases where they were entitled to deduction since the fact of placing national and foreign entrepreneurs on the same footing could help to bring about a truly common market and was, moreover, perfectly in line with the principles of VAT.

8. VAT is in fact based on the principle of percentage payments at every stage of production and distribution chain and on the right of every taxable person to deduct entirely and immediately the VAT which he has already paid at the time of purchase, and makes it possible to ascertain the exact tax burden at each stage of the chain and to avoid any cumulative effects.

In other words the tax burden on any product on the domestic market will be identical regardless of the number of stages in the process it goes through².

¹ Notenboom report of 14 February 1974 - Doc. 360/73; OJ No. C 40, 8.4.1974

² See explanatory statement in the report drawn up on behalf of the Committee on Budgets - Doc. 360/73, paragraph II.4

9. Cumulative effects for the consumer and any loopholes that allow the tax to be levied at intermediate stages are therefore to be avoided. If a distinction is made between taxable persons established in the Member States and those resident in third countries, the system's application is in fact interfered with and a cumulative effect introduced into the levying of the tax.

10. It is of little interest to the consumer that taxable persons established outside the EEC have been involved in the production of the product he buys. As far as the VAT system is concerned, it ought to be immaterial whether a product sold in France to a Frenchman has been processed by a taxable person established in Italy, Spain or Switzerland. The provisions of Article 8, under which Member States may refuse to refund VAT or impose special conditions on taxable persons established in third countries, are therefore only acceptable as an interim measure. The EEC VAT system already causes enough problems in trade relations between the EEC and the United States. The Commission of the European Communities is endeavouring to convince the Americans that VAT is a neutral system that treats American and European taxable persons alike and is in no way protectionist. A proposal covering refunds to undertakings in third countries must therefore be submitted as soon as possible. The Commission has agreed to put forward a proposal covering this area at an early date; this is why the rapporteur and the committee are not demanding that the equal treatment of undertakings in Member States and third countries should be complete and compulsory from now on.

IV. REFUND FORMALITIES

11. As we mentioned earlier, the proposal for a directive also tries to simplify and harmonize the refund procedure.

Article 3 lists the formalities involved (application modelled on the specimen contained in Annex A; certification of taxable status in the country of establishment modelled on the specimen contained in Annex B; written declaration by the applicant that he has not carried out any taxable transactions in the territory of the country).

12. Article 4 exempts taxable persons who carry out exempted transport transactions in the territory of the country from producing evidence of taxable status. It would be an idea to extend this exemption to all regular applicants and to complete Article 3 along these lines.

Article 7 provides various details as regards the period covered by the refund application (3 months or calendar year), the maximum period within which the refund must be made (6 months) and the minimum amount of tax for which an application may be submitted (25 or 50 EUA).

Article 6 prohibits Member States from imposing on taxable persons obligations other than those laid down in the proposal for a directive.

Lastly, Article 9 instructs Member States to inform foreign taxable persons of the authorities to which applications should be made.