
EUROPEAN PARLIAMENT

Working Documents

1978 - 1979

7 March 1979

DOCUMENT 647/78

Report

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

on a proposal from the Commission of the European Communities to the Council
(Doc. 508/77) for a/Seventh Directive on the harmonization of the laws of
Member States relating to turnover taxes – Common system of value added tax to
be applied to works of art, collectors' items, antiques and used goods

Rapporteur: Mr H. NOTENBOOM

122

By letter of 19 January 1978 the President of the Council of the European Communities requested the European Parliament, pursuant to Articles 99 and 100 of the EEC Treaty, to deliver an opinion on the proposal for a Seventh Directive on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax to be applied to works of art, collectors' items, antiques and used goods.

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

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 1978, 20 and 21 February 1979 and 28 February 1979.

At its meeting of 28 February 1979, the committee unanimously adopted the motion for a resolution.

Present: Sir Brandon Rhys Williams, acting chairman; Mr Notenboom, vice-chairman and rapporteur; Lord Ardwick, Mr de Keersmaeker, Mr Peschamps, Mr Lange, Mr Nyborg, Mr Ripamonti, Mr Spinelli and Mr Starke.

C o n t e n t s

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	10

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 from the Commission of the European Communities to the Council for a Seventh Directive on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax to be applied to works of art, collectors' items, antiques and used goods
The European Parliament,

- having regard to the proposal from the Commission to the Council¹,
 - having been consulted by the Council (Doc. 508/77),
 - having regard to the report of the Committee on Economic and Monetary Affairs (Doc. 647 /78),
1. Considers that the field of works of art, collectors' items, antiques and, more generally, used goods could not be made subject to the general system of VAT because of the peculiar nature of the economic cycle and final destination of these goods;
 2. Feels that the proposal for a Seventh Directive, the object of which is the harmonization of the basis of assessment of VAT applicable to the field of works of art and used goods, is likely to contribute as far as possible to the elimination of double taxation and distortions of competition by ensuring equal treatment of taxable persons wishing to resell;

As regards works of art, collectors' items and antiques

3. Emphasizes that the tax system for works of art may well have a not insignificant indirect effect on cultural life by encouraging or discouraging the creation and dissemination of works of art in the Community; consequently:
 - (a) approves the exemption of artists from VAT;
 - (b) considers that the choice of a flat rate of 30% of the selling price as the basis for the taxation of goods supplied by a taxable person wishing to resell works of art, while undeniably simplifying the situation in many cases, may be unfair to certain categories of taxable persons, precisely because it is a flat rate and because circumstances may be

¹OJ No. C 26 of 1.2.1978, p.2

widely divergent; calls for the adoption of a more flexible system of options for the benefit of those concerned;

- (c) feels that the tax system for imported works of art which enrich the cultural patrimony should be more favourable and should include:
- either exemption for imports,
 - or the opportunity to deduct immediately the tax paid on importation, in contrast to the provisions of Article 2(6);

As regards used goods

4. Considers that, for the calculation of the taxable amount, a more flexible system than the flat-rate of 30% provided for in the Directive should also be applied to a taxable person wishing to resell;
5. Feels that, in the case of officially registered used goods, the right to deduct enjoyed by a taxable person wishing to resell should be allowed up to the amount of the tax payable on the resale of those goods and should also apply to components used in their repair;
6. Hopes in ~~general~~ terms that, since this Seventh Directive involves almost exclusively small and medium-sized undertakings - in many cases family businesses - its implementation will avoid complicated paperwork requirements as far as possible;
7. Approves, subject to the above considerations, the Commission's proposal for a directive and requests the Commission to adopt the following amendments, pursuant to the second paragraph of Article 149 of the EEC Treaty.

Proposal for a Seventh Directive on the
harmonization of the laws of the Member
States relating to turnover taxes - Common
system of value added tax to be applied to
works of art, collectors' items, antiques
and used goods.

Preamble, recitals and Article 1
unchanged

Article 2, paragraphs 1 and 2
unchanged

- | | |
|---|---|
| <p>3. The taxable amount in respect of supplies of works of art, collectors' items and antiques effected by a taxable person wishing to resell shall be 30% of the selling price.</p> | <p>3. The taxable amount in respect of supplies of works of art, collectors' items and antiques effected by a taxable person wishing to resell shall be 30% of the selling price <u>or, on production of supporting documents, the difference between the selling price and the purchase price;</u></p> |
|---|---|

Paragraph 4 unchanged

- | | |
|---|--|
| <p>5. The following shall not be deductible:</p> <ul style="list-style-type: none">- tax paid at the time of the acquisition of the items referred to in paragraph 1;- tax paid by a taxable person wishing to resell at the time of acquisition of goods and services used for the purposes of this activity; | <p>5. The following shall not be deductible:</p> <ul style="list-style-type: none">- tax paid at the time of the acquisition of the items referred to in paragraph 1; <u>deleted</u> |
| <p>6. Where the items referred to in paragraph 1 are imported by a taxable</p> | <p>6. <u>Importation of</u>
- <u>original works of art,</u></p> |

¹For full text see OJ No. C 26 of 1.2.1978, p.2

person wishing to resell, 70% of the amount of the value added tax paid at the time of importation shall be deductible. The right to deduct shall be exercised only when the tax in respect of the supply of the item effected by the taxable person wishing to resell becomes chargeable.

collectors' items and antiques imported with a view to resale by a taxable person wishing to resell shall be exempt.

Paragraph 7 unchanged

Article 3

Article 3

Paragraph 1 unchanged

2. The taxable amount in respect of supplies of used goods other than those referred to in Article 4 shall be 30% of the selling price where the supply is effected by a taxable person wishing to resell who acquired the item in question from a non-taxable person or from a taxable person not entitled to deduct value added tax at the time of acquisition of that item.

2. The taxable amount in respect of supplies of used goods other than those referred to in Article 4 shall be:
-30% of the selling price where the supply is effected by a taxable person wishing to resell who acquired the item in question from a non-taxable person or from a taxable person not entitled to deduct value added tax at the time of acquisition of that item;
- or, on production of supporting documents, the difference between the selling price and the purchase price.

3. The scheme provided for in paragraph 2 may, at the option of the taxable person wishing to resell, apply, in accordance with the procedures laid down by each Member State, to supplies of used goods acquired from other taxable persons. The option shall cover all such transactions.

3. The scheme provided for in paragraph 2 may, at the option of the taxable person wishing to resell, apply, in accordance with the procedures laid down by each Member State, to supplies of used goods acquired from other taxable persons.

(last sentence deleted)

Paragraphs 4 and 5 unchanged

Article 4

Scheme for certain used goods

1. For the purposes of this Directive:

- 'private cars' shall mean motor road vehicles used for the transport of persons, with a seating capacity of not more than eight in addition to the driver,
- 'trailers' shall mean any trailer hauled by a private car, including caravans but excluding mobile homes;
- 'motor-cycles' shall mean motor-cycles, with or without side-cars, and cycles fitted with an auxiliary motor; side-cars for motor-cycles;
- 'private aircraft' shall mean aircraft, whether or not fitted with an engine, not used for a taxable activity;
- 'pleasure vessels' shall mean pleasure boats and other pleasure craft, whether or not fitted with a motor, not used for a taxable activity.

Article 4

Scheme for certain used goods

1. For the purposes of this Directive:

- unchanged
- agricultural or forestry tractors:
Any wheeled or tracked motor vehicle especially designed to pull, push, carry or power certain tools or machinery utilized in farming or forestry activities;
- commercial vehicles: Any utility road vehicle for the carriage of passengers or goods;
- unchanged
- unchanged
- unchanged
- unchanged

- other goods requiring official registration: goods whose purchase and sale is recorded in the books kept by the taxable person wishing to resell in a manner satisfactory to the tax authority.

Paragraph 2 unchanged

3. The right to deduct provided for in paragraph 2 shall arise when the tax in respect of the supply of the item by the taxable person wishing to resell becomes chargeable. The amount deductible may not exceed four-fifths of the amount of tax due on resale.
3. The right to deduct provided for in paragraph 2 shall arise when the tax in respect of the supply of the item by the taxable person wishing to resell becomes chargeable. The amount deductible may not exceed the amount of tax due on resale. The exercise of this right shall also extend to costs incurred in repairing the item.
4. Where the goods referred to in paragraph 1 are dispatched or transported outside the territory referred to in Article 3 of Directive 77/388/EEC, the amount of tax deductible may not exceed four-fifths of the amount of tax calculated on the basis of the value declared for the purposes of exportation. The right to deduct shall be exercised only when the export formalities have been completed.
4. Where the goods referred to in paragraph 1 are dispatched or transported outside the territory referred to in Article 3 of Directive 77/388/EEC, the amount of tax deductible may not exceed the amount of tax calculated on the basis of the value declared for the purposes of exportation. The right to deduct shall be exercised only when the export formalities have been completed.

Paragraph 5 unchanged

EXPLANATORY STATEMENT

1. VAT is intended to tax goods chargeable to it only once during the economic cycle from production (or importation) to the final stage of consumption. However, it does happen that used goods enter a second commercial cycle and thus once more become liable to VAT. In the proposal for a Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes, which the Commission submitted to the Council on 29 June 1973, special VAT arrangements were suggested for used goods, works of art, antiques and collectors' items.

When the Council discussed that proposal it was unable to adopt any of the solutions put forward. Article 23 of Directive No. 77/388/EEC instructs the Commission to submit a fresh proposal. Complying with that instruction, it is now submitting this proposal for a Seventh Directive.

I. SPECIAL VAT ARRANGEMENTS FOR WORKS OF ART, COLLECTORS' ITEMS, ANTIQUES AND USED GOODS

(a) Scope of the special VAT arrangements

2. Used goods which have already reached the final consumer and have thereby completed a commercial cycle can be introduced into a second commercial cycle after a period of use. The term 'used goods' can apply to various categories, viz: (1) consumer durables that lose their value during successive commercial cycles (2) used goods, such as cars and boats, where ownership is officially recorded, and (3) works of art and collectors' items, whose value usually increases over a period of time. The goods falling into these three categories usually have two specific characteristics: a long economic life and the fact that, unlike new goods, they can change hands without the transfer involving a commercial enterprise.

(b) The need for special VAT arrangements

3. Used goods can be re-introduced into the marketing channels by a taxable person who has purchased them from a non-taxable private individual. Consequently, in the absence of special VAT arrangements, the taxation of such goods could become cumulative, since the taxable person who purchases the item from a non-taxable person cannot deduct the tax paid previously. For once used goods that have already reached the final consumer are

purchased by a taxable person with a view to their resale, a residual amount of non-deductible tax is incorporated in the purchase price; consequently, VAT is charged on the taxable person's total selling price and not just on the value added.

(c) Selection of special VAT arrangements

4. The proposal excludes the application of a common reduced rate because such falls outside the scope of harmonization of the basis of assessment; also excluded is taxation of the real value added by the taxable person wishing to resell, either on every transaction (which would have the drawback of revealing the taxable person's profit margin to the purchaser) or on the declaration (which would be contrary to the spirit of VAT, which is a consumer tax).

The proposal finally advocates two solutions which could be applied according to the kind of goods involved. The first consists in fixing the tax at a flat-rate percentage of the selling price, the second in the deduction of the tax calculated on the basis of the purchase price from the tax chargeable on the reselling price. The first method would be applicable to antiques and used goods where ownership is not officially registered, the second to registered used goods.

(d) General provisions

5. Article 1 of the proposal for a directive clearly stipulates that, no matter what the nature of the used goods, all the provisions of Directive No. 77/388/EEC are applicable except those in respect of which an express derogation has been authorized by the special arrangements and which concern the taxable amount for supplies and the right to deduct enjoyed by a taxable person wishing to resell. Exemption on exportation and the special scheme for small undertakings are expressly retained. Furthermore, the taxable person wishing to resell has the right to opt for the normal scheme if this is in his interest. Such interest may arise either because, as a result of the accounts he keeps, he can be taxed in respect of real value added (a taxable person normally purchasing goods from other taxable persons) or because he is engaged primarily in importing goods for resale to taxable persons (here, since both the purchaser and seller can claim deductions, no distortion of competition arises). Finally, any intermediary is treated as if he were a taxable person wishing to resell.

II. CONDITIONS FOR APPLYING THE SPECIAL VAT ARRANGEMENTS TO WORKS OF ART, COLLECTORS' ITEMS AND ANTIQUES

6. The economic cycle of works of art, collectors' items and antiques is quite exceptional because in this cycle there are no stages when value is added; the item is a unique creation which falls outside the scope of VAT. The economic cycle of such items does not end with consumption; there can never be any real 'consumption' of a work of art, there are successive transfers between art dealers and private individuals. The scheme for taxing works of art can therefore have indirect but not insignificant effects on cultural life; the scheme can either encourage or discourage the creation and dissemination of works of art and be a factor in the favouring of a particular venue inside or outside the Community for the conclusion of transactions. Special tax arrangements are therefore essential in this sphere, which merits a directive all to itself. In your rapporteur's opinion, the Community must realize that even a slight difference in the tax burden could be enough to cause a large number of works of art and antiques to leave the Community.

(a) Scope of the proposal

7. The first indent of Article 2(1) sets out a number of headings in Chapter 99 of the Common Customs Tariff but does not include every branch of the creative arts.

It is becoming increasingly difficult to apply the 100-year rule to antiques with any degree of accuracy. Your rapporteur feels, therefore that at the very least, additional criteria should be laid down. Such criteria could relate to the unique nature of the work of art, or the fact that it was largely hand-made, or the situation could be circumscribed as follows : 'All items of an age exceeding 100 years or dating from a period with a specific style of which it can reasonably be said that that period began not less than 100 years before the date of the chargeable event in question.'

(b) Calculation of the rate

8. For works of art, collectors' items and antiques, the definitions laid down in the Common Customs Tariff are to apply. The taxable amount in respect of supplies of these items effected by a taxable person wishing to resell is to be 30% of the selling price, which would seem

to be the figure closest to the average profit margin in this branch of commerce.

The Commission recognizes that the taxable amount - fixed at a flat-rate percentage of the selling price - may, like any other flat-rate percentage, appear arbitrary.

The 30% flat-rate does appear to be in line with the average profit margin of the major galleries which sell works of art (the margin lies between 10% and 50% depending on whether the item in question is being sold for the first time or is being resold, and whether it is the work of an unknown artist or one with an established reputation). However, this figure of 30% is not in line with the average profit margin of the small galleries exhibiting local artists, which, we are informed, is of the order of 7%. Nor is account taken of the special position of those art dealers who run their galleries as a sideline. Your rapporteur feels therefore that the taxable person wishing to resell should have the right to opt either for the flat-rate tax or, on production of supporting documents, for the tax on the actual profit margin. If this option were available, it would save certain art dealers from considerable disadvantage in cases where the assessment basis applicable to them was much higher than their profit margin.

With a view to preventing evasion, the arrangements laid down in Article 2 are to be applicable to supplies of precious items only if their commercial value is twice the value of the precious metals or precious stones incorporated therein. Given the fluctuations in the price of gold and precious metals and stones, as also in wage costs, the definition of precious metals and precious stones incorporated in these items seems rather precarious. Your rapporteur wonders whether it might not be better to delete this provision. After all, the value of gold, of other precious metals and stones does fluctuate. Even a very slight movement in the value of gold, for example, would mean that a large number of these items fell inside or outside the scope of the arrangements : the situation could change virtually from one day to the next. But quite apart from that consideration, the question remains: who can really determine accurately whether the value of a particular work of art depends on the value of the material used or on the artistry with which it was fashioned. It is also true that craftsmen's salaries and profit margins vary.

(c) Equal treatment of taxable persons wishing to resell

9. Your rapporteur finds it rather unfair that art dealers should not be entitled to deduct tax paid on the purchase of goods and for the services rendered by them for the purposes of the activity referred to

here (second indent of Article 2(5)), whereas in the case of all other activities a refund can be claimed of the VAT paid on overheads, including immovables.

(d) The tax scheme for imports

10. Article 2(6) guarantees equal treatment between taxable persons wishing to resell who purchase goods on the home market and taxable persons wishing to resell who import their goods, by authorizing those who buy their stock abroad to deduct 70% of the tax paid on importation.

It should be noted that, in contrast to the situation in respect of everyday consumer goods, it is the importation rather than the exportation of works of art which should be encouraged (since it enriches the Community's cultural patrimony). Such imports should therefore be exempted from tax; in contrast to what is laid down in Article 2(6) it is therefore imperative to make the tax payable on importation entirely deductible.

(e) Special arrangements for artists

11. Article 2(2) of the special VAT arrangements exempts from tax all supplies and imports of works of art effected by the artist himself. Such exemption is restricted to creative artists in the plastic arts who, unlike composers, musicians and writers, are not linked in a tax chain; consequently the chain is not broken. The non-taxation of artists, which is the rule in a number of Member States, is advocated in the Florence Agreement, concluded under the aegis of UNESCO, and is indeed in line with the spirit of the Communication from the Commission to the Council concerning Community action in the cultural sector (COM(77) 560 final). The definition of works of art set out in Article 1 makes it possible to draw a clear-cut dividing line between the creative arts and other adjacent sectors - which are not exempt - such as handicrafts.

III. CONDITIONS FOR APPLYING THE SPECIAL VAT ARRANGEMENTS TO USED GOODS

A. Used goods in a restricted sense

12. 'Used goods' as meant here are those other than the goods referred to in Article 2 which can be used again as they stand or after repair. The taxable amount in respect of supplies of these goods is fixed at 30% of the selling price. As in the case of works of art, Article 3 lays down that the profit margin of a taxable person wishing to resell is to be taxed on a flat-rate basis whether the goods are acquired from a non-

taxable person or from a taxable person not entitled to deduct VAT. In order to simplify accounting procedures, however, a taxable person wishing to resell may opt for the special scheme, irrespective of his source of supply, it being understood that, in so doing, he will not be able to deduct any part of the tax invoiced to him by the taxable person supplying the goods.

The flat-rate tax of 30% of the selling price has all the drawbacks of every flat-rate system; the tax appears too high in the particular case of the used car trade, where the average profit margin is 10%.

Pursuant to Article 3(3), a request for the application of the special scheme laid down in the Seventh Directive must 'cover all the transactions' of a taxable person wishing to resell. It would be preferable if the parties concerned could submit requests case by case, since profit margins vary greatly according to the price.

Finally, it should be noted that, pursuant to Article 3(4), the special scheme is not to apply to supplies of used goods made of gold or other precious metals because of the excessive scope for evasion here (such goods could be used as the primary materials for the manufacture of new items).

B. Used goods where change of ownership is officially registered

(a) Scope

13. The definition of the scope of these used goods (the first paragraph of Article 4) is inadequate because it applies to private cars but not to commercial vehicles or agricultural tractors for which a registration number must also be obtained through the same official channels. It is a defensible proposition that the scheme set out in Article 4 should apply likewise to goods which are actually registered by the person wishing to resell in the sense that it is possible for the authorities to keep track of their purchase and sale. And good administrative practice should be encouraged. For example, office machines and computers might be exchanged by undertakings which are not entitled to deduct (such as banks, insurance companies, the Post Office and hospitals).

(b) Tax arrangements

14. Officially registered goods (passenger cars, trailers, motor cycles, private aircraft and pleasure vessels) are not to be subject to a flat-rate tax. Since these goods have to be registered - and change of ownership recorded - and so as to mitigate the cumulative impact of further taxation, which might cut traders out of the business, taxable persons who have acquired such goods with a view to their resale would be entitled, under

the Commission's proposal, to deduct VAT calculated on the purchase price of the goods at the rate in force at the time of acquisition, up to a maximum of four-fifths of the amount of tax due on resale. The advantage of this arrangement for deducting input tax is that it does not reveal the profit margin of the taxable person wishing to resell. There seems to be no reason why this deduction should be limited to four-fifths. The presumed profit margin of 25% will frequently not be attained. And frequently the goods referred to in the first paragraph are exchanged on a 'no profit, no cure' basis. To prevent evasion or, at any rate, the use of this scheme for purposes for which it was not intended, and to ensure that the tax deducted does not exceed the tax calculated on the real value of the exchanged goods, it would be sufficient for the deduction to be limited to the tax payable on resale.

The right to deduct laid down in the second paragraph of Article 4 is to apply not only to the purchase price of the used goods but also to the purchase price of components used to repair the goods. Even simple repairs made to used goods before their resale can result in high costs.

Under the fourth paragraph of Article 4, these goods may be exported without any tax being paid on the added value, even if that tax has not been invoiced to the taxable person exporting the item. This advantageous arrangement for exports is justified by the fact that these goods account for the most important part of intra-Community trade in used goods. In this case, considerations other than those relating to works of art apply.

15. The greatest merit of the special VAT arrangements for works of art and used goods in the proposal for a Seventh Directive is that:

- it avoids double taxation and consequent distortions of the conditions of competition, as also the deflection of trade;
- it takes account of the characteristics of works of art as being used goods in general but without excluding them from the scope of VAT. For a work of art is very often regarded as a private investment and, for that reason, should not be exempt from tax.

The committee requests the Council, when it adopts this directive, to bear in mind that the area covered involves almost exclusively small and medium-sized undertakings, in many cases family businesses. It therefore requests the Council to avoid complicated paperwork requirements as far as possible. The directive also concerns, however, a number of sectors where 'dilettanti' work alongside the bona fide professional businessmen, where 'non-registered vendors' compete with registered vendors.

Bona fide businesses should be rewarded, not penalized. Vendors who willingly submit to tax rules should not be placed under an additional administrative burden which increases their 'handicap' vis-à-vis those who avoid them by tax evasion.

At a later stage the Commission will have to seek ways of harmonizing VAT rates. Subject to moderation of the drawbacks attaching to flat-rate taxation - the most criticized aspect of the directive - by the provision of more alternatives, this proposal for a Seventh Directive could thus be approved.