



COMMISSION OF THE EUROPEAN COMMUNITIES

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98/0025 (CNS)

**Proposal for a Council Directive governing the tax treatment of private motor vehicles moved permanently to another Member State in connection with a transfer of residence or used temporarily in a Member State other than that in which they are registered.**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### I. INTRODUCTION:

1. The proposed directive is intended to replace Directive 83/182/EEC on tax exemptions within the Community for certain means of transport imported into one Member State from another<sup>1</sup> and Directive 83/183/EEC on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals<sup>2</sup>, as amended by Directive 89/604/EEC<sup>3</sup>. It therefore has two main objectives: firstly, to consolidate and update the provisions of the two directives being replaced in the light of the internal market taxation rules and, secondly, to extend their provisions to address problems encountered with their application and to fit in with internal market requirements and expectations on the freedom of movement.
2. The proposed directive does not seek to change radically the underlying concepts of the directives being replaced. It does, however, attempt to address situations where the existing rules regarding liability to tax provided for by those directives are considered to be too limited in the context of the single market, where they give rise to unreasonable administrative burdens for individuals and where, in the past, they have been interpreted in an excessively restrictive manner by Member States. It should be stressed that, on a general level, vehicle taxes have not been, and are not currently, the subject of rules aimed at approximation at a Community level, and reside largely within the competence of the Member States. The wide differences in practice between Member States in this area have been clearly identified in the review of vehicle taxation which has recently been carried out by the Commission's Directorate-General for indirect taxation (DGXXI). Insofar as this proposal lays down certain conditions under which Member States may not impose vehicle taxes, it is to be stressed that this should not be taken as implying that, in other cases, there is an obligation on Member States to introduce or to impose vehicle taxes.
3. In addition to the considerations mentioned above, the proposed directive is intended to reflect more accurately the systems of taxation of motor vehicles applied by Member States since 1 January, 1993. Since that date, the internal market rules prohibit the use of frontier formalities in the collection of such taxes, and luxury VAT rates are no longer permitted. Consequently, Member States largely converted their excise duties on motor vehicles into registration taxes, or in some cases introduced new taxes or modified existing ones to compensate for VAT rate reductions. The proposal aims to ensure that these new taxes and charges introduced on or after 1 January 1993 come within the scope of measures aimed at avoiding double taxation. References to exemption from VAT are no longer necessary, as under the VAT rules applying since 1 January 1993 VAT is not payable in connection with transfer of residence or temporary use of vehicles in another Member State. The application of the existing directives has

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<sup>1</sup> O.J. No. L 105, 23. 4. 83, p. 59.

<sup>2</sup> O.J. No. L 105, 23. 4. 83, p. 64.

<sup>3</sup> O.J. No. L 348, 29. 11. 89, p. 28.

already been repealed for VAT purposes by Article 2 of Directive 91/680/EEC<sup>4</sup>. Furthermore, the scope of the proposed directive is being limited to motor vehicles, reflecting the fact that, in practise, they are the sole type of property subject to taxation and requiring express rules forbidding the imposition of taxation in certain cases. Finally, it is proposed that special rules regarding taxation of vehicles which move between Member States in connection with marriage or inheritance are no longer necessary.

4. The changes proposed acknowledge that obstacles to free movement of privately owned vehicles from one Member State to another are amongst the most sensitive issues for individuals in the Community. Obstacles to such movement, be they fiscal or otherwise, can in effect be obstacles to the free movement of persons, given the level of use of the motor car as a preferred means of transport. At present such obstacles, often in the form of imposition of double taxation, continue to exist despite the expectations created by the advent of the single market. The need for such a proposal has been highlighted by a steady increase in the number of complaints by citizens to the European Commission, corresponding increases in the volume of petitions to the European Parliament and, most recently, by calls from the High Level Panel on the Free Movement of Persons, chaired by Mrs. Simone Veil, for solutions to eliminate cases of double taxation of vehicles.
5. On the detail of the proposed changes, where such exist, the overall objectives are to address situations which have been the subject of repeated complaints to Parliament and to the Commission, to expressly state in the Directive the outcome of a number of recent judgements of the Court of Justice, and generally to bring the tax treatment of vehicles which accompany private individuals moving from one Member State to another more in line with the concept and principles of the single market.
6. The measures proposed cover two broad categories. Firstly, in the case of transfers of residence, it is proposed that Member States should not impose registration taxes, or similar taxes, on vehicles brought into their territory by individuals who are transferring their place of residence to their territory from another Member State. This broadly corresponds, in its effect, to the aim of Directive 83/183/EEC, insofar as that directive provided for an exemption from taxes on the importation of motor vehicle in connection with a transfer of residence, with the significant exception that Directive 83/183/EEC did not apply to registration taxes.
7. As regards temporary movements, the main thrust of the proposals is to ensure a satisfactory continuation of the right of an individual to use a vehicle temporarily in a Member State other than that in which he resides, as provided for in Directive 83/182/EEC. The key element here is the right to use a vehicle for a period of up to six months in any twelve month period. A number of additional elements are being introduced, such as greater freedom to use rental cars in Member States other than those where they are registered, the right of family members to use the vehicle, and greater flexibility concerning the rights of

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<sup>4</sup> O.J. No. L 376, 31. 12. 91, p. 1.

persons who work in a Member State other than that where they reside and vehicles provided by employers.

8. The proposal also envisages a greater onus on the competent authorities of Member States to communicate bilaterally in the event of a dispute concerning a person's alleged place of residence, and emphasises that, in cases where national law is infringed, any consequent action or sanction must be proportionate.
9. In subsidiarity terms, an initiative is necessary at Community level to ensure that, where taxes connected with motor vehicles exist in Member States, there is a common set of rules governing the non-imposition of such taxes in certain well-defined cases. This is necessary to facilitate movement of persons within the Community and to avoid double taxation. The proposal does not seek to harmonise the taxes which Member States choose to implement in relation to motor vehicles. Furthermore, it does not impede the right of Member States to introduce or modify such taxes, nor does it undermine national measures to ensure the satisfactory collection of such taxes. It represents what the Commission considers to be the minimum level of regulation at Community level to be consistent with the principles of the single market. Member States are free to apply more liberal rules, if they see fit.

## II. EXPLANATION OF THE PROVISIONS OF THE PROPOSED DIRECTIVE:

### TITLE I    General provisions.

#### Article 1.

1. Article 1 describes the situations in which Member States shall not impose taxes on motor vehicles.
  - 1.1. Article 1, paragraph 1 states that Member States shall not impose vehicle taxes following a transfer of residence. All taxes other than VAT and periodic road taxes are covered.
  - 1.2. Article 1, paragraph 2 states that each Member State shall allow vehicles registered in other Member States to be used on its territory without requiring payment of vehicle taxes. All taxes other than VAT are covered.
  - 1.3. Article 1, paragraph 3 extends the provisions of paragraphs 1 and 2 to normal spare parts, accessories and equipment.
  - 1.4. Article 1, paragraph 4 specifies that VAT is not covered by this directive.

#### Article 2.

2. Article 2 defines commercial vehicle, private vehicle, business use, private use, residence and family.

### TITLE II    General rules for determining normal residence

#### Article 3.

3. Article 3 sets out the general rules for determining normal residence. They are largely the same as those contained in the Directives being repealed.
  - 3.1. Article 3, paragraph 1 states that normal residence shall be determined by reference to the place where a person usually lives, i.e. for at least 185 days per year, because of personal and professional ties.
  - 3.2. Article 3, paragraph 2 states that, where a person's professional and personal ties are located in two different Member States, his/her place of residence shall be the Member State where his/her personal ties are located, provided he/she returns there regularly.
  - 3.3. Article 3, paragraph 3 states that, where the professional and personal ties are located in two different Member States but where the person is living in a Member State to carry out a task of a definite duration, his/her place of residence

shall be that of the personal ties, irrespective of whether he/she returns there regularly.

- 3.4. Article 3, paragraph 4 states that attendance at a university or school in another Member State shall not imply a change of residence.
- 3.5. Article 3, paragraph 5 introduces a new provision, stating that a change in marital status does not automatically imply a change of residence. Thus, for example, a student who marries in the Member State of his/her studies does not automatically become a resident of that State. This was the essence of the Profant judgement of the European Court of Justice<sup>5</sup>.
- 3.6. Article 3, paragraph 6 describes forms of evidence of normal residence.
- 3.7. Article 3, paragraph 7 permits Member States to seek additional information from the individual concerned or the competent authorities of other Member States in cases of doubt.

### TITLE III    Transfer of residence

#### Article 4.

4. Article 4 sets out the conditions relating to vehicles on which no tax is payable following a transfer of residence.
  - 4.1. Article 4, paragraph 1 states that a vehicle must have been acquired under normal taxation rules and not be subject to a refund as a result of its being transferred to another Member State. (A vehicle purchased under diplomatic privilege is deemed to satisfy these requirements, as is a vehicle acquired under special arrangements for international arrangements, NATO forces, etc.) The vehicle must have been used by the person for six months prior to transfer of residence. It must also be transferred not later than twelve months after the transfer of residence. These two latter conditions are largely reproduced from Directive 83/183/EEC. If a greater degree of approximation of tax systems existed, such provisions should not be necessary. However, given the current wide discrepancies, it is considered that these measures should be retained, in order to prevent excessive erosion of Member States tax bases through last minute tax avoidance schemes. Nonetheless, the restriction on disposal within 12 months after transfer has been deleted. It is considered that this is too restrictive in the context of the single market, bearing in mind that the relief is only available where a genuine transfer of residence is taking place.
  - 4.2. Article 4, paragraph 2 states that Member States may increase the six month period of prior ownership to 12 months in the case of vehicles purchased under diplomatic privilege. This is a reproduction of a provision in Directive 83/183/EEC.

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<sup>5</sup> Judgement of 03.10.1985 (Case 249/84 *Ministère Public v Profant* [1985] ECR 3237)

TITLE IV Temporary use of a vehicle in a Member State other than that of registration

Article 5.

5. Article 5 states the general rules under which vehicles may be used temporarily in a Member State other than that of registration without payment of taxes in the Member State of temporary use.

5.1. Article 5, paragraph 1 states that taxes shall not be imposed where the period of temporary use does not exceed six months in any 12 months. The following conditions also apply:

- (a) the user must have his/her normal residence in another Member State;
- (b) use must be confined to private use;
- (c) the vehicle must not be hired out or lent to a resident of the Member State of temporary use.

This is largely as before, with the exception that a restriction on disposal has been removed. Consequently, disposal would be permitted, though of course that would mark the end of the period of temporary use, and final taxation arrangements should then apply.

5.2. Article 5, paragraph 2 increases the six month period to nine months in the case of a person whose professional ties are in a different Member State to that of his/her normal residence. This provision is considered necessary to cater for the growing number of people who work during the week in one Member State and who only return at weekends and holidays to the Member State of normal residence, where their personal ties are located. A period of nine months is considered sufficient to cover the typical amount of time per year which a person might spend in another Member State for professional reasons, following deduction of holidays, weekends, etc. Complaints have been received that Member States have required people working on their territory to register their private vehicles, and pay taxes, once the standard six month period is exceeded

Article 6.

6. Article 6 identifies several specific types of cases where, although the general conditions laid down in article 5 may not be satisfied, taxation may not be imposed in the Member State of temporary use.

6.1. Article 6, indent (a) allows re-rental of a rental vehicle, which is in the Member State as a result of a rental contract ending there, to a non-resident for up to two months, or for up to thirty days longer if it is to be removed from the State during the rental period. It also allows rental to a resident with a view to removal within fifteen days. These are new provisions, which are intended to overcome practical problems that can arise when a rental contract ends in a Member State other than that in which the contract commenced, and should allow better fleet management for car rental companies. The existing provision, allowing an employee of the rental company to repatriate the vehicle, even if the employee is a resident of the Member State of temporary use, is also reproduced.

- 6.2. Article 6, indent (b) permits use of a vehicle rented in and registered in another Member State, subject to a maximum of eight days.
- 6.3. Article 6, indent (c) allows members of the user's family to use the vehicle while the user is in the Member State. This is a new provision, to reflect the reality which can arise regarding shared use of a motor vehicle within a family unit.
- 6.4. Article 6, indent (d) allows use by any person when the person who brought the vehicle to the Member State is on board. Similarly, this is intended to reflect situations which can often arise whereby the person who brought the vehicle to the Member State of temporary use may not wish to be the driver all of the time. He must be on board, however, unless the driver is a member of his/her family.
- 6.5. Article 6, indent (e) allows a person to return to his/her Member State of normal residence with a vehicle registered in another Member State, where his/her own vehicle has become immobilised in that State. Exemption is limited to the period during which his/her vehicle is under repair, and is subject to a maximum period of two months.
- 6.6. Article 6, indent (f) allows an employee to use in the Member State of his/her normal residence a vehicle provided by his/her employer, located in another Member State. The Member State in which the employee is resident cannot impose taxes, and there is no time limit. This provision is a logical consequence of the Court of Justice judgement in the *Ledoux* case<sup>6</sup> which found that exemption from VAT was warranted in such circumstances, taking into account the principle of free movement of workers: the case did not specifically address taxes other than VAT. It is also proposed that both professional and private use should be allowed, as should use by family members.
- 6.7. Article 6, indent (g) permits unlimited use of their own vehicles by persons whose journey to and from work involves travelling to another Member State. This provision already exists in Directive 83/182/EEC.
- 6.8. Article 6, indent (h) provides that students may use, in the Member State of their studies, vehicles registered in their Member State of normal residence. This provision already exists in Directive 83/182/EEC.

#### Article 7.

7. Article 7 governs temporary business use of a private vehicle.
- 7.1. Article 7, paragraph 1 states the conditions under which Member States may not impose taxes on private vehicles temporarily on their territory for business use. These are that the user must be non-resident, the vehicle must not be used to carry passengers commercially or to carry goods, the vehicle must not be hired or

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<sup>6</sup> Judgement of 06.07.1988 (Case 127/86 *Ministère Public v Ledoux* [1988] ECR 3741)



lent and it must have been registered and subject to taxation in the Member State of residence of the user. The non-resident requirement does not apply in the case of an employee using a vehicle provided by the employer, established in another Member State. As for article 5, the existing prohibition on disposal is being dropped.

- 7.2. Article 7, paragraph 2 specifies that this provision shall not be subject to any time limit. This is considered appropriate in the context of the internal market, and is not expected to pose any significant threat to Member States' revenues. Previously it was seven months for certain users and six for others.

#### Article 8.

8. Article 8 states that taxes shall not be sought in the Member State of temporary use where, during a period of legitimate temporary use, a vehicle is damaged and where the cost of repair exceeds the value of the vehicle. This is a logical provision, to cater for unforeseen problems which can arise as a result of accident, breakdown etc. The vehicle must be disposed of for scrapping purposes. This provision is intended to ensure that the vehicle does not end up being used again.

#### Article 9.

9. Article 9 deals with vehicles which will be used by non-residents for periods exceeding those laid down in this proposal.
- 9.1. Article 9, paragraph 1 requires Member States to register such vehicles.
- 9.2. Article 9, paragraph 2 allows Member States which register such vehicles to impose their normal tax rules on such vehicles.
- 9.3 Article 9, paragraph 3 allows Member States to prohibit use by their residents of such vehicles on their territory.

### TITLE V Final provisions

#### Article 10.

10. Article 10 is concerned with infringements and related sanctions.
- 10.1. Article 10, paragraph 1 states that Member States shall not deem a vehicle to have been brought to their territory permanently where it does not comply with the provisions of this directive. Breach of the rules governing temporary use should not automatically result in tax becoming due. The purpose of this provision is to provide a choice for the individual concerned whether to pay the tax sought or to remove the vehicle from the Member State without payment of tax.

10.2. Article 10, paragraph 2 provides that any sanctions to be applied should take account of whether the person concerned has acted in good faith and whether any intention of fraud exists.

10.3. Article 10, paragraph 3 states that sanctions imposed must not be disproportionate to the seriousness of the infringement. This takes account of consistent jurisprudence of the European Court of Justice<sup>7</sup> in which it has been held that if measures adopted to prevent tax fraud are not excessive, they are compatible with the principle of free movement of goods and persons.

#### Article 11.

11. Article 11 states that, where a used vehicle is brought into a Member State in circumstances other than those covered by this directive, and that Member State imposes a registration tax or similar tax, the amount of tax must not exceed the residual tax contained in the value of a similar car on the domestic market of the Member State in question. This simply puts into the directive a principle which has been established by the Court of Justice<sup>8</sup>, based on the correct application of article 95 of the Treaty. The situation could arise, for example, where a resident of a Member State chooses to buy a used car in another Member State, or where a person transfers his/her residence but does not fulfil all the conditions prescribed in this directive.

#### Article 12.

12. Article 12 imposes on Member States the obligation to cooperate with each other where difficulties arise in the application of the Directive.

12.1 Article 12, paragraph 1 states that Member States shall take decisions by mutual agreement.

12.2. Article 12, paragraph 2 states that where a claim regarding a person's place of normal residence is disputed, the competent authorities of the Member States in question must consult with each other to resolve the matter. In addition, tax shall not be imposed in the Member State to which a person claims to be transferring residence, or claims to be using temporarily a vehicle registered in another Member State, pending the outcome of such consultations. This provision is necessary to ease the burden of proof on the individual, and to avoid him/her being exposed to difficulties as a result of matters beyond his/her control.

12.3. Article 12, paragraph 3 states that, where no agreement is reached, the matter shall be referred to the Commission, which shall issue a decision on the place of

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<sup>7</sup> Judgement of 09.10.1980 (Case 823/79 *Carciati* [1980] ECR 2773, pt. 9)

Judgement of 25.02.1988 (Case 299/86 *Drexel* [1988] ECR 1213, pt. 18)

Judgement of 14.12.1995 (Case 387/90 *Banchero* [1995] ECR 4663 pt. 58)

<sup>8</sup> Judgement of 11.12.1990 (Case 47/88 *Commission v Denmark* [1990] ECR 4509)

Judgement of 09.03.1995 (Case 345/93 *Nuñez Tadeu* [1995] ECR 479)

residence to be used for the purposes of taxing the vehicle. Such a decision would obviously be open to challenge in the European Court of Justice.

**Article 13.**

13. Article 13 repeals directives 83/182/EEC and 83/183/EEC.

**Proposal for a Council Directive governing the tax treatment of private motor vehicles moved permanently to another Member State in connection with a transfer of residence or used temporarily in a Member State other than that in which they are registered.**

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

**[Recital #1]**

Whereas, in the single market, tax obstacles to the free movement of persons and their personal property, including motor vehicles, should be removed;

**[Recital #2]**

Whereas, at present, Community law regarding the tax treatment of private motor vehicles used temporarily in a Member State other than that in which they are registered is unnecessarily restrictive in the context of the principles of the single market;

**[Recital #3]**

Whereas, furthermore, present Community law covering the tax treatment of motor vehicles belonging to persons transferring residence from one Member State to another can place an unnecessary administrative burden on such persons to prove that a liability to pay tax does not exist;

**[Recital #4]**

Whereas, accordingly, the terms of the exemptions provided by Council Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another<sup>9</sup> and Council Directive 83/183/EEC on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals<sup>10</sup> do not reflect the present needs concerning free circulation of persons and of goods;

**[Recital #5]**

Whereas, in any event, Directives 83/182/EEC and 83/183/EEC no longer accurately cover the systems of taxation of motor vehicles applied by Member States since the introduction of the single market; whereas their application to exemption from VAT has already been repealed by Article 2 of Council Directive 91/680/EEC supplementing the common system of value added tax and amending Directive

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<sup>9</sup> O.J. No. L 105, 23. 4. 83, p. 59.

<sup>10</sup> O.J. No. L 105, 23. 4. 83, p. 64.

77/388/EEC with a view to the abolition of fiscal frontiers<sup>11</sup>; whereas, in practice, problems concerning taxation of property following a transfer of residence are confined to motor vehicles and it is thus no longer necessary to lay down rules for other goods; whereas permanent exemptions other than in connection with transfer of residence need no longer be provided for;

**[Recital #6]**

Whereas, however, abuses caused by the differing levels of taxation of motor vehicles between Member States should be prevented; whereas, therefore, it is still necessary to provide for certain restrictions on temporary use by residents of vehicles registered in other Member States;

**[Recital #7]**

Whereas, therefore, the provisions of Directives 83/182/EEC and 83/183/EEC require updating and these directives should be repealed and replaced by a single, consolidated directive;

**[Recital #8]**

Whereas Member States should not charge taxes on private motor vehicles moved to their territory from other Member States by individuals transferring residence from such Member States;

**[Recital #9]**

Whereas Member States should not charge taxes on private motor vehicles registered in other Member States where such vehicles are used temporarily on their territory, in certain defined circumstances;

**[Recital #10]**

Whereas for the purposes of determining liability to tax it is necessary to define the place of normal residence of the vehicle user;

**[Recital #11]**

Whereas in the case of transfer of residence, no tax should be payable in the new Member State, subject to certain conditions and provided the vehicle has been acquired in accordance with the tax rules of the first Member State;

**[Recital #12]**

Whereas temporary use in another Member State without payment of taxes should be permitted for a period of six months in any twelve; whereas, in the case of a person whose professional ties are in another Member State, this should be increased to nine months;

**[Recital #13]**

Whereas it is necessary, in the interests of the internal market, to introduce some flexibility concerning the use of rental vehicles in Member States other than that of registration, subject to certain conditions; whereas, furthermore, it is necessary to expressly provide for use of vehicles by certain persons other than the owner, and

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<sup>11</sup> O.J. No. L 376, 31. 12. 91, p. 1.

whereas it is necessary, in certain circumstances, to allow use by a resident of a Member State a vehicle registered in another Member State;

**[Recital #14]**

Whereas it is necessary to provide rules governing the temporary use of a private vehicle in another Member State for business purposes;

**[Recital #15]**

Whereas vehicles which, during temporary use in another Member State, are irretrievably damaged should not incur liability to taxation as a result;

**[Recital #16]**

Whereas persons who wish to use vehicles in a Member State other than that of their place of residence should be entitled to register vehicles in such Member States; whereas, in such cases, taxes shall be payable in the Member State of registration; whereas, furthermore, the Member State of residence of the owner may prohibit use of such vehicles on its territory;

**[Recital #17]**

Whereas, in cases where infringements of the rules are encountered, any sanctions imposed shall be proportionate to the offence;

**[Recital #18]**

Whereas, in cases where Member States are entitled to impose registration or similar taxes on used vehicles arriving from other Member States, they shall ensure that the tax charged does not exceed the residual amount of tax contained in the value of similar vehicles on the domestic market, in accordance with article 95 of the Treaty;

**[Recital #19]**

Whereas, in cases of dispute, the competent authorities of the relevant Member States shall consult with each other; whereas, furthermore, in such cases tax should not be imposed pending the outcome of such consultations by the relevant competent authorities; whereas if no agreement is reached between the competent authorities, the Commission should decide on the matter;

**HAS ADOPTED THIS DIRECTIVE:**

## TITLE I

### GENERAL PROVISIONS

#### *Article 1*

##### **Prohibition on imposing taxes in certain circumstances**

1. A Member State shall not impose excise duties, registration taxes and/or other consumption taxes, such as the taxes listed in Annex I, but excluding the taxes listed in Annex II, on private motor vehicles registered in other Member States and brought into that Member State permanently in connection with the transfer of normal residence of a private individual from another Member State, subject to the conditions laid down below.
2. A Member State shall not impose excise duties, registration taxes, other consumption taxes and/or road taxes, such as the taxes listed in Annex I and Annex II, on private motor vehicles registered in other Member States and used temporarily on its territory, subject to the conditions laid down below.
3. The provisions of paragraphs 1 and 2 shall also apply to the normal spare parts, accessories and equipment of the motor vehicle.
4. This Directive shall not apply to value added tax.

#### *Article 2*

##### **Definitions**

For the purposes of this Directive:

- (a) "commercial vehicle" means any road vehicle which, by its design or equipment, is suitable for and intended for transporting, whether for payment or not:
  - more than nine persons, including the driver,
  - goods,as well as any road vehicle for special use other than transport as such;
- (b) "private vehicle" means any road vehicle, including its trailer, if any, other than a commercial vehicle;
- (c) "business use" of a motor vehicle means the use thereof in the direct exercise of an activity carried out for consideration or financial gain;
- (d) "private use" means any use other than business use;
- (e) "residence" means normal residence as defined in Article 3;

(f) a person's "family" shall be deemed to mean his spouse, his immediate ancestors and descendants and those of his spouse.

## TITLE II

### NORMAL RESIDENCE

#### *Article 3*

#### **General rules for determining normal residence**

1. For the purposes of this Directive, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

2. Notwithstanding paragraph 1, the normal residence of a person whose occupational ties are in a different place from his personal ties, and who consequently lives in turn in different places situated in two or more Member States, shall be regarded as being the place of his personal ties, provided that he returns there regularly.

3. Where a person is living in a Member State in order to carry out a task of a definite duration, and as a result has his occupational ties in a different place from his personal ties, his place of residence shall be regarded as being the place of his personal ties, irrespective of whether he returns there regularly.

4. Attendance at a university or school in another Member State shall not imply transfer of normal residence.

5. A change in a person's marital status shall not, of itself, imply a change of residence.

6. Individuals shall give evidence of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

7. Without prejudice to Article 12, where the competent authorities of the Member state of destination have doubts as to the validity of a statement as to normal residence made in accordance with this Article, or for the purpose of certain specific controls, they may request additional information or evidence either from the individual making the statement or from the competent authorities of the other Member State concerned.



## TITLE III

### TRANSFER OF RESIDENCE

#### *Article 4*

#### **Conditions under which tax is not payable following a transfer of residence**

1. The provisions of Article 1 (1) shall apply where the following conditions are fulfilled:

- (a) the motor vehicle has been acquired under the general conditions of taxation in force in the domestic market of one of the Member States and is not subject, as a result of its being brought to another Member State, to any exemption from or refund of any of the taxes referred to in Article 1(1) in the Member State from which it is brought.

These two conditions shall be deemed to be fulfilled if the vehicle bears a standard registration plate of the Member State of registration, all types of temporary plate being excluded.

For the purposes of this Directive, the general conditions of taxation shall be deemed to include diplomatic and consular arrangements, agreements concerning international organisations and their members, arrangements governing forces which are party to the North Atlantic Treaty or the civilian staff accompanying them.

- (b) the person transferring residence has had the use of the vehicle for a period of at least six months prior to the transfer of residence;
- (c) the motor vehicle is brought into the Member State to which the person transfers his residence not later than 12 months after such transfer.

2. In the case of vehicles acquired under the diplomatic and consular arrangements or other arrangements mentioned in the third indent of paragraph 1 (a), Member States may increase the period mentioned in paragraph 1 (b) to 12 months.

## TITLE IV

### TEMPORARY USE OF A VEHICLE

#### *Article 5*

##### **General conditions under which tax is not payable when a vehicle is used temporarily in a Member State other than that of registration.**

1. The provisions of Article 1 (2) shall apply in respect of a motor vehicle used temporarily in a Member State, other than the Member State in which it is registered, for a period, continuous or otherwise, of not more than six months in any 12 months, provided that:

- (a) the person using the vehicle has his normal residence in a Member State other than the Member State of temporary use;
- (b) the vehicle is only the subject of private use;
- (c) the vehicle is not hired out in the Member State of temporary use, or lent to a resident of that State, other than as provided for in Article 6.

2. The period of six months referred to in paragraph 1 shall be increased to nine months in the case of a person whose occupational ties are not in the Member State of his normal residence and who uses in the Member State of his occupational ties a vehicle registered in the Member State of his normal residence.

#### *Article 6*

##### **Specific cases of private use where taxation is not permitted**

In addition to the cases covered by Article 5, the provisions of Article 1 (2) shall apply in respect of the following cases:

(a) a private vehicle belonging to a car rental firm, where that vehicle is in the Member State of temporary use as a result of a rental contract which ended in that Member State and which:

(aa) is re-rented to a person other than a resident of the Member State of temporary use, subject to the limitation that the period of any such re-renting must terminate within two months of the end-date of the original contract under which the vehicle was returned to the car rental firm in the current Member State, save where the vehicle is re-rented to a non-resident with a view to being removed from that State within thirty days from the date of the new rental period;

(bb) is re-rented to a resident of the Member State of temporary use with a view to being removed from that State within fifteen days from the beginning of the new rental period, or

- (cc) is returned by an employee of the car rental firm to the country where it was originally rented even if such employee resides in the Member State of temporary use;
- (b) a private vehicle registered in another Member State and rented from a car rental firm under a rental contract which commenced in that Member State by a resident of the Member State of temporary use, subject to a limit of eight days use;
  - (c) a private vehicle used, while the person who brought the vehicle to the Member State of temporary use is in that Member State, by members of his family, whether or not such family members have their normal residence in the Member State of temporary use;
  - (d) a private vehicle used by any person, provided that the person who brought the vehicle to the Member State of temporary use is also on board the vehicle;
  - (e) a private vehicle registered in another Member State and used by a resident of the Member State of temporary use following temporary immobilisation of his vehicle as a result of breakdown or accident in the other Member State, where such use is confined to the period during which the user's own vehicle is being repaired and in any event does not exceed a maximum period of two months;
  - (f) a private vehicle registered in another Member State which belongs to or is hired by an undertaking established in the Member State in which it is registered and which is used by an employee of such undertaking, or by a member of the family of such employee, where such user has his normal residence in the Member State of temporary use. This category shall not be subject to any time limit;
  - (g) a private vehicle registered in the country of normal residence of the user and used regularly for the journey from his residence to his place of work in another Member State, and vice versa. This category shall not be subject to any time limit;
  - (h) a private vehicle registered in the Member State of his normal residence used by a student in the Member State in which he is pursuing his studies, where such Member State is not that of his normal residence.

#### *Article 7*

##### **Cases of business use where taxation is not permitted**

1. A Member State shall not impose the taxes specified in Article 1(2) on a private vehicle used temporarily on its territory for business purposes, provided that:
  - (a) the person using the vehicle has his normal residence in a Member State other than the Member State of temporary use;

This condition need not apply in the case of a person who has his normal residence in the Member State of temporary use, where that person is an employee of an

undertaking established in another Member State and is using a vehicle which belongs to or is hired by that undertaking and which is registered in the Member State where the undertaking is established.

- (b) the vehicle is not used in the Member State of temporary use to carry passengers for hire or material reward of any kind, or for the industrial and/or commercial transport of goods, whether for reward or not;
- (c) the vehicle is not hired out or lent in the Member State of temporary use;
- (d) the vehicle is registered in the Member State of normal residence of the user;
- (e) the vehicle has been acquired under the general conditions of taxation of the Member State of normal residence of the user and is not subject to any refund of any of the taxes referred to in Article 1 (2) by virtue of its being used in another Member State.

This condition shall be deemed to be satisfied if the vehicle bears a standard registration plate of the Member State of registration, all types of temporary plate being excluded;

- (f) any periodic vehicle taxes ordinarily payable in the Member State of registration are paid.

2. The provisions of paragraph 1 shall apply without any time limit.

#### *Article 8*

##### **Provisions concerning irreparable damage to vehicles**

Where a private vehicle registered in another Member State is used temporarily in a Member State without imposition of the taxes referred to in Article 1(2) in accordance with the provisions of this directive, and that vehicle becomes badly damaged as a result of a duly proven accident, breakdown or criminal or malicious act which occurs within that Member State, where the cost of the requisite repairs exceeds the market value of the vehicle, and where the vehicle is disposed of with a view to being scrapped or destroyed, no subsequent demand for any of the taxes referred to in article 1(2) shall be made by the Member State of temporary use. The competent authorities of Member States may require proof of the damage and/or of the proper disposal of the vehicle.

#### *Article 9*

##### **Permanent use in a Member State other than that of normal residence**

1. Where a person wishes to use a vehicle in a Member State other than that in which he has his place of normal residence for a period in excess of that provided for

in article 5, for example on an ongoing basis in connection with a secondary residence, the Member State in question shall register such vehicle.

2. Where the provisions of paragraph 1 apply, the Member State of registration shall be entitled to impose such taxes as would ordinarily be payable in connection with and following registration of such vehicle.

3. The Member State in which the owner of a vehicle as described in paragraph 1 has his place of normal residence may refuse to allow use of such vehicle on its territory.

## TITLE V

### FINAL PROVISIONS

#### *Article 10*

##### **Infringements and sanctions**

1. Where a vehicle is used in a Member State temporarily and the provisions of this Directive are not complied with, such vehicle shall not be deemed to have been brought to that Member State permanently, and taxes shall not automatically be deemed to be payable. In such instance, notwithstanding any sanctions applied, the individual concerned may choose either to remove the vehicle from the Member State of temporary use or to have it registered, and to pay taxes, in the normal way in that Member State.

2. In applying sanctions, Member States shall take into account the good faith of the individuals concerned and the absence of any intention of fraud.

3. The control procedures applied by the competent authorities of the Member States shall not be framed in such a way as to restrict the free movement of goods and persons required by the Treaty. In cases where the provisions of this Directive are infringed, penalties shall not be so disproportionate to the gravity of the infringement that they become an obstacle to the free movement of goods and persons.

#### *Article 11*

##### **Calculation of tax, where payable**

In cases where a used motor vehicle is brought permanently from one Member State to another, in circumstances other than those governed by this Directive, and the latter Member State imposes a registration tax or similar tax such as the taxes listed in Annex I on that vehicle, the Member State in question shall ensure that the amount of tax charged shall not be greater than the amount of residual tax contained in the value of a vehicle of similar age, characteristics and condition on the domestic market of that Member State.

## *Article 12*

### **Settlement of disputes**

1. Where the practical application of this Directive gives rise to difficulties, the competent authorities of the Member States concerned shall take the necessary decisions by mutual agreement.

2. In particular, where a person claims to have transferred his place of normal residence from one Member State to another, and that claim is disputed by the competent authorities of either of those states, the competent authorities of both States shall consult each other to decide which place of residence should be used for the purposes of deciding where the vehicle should be subject to taxation. Similarly, where a person claims to be using a vehicle temporarily in one Member State whilst his place of normal residence is in another Member State, and that claim is disputed by the competent authorities of the Member State in which the vehicle is being used, the competent authorities of both States shall consult each other to decide which residence should be used for the purposes of taxing the vehicle. The Member State to which the user claims to have transferred his normal residence, or in which he claims to be using the vehicle temporarily, shall not impose the taxes referred to in article 1 pending the outcome of such consultations.

3. If Member States do not come to an agreement within six months of the date of the claim by the individual concerned, they shall refer the question to the Commission. The Commission, after having examined the arguments put forward by the two Member States and, if the Commission considers it appropriate, by the individual concerned, will issue a decision establishing which residence shall be used for the purposes of taxing the vehicle.

## *Article 13*

### **Repeals**

The following directives shall cease to have effect on 1 July 1998:

- Directive 83/182/EEC,
- Directive 83/183/EEC as amended by Directive 89/604/EEC.

## *Article 14*

### **Implementation of the Directive**

1. Member States may retain or introduce provisions which are more favourable to users than those laid down in this Directive, in order to allow temporary use of

vehicles registered in other Member States, or permanent transfer of vehicles from other Member States, without imposition of the taxes referred to in Article 1.

2. Member States may not, by virtue of this Directive, apply within the Community tax treatment which is less favourable than that applied in connection with imports or use of vehicles brought directly from third countries.

3. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1998. Member States shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

4. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

#### *Article 15*

#### **Addressees**

**This Directive is addressed to the Member States.**

**Done at Brussels**

**For the Council  
The President**

## Annex I

### BELGIUM

- Taxe de mise en circulation

### DENMARK

- Registreringsafgift af motorkøretøjer

### GERMANY

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### GREECE

- Special Consumption Tax (EFK)
- Registration Tax (EPET)

### SPAIN

- Impuesto Especial sobre Determinados Medios de Transporte

### FRANCE

- Taxe sur les certificats d'immatriculation des véhicules à moteur

### IRELAND

- Vehicle Registration Tax

### ITALY

- IET
- APIET

### LUXEMBOURG

- -----

### NETHERLANDS

- Belasting Personenauto's en Motorrijwielen

### AUSTRIA

- Normverbrauchsabgabe

### PORTUGAL

- Imposto Automovel

### FINLAND

- Autovero

### SWEDEN

- Sales tax

### UNITED KINGDOM

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## Annex II

### BELGIUM

- Taxe de circulation sur les véhicules automobiles/Verkeersbelasting op de autovoertuigen
- Taxe compensatoire des accises/
- Taxe de circulation complémentaire/

### DENMARK

- Vaegtafgift af motorkoretojer

### GERMANY

- Kraftfahrzeugsteuer (Kraftfahrzeugsteuergesetz - 1979)
- Kraftfahrzeugsteuer (Durchführungsverordnung - 1979)

### GREECE

- Τέλη κυκλοφορίας

### SPAIN

- Impuesto sobre vehículos de tracción mecánica
- Tributos Locales sobre circulación de vehículos automoviles

### FRANCE

- Taxe différentielle sur les véhicules à moteur
- Taxe sur les véhicules des sociétés

### IRELAND

- Motor vehicle excise duties

### ITALY

- Tassa sulla circolazione degli autoveicoli

### LUXEMBOURG

- Taxe sur les véhicules automoteurs

### NETHERLANDS

- Motorrijtuigenbelasting

### AUSTRIA

- Kraftfahrzeugsteuer

### PORTUGAL

- Imposto municipal sobre veiculos
- Imposto de circulação

### FINLAND

- Moottoriajoneuvovero
- Windscreen sticker tax

### SWEDEN

- Vagtrafikskatt

### UNITED KINGDOM

- Vehicle excise duty

## **STATEMENT OF IMPACT ON SMALL AND MEDIUM ENTERPRISES**

The proposed directive seeks to simplify the conditions and procedures relating to the movement of private motor vehicles, either temporarily or permanently, between Member States, and is a logical consequence of the introduction of the single market.

**1. Administrative obligations on firms as a result of enactment of the legislation:**

None.

**2. Advantages for businesses:**

The proposals include a number of provisions which, in certain circumstances, allow a resident of a Member State to use in his Member State of normal residence a hire-car registered in another Member State. This will facilitate better fleet management for car-hire firms.

The proposals contain provisions improving the rights of persons whose place of employment is in a Member State other than that of their normal residence to use in the latter Member State a car provided by their employer. Such an improvement for employees should have a consequent benefit for employers.

**3. Disadvantages for businesses:**

- None.

**4. Effect on employment.**

No major effect on employment anticipated.

**5. Consultations with social partners.**

No.

**6. Is there an alternative, less binding, approach?**

The proposals are considered to be the minimum necessary to address the underlying problems and to be compatible with the single market.

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