

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 443 final

Brussels, 15 July 1982

Proposal for a
Thirteenth 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 Community territory

(submitted to the Council by the Commission)

COM(82) 443 final

Com V13
EXPLANATORY MEMORANDUM

I. GENERAL CONSIDERATIONS

1. In accordance with the principle laid down in Article 17 of the Sixth Council Directive of 17 May 1977 on the common system of value added tax (1), any taxable person is entitled to a refund of the tax invoiced to him in a Community country in which he is not established.

The arrangements under which taxable persons established in the Community can exercise this right are laid down in the Eighth Council Directive of 6 December 1979 (2).

2. The treatment of traders established in non-member countries to whom value added tax is invoiced in a Community country poses several specific problems which made it impossible to lay down common rules in this respect in the Sixth Directive. That Directive therefore does no more than state, in Article 17(4), that "where the taxable person is not resident in the territory of the Community, Member States may refuse the refund or impose supplementary conditions".

3. Currently, some Member States refund value added tax to traders from non-member countries under the same conditions as those which apply to Community taxable persons, whereas others have adopted a much more restrictive attitude, even to the point of not allowing any right to a refund.

4. During the discussions before the Eighth Directive was adopted, the Commission made it clear that it wished to see these differences eliminated, in view of the difficulties they caused as regards both the deflection of trade within the Community and the expansion of trade relations between the Community and non-member countries. Parliament for its part called on the Commission, in its Resolution on the proposal for an Eighth Directive (3), 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.

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(1) OJ No L 145, 13.6.1977

(2) OJ No L 331, 27.12.1979

(3) OJ No C 39, 12.2.1979.

5. The problem arose of deciding which legal method would be the most appropriate for arriving at a common approach: adopting a directive or concluding a convention between the Community and each of the non-member countries concerned. At first sight, the latter approach seemed the more appropriate. The refund of VAT by Community Member States to traders from non-member countries entails equivalent reciprocal measures by these countries towards Community traders. Negotiations between the Community and various non-member countries would allow reciprocal arrangements to be defined case by case on the basis of the tax systems applied by the various parties involved.

However, as broad agreement in favour of a directive was reached at the meeting of the Standing Committee of Heads of National Revenue Departments held in Brussels on 11 December 1980, the Commission has decided to present to the Council the current proposal for a directive.

II. COMMENTARY ON THE ARTICLES

Concerning Article 1

The definition of the concept "taxable person not established in the territory of the Community" (see the last sentence of Article 17 (4) of the Sixth Directive) refers to the comprehensive definition of taxable persons laid down in Article 4(1) of the Sixth Directive. This appears necessary, firstly because the scope of the definition in Article 4 (1) extends beyond Community frontiers, and secondly because the same conditions of entitlement to refund should in principle be laid down for both Community and non-Community taxable persons.

The proposed text also makes it clear that a person established outside the Community must not carry out as a taxable person any transaction considered to be situated in the country of refund.

Given that it is difficult, if not impossible, to control the activities which may be carried out by a non-Community taxable person, it seemed advisable to restrict the application of this condition to the Member State of refund as opposed to the more logical application to the Community as a whole.

Concerning Article 2

. Reference to Article 17(3)(a) of the Sixth Directive

This reference ensures that refund of VAT for a non-Community taxable person who uses goods or services purchased for the purposes of the transactions related to an economic activity which he carries out "abroad" (i.e. at a place which, in the context of this proposal for a directive, can only be outside the Community) and which would be eligible for deduction of tax "if they had occurred in the territory of the country" (of refund).

. Reference to Article 17(3)(b) of the Sixth Directive

This reference ensures that tax is refundable to, for example, a non-Community carrier whose transport services in a Member State are exempt by virtue of the fact that their value is included in the taxable amount of the goods imported (Article 14(1)(i) of the Sixth Directive).

Concerning Article 3

In contrast to the arrangements stipulated in the Eighth Directive, it is preferable not to spell out in too much detail the rules for Member States as regards the submission of applications and refunds.

This greater flexibility is justified by the fact that, while the main aim of the Eighth Directive is to place all Community taxable persons on an equal footing, a Directive regulating relations with non-member countries should seek rather to eliminate the major difficulties arising from the deflection of trade caused by the Member States' differing approaches towards non-member countries. The proposal to give Member States wider latitude in this field is also justified by the wide variety of tax systems in non-member countries: Member States must be able to use, for each of these countries, the most appropriate means for assessing the merits of applications and for preventing fraud.

It also seems advisable not to include in this Article a provision prohibiting the refund of tax to undertakings exempted from tax in the country in which they are established (such a provision is included in Article 3(b) of the Eighth Directive). This provision of the Eighth Directive is designed to prevent a taxable person who is not entitled to deduct tax in his own (member) country from obtaining a refund by making his purchases in another member country instead, this would have caused distortions between Member States. There would be no point in incorporating such a restriction

in a Directive governing relations with non-member countries, since the competitive situation within the Community would not be affected at all. On the contrary, the absence of any such restriction can only benefit the Community economy, in that the European market would be an attractive source of purchases for these non-Community traders, who might henceforth not be required to pay input value added tax.

The possibility of making refunds conditional upon the appointment of a tax representative would enable Member States to guard more effectively against fraud.

Paragraph 2 is designed to meet the expectations of certain non-member countries which apply a VAT system and which, in their desire for closer relations with the Community in this field, would be prepared to apply the same conditions and refund procedures to Community taxable persons as those which the Community has laid down for its own taxable persons in the Eighth Directive (including the restrictions on refunds, such as the prohibition of tax refunds to small undertakings). It therefore seems fair (with all the advantages and disadvantages which this entails) to extend the procedures provided for in the Eighth Directive to the nationals of these non-member countries. This would help to place Community and non-member country taxable persons on the same footing, thereby improving competition and trade relations between the Community and these countries. One condition is of course that the non-member State in question must be prepared to comply with the Eighth Directive in its dealings with the taxable persons of all Member States, since otherwise a privileged relationship between certain Member States and a third country would result in distorted competition between Member States. In so far as consideration of this compliance with the Eighth Directive is concerned, it is clear that any doubtful or controversial cases which may arise can be examined by the value added tax Committee under the procedure outlined in Article 29(4) of the Sixth VAT Directive.

The right of a Member State, provided for in paragraph 3, to invoke the principle of reciprocity is necessary to ensure that taxable persons from that Member State do not receive less favourable treatment in a third country than the taxable persons of that third country receive in that Member State.

Concerning Article 4

It seems logical to extend to nationals of non-member countries the same restrictions on refund entitlement as each Member State imposes on its own taxable persons. With regard to certain types of expenditure (acquisition or use of passenger cars, travel expenses, etc), legislation in some countries currently provides for a partial refund, or a refund subject to certain conditions, of the VAT on such expenditure. Given the nature of such expenditure and the difficulty of checking that it has been incurred for the purposes of the business, it seems best to prohibit totally and unconditionally the refund to non-Community traders of the VAT on this type of expenditure. However, these restrictions could be dispensed with in respect of non-Community countries which adopted provisions similar to those of the Eighth Directive.

The provision in the third paragraph appears in the second paragraph of Article 5 of the Eighth Directive and can be extended to the nationals of non-member countries. In the case in point, the Directive on the refund of tax would not be applicable since the purchaser buys the goods under the export exemption arrangements provided for in Article 15 (2) of the Sixth Directive.

Concerning Articles 5, 6, 7 and 8

No comments.

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Proposal for a
Thirteenth 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 Community territory

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 99 and 100 thereof,

Having regard to Sixth Council Directive 77/388/EEC of 17 May 1977 on the
harmonization of the Laws of the Member States relating to turnover taxes -
Common system of value added tax: uniform basis of assessment¹, and in
particular Article 17(4) 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,

Whereas Article 8 of Eighth Council Directive 79/1072/EEC² on the
arrangements for the refund of value added tax to taxable persons not
established in the territory of the country provides that in the case
of taxable persons not established in the territory of the Community,
Member States may refuse refunds or impose special conditions;

Whereas refund arrangements and conditions which vary too much between
Member States may create distortion of competition and deflection of
trade to the detriment of the taxable persons of a Member State who
supply goods or services for nationals of non-member countries where
the legislation applicable in that Member State lays down refund arrange-
ments and conditons which are appreciably more restrictive than those in
other Community countries,

Whereas such a situation is likely to impair the harmonious development
of trade relations between the Community and non-member countries;

¹OJ No L 145, 13.6.1977, p. 1

²OJ No L 331, 27.12.1979, p. 11

Whereas Community rules in this field, while based on the provisions of Directive 79/1072/EEC, must remain sufficiently flexible to take account of the varying situations encountered in non-Community countries.

Whereas certain forms of tax evasion or avoidance should be prevented,

HAS ADOPTED THIS DIRECTIVE :

Article 1

For the purposes of this Directive :

1. "taxable person not established in the territory of the Community" shall mean a taxable person as referred to in Article 4(1) of Directive 77/388/EEC who, during the period referred to in Article 3(1), has had in that territory neither the seat of his economic activity, nor a fixed establishment from which business transactions are effected, nor, if no such seat or fixed establishment exists, his domicile or normal place of residence, and who, during the same period, has supplied no goods or services deemed to have been supplied in the Member State referred to in Article 2, with the exception of :
 - (a) transport services and services ancillary thereto, exempted pursuant to Article 14(1)(i), Article 15 or Article 16(1) B, C and D of Directive 77/388/EEC;
 - (b) services provided in cases where tax is payable solely by the person to whom they are supplied, pursuant to Article 21(1)(b) of Directive 77/388/EEC;
2. "territory of the Community" shall mean the territories of the Member States in which Directive 77/388/EEC is applicable.

Article 2

Without prejudice to the provisions of Articles 3 and 4, each Member State shall refund to any taxable person not established in the territory of the Community, subject to the conditions set out below, any value added tax charged in respect of services or movable property supplied to him in the territory of the country by other taxable persons or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17(3)(a) and (b) of Directive 77/388/EEC or of the provision of the services referred to in Article 1(1)(b).

Article 3

1. Refunds shall be granted upon application by the taxable person. Member States shall determine the arrangements for submitting applications,

including the time limits for doing so, the period which applications should cover, the authority competent to receive them and the minimum amounts in respect of which applications may be submitted. They shall also determine the arrangements for making refunds, including the time limits for doing so. They shall impose on the applicant such obligations as are necessary to determine whether the application is justified and to prevent fraud, in particular the obligation to provide proof that he is engaged in an economic activity in accordance with Article 4(1) of Directive 77/388/EEC and that, during the period prescribed, he has not carried out any transaction which does not fulfil the conditions laid down in Article 1(1). The appointment of a tax representative may be required.

2. Where a taxable person referred to in Article 2 is established in a non-Community State which applies to taxable persons established in the Community provisions similar to those of Articles 3, 4, 6 and 7 of Directive 79/1072/EEC, Member States shall grant the refund to that taxable person under conditions equivalent to those of the said Directive.

They shall inform the advisory Committee on value added tax of the application of the preceding sub-paragraph.

3. Refunds may not be granted under conditions more favourable than those applied to Community taxable persons. Member States may make refunds conditional upon observance of the principle of reciprocity.

Article 4

For the purposes of this Directive, eligibility for refund of tax shall be determined in accordance with Article 17 of Directive 77/388/EEC, as applied in the Member State of refund.

However, where Article 3(2) of this Directive is not applicable, value added tax shall under no circumstances be refundable in respect of:

- (a) expenditure on the acquisition, manufacture or importation, hire, use, modification, repair and maintenance of passenger cars, pleasure boats, private aircraft and motor cycles;
- (b) transport costs incurred on business travel;
- (c) expenditure on accommodation, food and drink;
- (d) expenditure on entertainment;
- (e) expenditure on amusements and luxuries.

This Directive shall not apply to supplies of goods which are or may be exempted under item 2 of Article 15 of Directive 77/388/EEC.

Article 5

Member States shall bring into force the provisions necessary to comply with this Directive no later thanThis Directive shall apply only to applications for refunds concerning value added tax charged on purchases of goods or services invoiced or on imports effected on or after that date.

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

Article 6

Within three years of the date referred to in Article 5, the Commission shall, after consulting the Member States, submit a report to the Council on the application of this Directive.

Article 7

As from the date on which this Directive is implemented and at all events on the date mentioned in Article 5, the last sentence of Article 17(4) of Directive 77/388/EEC and Article 8 of Directive 79/1072/EEC shall cease to have effect in each Member State.

Article 8

This Directive is addressed to the Member States.