



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.11.1997
COM(97) 577 final

Proposal for a

COUNCIL DECISION

**authorising the Kingdom of the Netherlands to apply
a measure derogating from Articles 2 and 28a(1)
of the Sixth Council Directive (77/388/EEC)
of 17 May 1977 on the harmonisation of the laws
of the Member States relating to
turnover taxes**

(presented by the Commission)

EXPLANATORY MEMORANDUM

By letter registered with the Secretariat-General of the Commission on 9 June 1997, the Dutch Government requested authorisation - under Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes: common system of value added tax, uniform basis for assessment¹ - to apply a special measure as regards trade in used and waste materials.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed of the Dutch request by letter dated 10 September 1997.

The special measure that the Netherlands intends to introduce comprises:

- exemption of the supply and intra-Community acquisition of used and waste materials in the case of taxable entities with an annual turnover of less than HFL 2.5 million. For the purposes of that threshold, turnover in non-ferrous metals can be disregarded. If the threshold is exceeded, the exemption does not apply from the start of and throughout the following calendar year;
- exemption of the supply and intra-Community acquisition of non-ferrous metals, regardless of turnover;
- these exemptions are accompanied by the option of applying to the authorities for authorisation to charge VAT on the supply and acquisition of the materials concerned.

According to the Dutch Government, the purpose of the measure, which covers trade in a number of materials suitable for recycling such as scrap, waste iron and steel, non-ferrous metals, glass, paper and cloth, is to simplify the charging of tax in this sector and to combat tax fraud.

In this connection, the Dutch Government would point out that many of the administrative provisions applicable to this sector are inadequate, that invoicing is often seriously deficient, that the traders concerned - i.e. smaller traders, who are difficult to trace and investigate - often do not pay the VAT due and that major practical difficulties arise in the course of collection.

The first provision referred to above means that small traders in used and waste materials other than non-ferrous metals do not have to pay VAT and are not permitted to issue any invoices inclusive of VAT. Nor are they entitled to deduct input tax.

¹ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

Nor are the taxable entities in question subject to VAT in respect of their intra-Community acquisitions, with the result that the corresponding intra-Community supply is taxed in the country of origin.

The purpose of the HFL 2.5 million turnover threshold is to prevent the exemption from also applying to large traders.

The second provision means that traders in non-ferrous metals may make use of the exemption even if their total turnover exceeds HFL 2.5 million, the reason being that, since non-ferrous metals are normally traded at appreciably higher prices than other used and waste materials, the threshold would be reached relatively quickly in the case of trade in non-ferrous metals.

Lastly, the third provision offers traders in used and waste materials who should - in principle - be exempted the option of being subject to VAT and thus the right to deduct input tax. Making that option conditional on authorisation being granted should ensure that the taxable entities concerned discharge their tax obligations. What is more, the fact that being subject to tax supervision is "rewarded" by way of the right to deduct input tax should help to make traders more willing to pay tax.

The Commission considers that exemption of supplies and intra-Community acquisitions by small firms both simplifies matters and helps to combat fraud since a category of taxable persons where checks and efforts at collection would be disproportionate to the revenue generated can be excluded from the VAT system.

The specific rules on supplies and intra-Community acquisitions of non-ferrous scrap metals are justified because they provide a secure basis for transactions involving a greater risk of fraud on account of the value of the materials in question.

Giving taxable persons the option of applying to the authorities in order to make their - in principle exempt - transactions subject to VAT ensures improved monitoring by the authorities.

Consequently, the Commission considers that the Kingdom of the Netherlands may be authorised to apply the proposed derogation until 31 December 1999.

On 10 July 1996 the Commission adopted a work programme for the phased introduction of a common system of VAT.² It therefore seems appropriate to allow implementation of the proposed measure only until 31 December 1999, so that an assessment can then be made of its compatibility with the approach developed within the framework of the new common system of VAT.

² COM(96) 328 final, 22.7.1996.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes: common system of value added tax, uniform basis for assessment,¹ and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion and avoidance;

Whereas, by letter registered with the Commission on 9 June 1997, the Kingdom of the Netherlands requested authorisation to introduce a measure derogating from Articles 2 and 28a(1) of Directive 77/388/EEC;

Whereas, in accordance with Article 27(3) of that Directive, the other Member States were informed on 10 September 1997 of the request submitted by the Kingdom of the Netherlands;

Whereas that special measure provides, firstly, for exemption of the supply and intra-Community acquisition of used and waste materials, with the exception of non-ferrous metals, in the case of taxable entities with an annual turnover of less than HFL 2.5 million and, secondly, for exemption of the supply and intra-Community acquisition of non-ferrous metals;

Whereas the taxable persons whose transactions are covered by the above exemptions may, subject to the conditions laid down by the Kingdom of the Netherlands, be

¹ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

authorised not to apply that measure to their transactions;

Whereas the measure both simplifies matters and helps to combat fraud since a category of taxable persons where checks and efforts at collection would be disproportionate to the revenue generated can be excluded from the VAT system;

Whereas, consequently, the special measure satisfies the conditions laid down in Article 27 of the Sixth Directive;

Whereas the Commission adopted on 10 July 1996 a work programme, together with a timetable, for the phased introduction of a common system of VAT for the single market;²

Whereas authorisation is being granted until 31 December 1999 so that an assessment can then be made of the compatibility of the measure with the overall approach adopted for the new common system of VAT;

Whereas this derogation will have no impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

² COM(96) 328 final, 22.7.1996.

Article 1

The Kingdom of the Netherlands is hereby authorised until 31 December 1999 to apply a special measure for the taxation of used and waste materials that contains provisions derogating from the Sixth Council Directive of 17 May 1977.

The provisions in question are laid down in Articles 2, 3 and 4 below.

Article 2

By way of derogation from Article 2 of the Sixth Directive, the following shall be exempt from VAT:

- the supply of used and waste materials by firms with an annual turnover of less than HFL 2.5 million. For the purposes of that threshold, turnover in non-ferrous metals may be disregarded;
- the supply of non-ferrous metals.

Article 3

By way of derogation from Article 28a(1)(a) of the Sixth Directive, the following shall be exempt from VAT:

- the intra-Community acquisition of used and waste materials by firms with an annual turnover of less than HFL 2.5 million. For the purposes of that threshold, turnover in non-ferrous metals may be disregarded;
- the intra-Community acquisition of non-ferrous metals.

Article 4

Taxable entities carrying out transactions which are exempt pursuant to Articles 2 and 3 above may be authorised not to make supplies and intra-Community acquisitions of used and waste materials effected by them subject to the special measure provided for by this Decision.

Article 5

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Council,

The President

ISSN 0254-1475

COM(97) 577 final

DOCUMENTS

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Catalogue number : CB-CO-97-593-EN-C

ISBN 92-78-26912-3

Office for Official Publications of the European Communities

L-2985 Luxembourg