COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.02.1997
COM(97)64 final

Proposal for a

COUNCIL DECISION

AUTHORISING THE UNITED KINGDOM TO APPLY AN OPTIONAL MEASURE DEROGATING FROM ARTICLE 17 OF THE SIXTH DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES

(presented by the Commission)

EXPLANATORY MEMORANDUM

By Council Decision of 23 July 1987[1], the United Kingdom was authorised, on the basis of Article 27(1) to (4) of the Sixth VAT Directive[2], to apply a measure derogating from Article 17(1) of that Directive until 30 September 1990. By Council Decisions of 24 September 1990 (90/497/CEE)[3] and of 15 February 1993 (93/111/EEC)[4] further extension of the derogation was permitted until 31 December 1992 and until 31 December 1996, respectively.

The derogation forms part of an optional system of taxation for undertakings whose annual turnover does not exceed a given ceiling (£350.000 at the moment) in which tax is accounted for on the basis of cash paid and received (cash accounting). This system is partly based on the third subparagraph of Article 10 (2) of the said Directive, which permits payment of tax to be deferred until receipt of the price.

The object of this derogation, which is designed to simplify collection of the tax, is to permit deduction of input tax by firms that have opted for the simplified scheme only when it is paid to the supplier.

By letter registered by the Commission's Secretariat-General on 19 November 1996, the United Kingdom Government submitted to the Commission a request for the previously authorised derogation to be extended until 31 December 2000 and for the ceiling to be increased from £350.000 to £400.000. Differing from the previous requests, the United Kingdom Government seeks also authorisation for a derogation from the provisions of Article 22(4) and (5), as it believes that the cash accounting scheme is rather based on a derogation from these provisions than on the provisions of Article 10 (2), which has partly been the basis for the simplified scheme up to now.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed by letter dated 18 December 1996 of the United Kingdom's request.

The United Kingdom considers the extension of the derogation to be amply justified in view of the number of firms that have already opted for using the simplified scheme and the favourable reception given to it by the trade and professional bodies concerned.

The Commission notes that in 1993 the derogation was authorised by the Council with a turnover limit which was, at the time, approximately equivalent to ECU 432.000. In its present request for authorisation, the United Kingdom authorities wish the turnover limit to be increased to £400.000, which is approximately equal to ECU 541.000. This adjustment is considered by the Commission to be acceptable.

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[1] OJ No L 213, 4.8.1987, p. 40

[2] 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

[3] OJ No L 276, 6.10.1990, p. 45

[4] OJ No L 43, 20.2.1993, p. 46

The United Kingdom Government also requests for a derogation from Article 22 (4) and (5), indicating that a derogation from these provisions is a more appropriate footing, as the existing scheme does not seek to change the time of the chargeable event.

The Commission would like to point out that the third subparagraph of Article 10 (2) permits Member States to fix, for certain transactions of certain categories of taxable persons, a moment when the tax shall become chargeable but does not affect the moment of the chargeable event. Consequently, the Commission is of the opinion that no derogation from Article 22 (4) and (5) is needed.

Article 17 (1) provides that the right to deduct shall arise at the time the tax becomes chargeable. The Commission considers the derogation from Article 17 (1), which postpones the right of deduction of tax until it has been paid to the supplier, to be a reasonable adjustment to the option provided for in Article 10 (2), which permits payment of tax to be deferred until receipt of the price.

The Commission considers that the United Kingdom can be authorised to apply the derogation for a period expiring on 31 December 1999. In fact, the Commission adopted on 10 July 1996 a work programme based on a step-by-step approach for progressing towards a new common system of VAT (COM (96) 328 final, 22 July 1996). The last package of proposals to be put forward by mid-1999, the Commission considers it appropriate to reconsider the necessity and the coherence of a specific measure in the framework of the global approach of the new common VAT system.

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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 harmonization of the laws of the Member States relating to turnover taxes - Common System of value added tax: uniform basis of assessment[1], and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under the terms of 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 measure for derogation from the provisions of that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom was authorised, by Decision 93/111/EEC[2], in accordance with the procedure laid down in Article 27(1) to (4) of Directive 77/388/EEC, to apply a measure derogating from Article 17(1) of the said Directive until 31 December 1996;

Whereas the United Kingdom, by means of a letter registered by the Commission on 19 November 1996, requested authorisation to extend the said derogation;

Whereas the other Member States were informed on 18 December 1996 of the United Kingdom's request;

Whereas this special measure derogating from Article 17(1) of Directive 77/388/EEC forms part of an optional system of taxation for firms with an annual turnover of less than £400.000 based on the third subparagraph of Article 10 (2) of the said Directive, which permits payment of tax to be deferred until receipt of the price;

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[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

[2] OJ No L 43, 20.2.1993, p. 46

Whereas the United Kingdom wishes to increase the turnover ceiling from £350.000 to £400.000 to take account of inflation;

Whereas a derogation can be accepted in view of the number of firms that already have opted for this simplified scheme and the limited duration of this extension;

Whereas the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT,

Whereas the Commission adopted on 10 July 1996 a work programme based on a step-by-step approach for progressing towards a new common system of VAT (COM (96) 328 final, 22 July 1996);

Whereas the last package of proposals is to be put forward by mid-1999, the authorisation is granted until 31 December 1999, in order to permit an evaluation of the coherence of the derogation with the global approach of the new common VAT system,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from the provisions of Article 17(1) of Directive 77/388/EEC, the United Kingdom is hereby authorised, until 31 December 1999, to provide within an optional scheme that enterprises with an annual turnover of less than £400.000 must postpone the right of deduction of tax until it has been paid to the supplier.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels,

For the Council,
The President

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7