

Commission notice concerning the VAT and excise rules to be applied from 1 July 1999 by suppliers of goods sold on board ferries and aircraft or in airports to passengers travelling within the European Union

(1999/C 99/08)

Goods sold during or prior to an intra-Community voyage

The legal bases governing the VAT and excise treatment of goods sold during or prior to an intra-Community voyage, which are not for immediate consumption, are contained in the general provisions of Council Directive 77/388/EEC of 17 May 1977 ⁽¹⁾ and Council Directive 92/12/EEC of 12 February 1992 ⁽²⁾ respectively. Until 30 June 1999, Member States may, as a derogative measure under Article 28k of Directive 77/388/EEC and Article 28 of Directive 92/12/EEC, exempt such supplies from VAT and excise duties, subject to certain conditions in terms of value and quantity.

Concept of intra-Community voyage

An intra-Community voyage is one between two Community ports or airports without any intermediate call or stopover in third countries or territories outside the European Community fiscal territory (see Article 28k of Directive 77/388/EEC and Article 28 of Directive 92/12/EEC in association with Article 2 of Council Regulation (EEC) No 3925/91 of 19 December 1991 ⁽³⁾). This basic rule applies even in cases where international waters or airspace have to be crossed.

If a ferry or an aircraft makes an intermediate call or a stopover in a third country or a territory outside the fiscal territory of the European Community, in order for passengers to embark or disembark, it will be treated as going to and coming from a third country. Goods other than for consumption bought by passengers on board the ferry or the aircraft will be treated as third country goods unless these goods have already been subject to Community VAT and excise duty. At import, the passenger may benefit from a traveller's allowance the value and quantitative limits of which are set out in Articles 1 and 4 of Directive 69/169/EEC of 28 May 1969 ⁽⁴⁾. However, this does not apply if the stay in the third country is of a purely token nature and does not *de facto* provide the passengers with an opportunity of making purchases on land. When the passengers coming from a third country enter or re-enter Community territory, appropriate controls will have to be applied, mainly in respect of the fiscal status of the goods carried by the passenger.

Goods sold on board ferries and aircraft other than for immediate consumption

According to existing Community VAT legislation as set out in Article 8(1)(c) of Directive 77/388/EEC, goods supplied on board ferries and aircraft during an intra-Community voyage other than for immediate consumption shall be taxed under the conditions and subject to the VAT rate applicable in the Member States of departure. This will apply irrespective of whether the goods are sold in the territorial waters or airspace of the Member State of departure or of the Member State of arrival or in international waters or airspace. Thus, for example, ferry operators or airlines working between Germany and Denmark would have to register and account for German VAT for sales of goods during journeys from Germany to Denmark and register and account for Danish VAT for journeys from Denmark to Germany.

With regard to excisable goods intended to be sold for purposes other than immediate consumption during intra-Community voyages, ferry operators and airlines will no longer be able to carry these goods in an untaxed state since they will no longer be eligible for exemption. Pursuant to the provisions of Directive 92/12/EEC, these goods will be considered to have left the suspension system when they are taken on board and there is no possibility to install tax warehouses on board ferries or aeroplanes. In consequence the goods will bear excise duty at the rate applicable in the Member State in which the goods are loaded, provided that this Member State is served by the ferry or air route. The goods can be sold according to the excise rate of the Member State of loading until the means of transport arrives in the national territory of the Member State of destination. This basic rule applies irrespective of whether fiscal territories of other Member States are crossed during the voyage provided that there is no stopover or intermediate call with the chance for passengers to disembark. The mere fact of crossing through national waters or airspace of other Member States gives no rise to the conclusion that excise duties would become chargeable.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1, (Directive as last amended by Directive 98/80/EC).

⁽²⁾ OJ L 76, 23.3.1992, p. 1, (Directive as last amended by Directive 96/99/EC).

⁽³⁾ OJ L 374, 31.12.1991, p. 4.

⁽⁴⁾ Official Journal, English Special Edition: Series-I 69(I) p. 232, (Directive as last amended by Directive 94/4/EC).

Under the provisions of Article 7(1) and (2), goods put up for sale within the territory of the Member State of destination have to be taxed again. However if the ferry operators or airlines wish to avoid taxation in the second Member State they can declare that they do not intend to sell the goods within the territory of this Member State. In this case Article

7(1) and (2) do not apply and the goods can be held on board without any further taxation. However in such cases the documentary control and pre-notification provisions of Article 7(7) and (8) apply, although Member States can make bilateral agreements according to Article 7(9) to allow simplified procedures. Economic operators can also continue to sell taxed goods loaded in one Member State in territories of other Member States. In this case, Article 7(1) and (2) apply and the excise duties of the subsequent Member States become chargeable. Economic operators can ask for reimbursement of the excise duties already paid in the Member State of loading in accordance with Article 22(3). How excise duty is to be charged and reimbursed including the possibility for simplified accounting procedures, is a matter for individual tax authorities to decide.

As to multilateral voyages with intermediate calls at one or more Member States, the basic rule is to regard each leg of a journey as a separate one. If a ferry operator loads goods in Member State A and then wishes to sell them on board when the ferry is crossing international waters operating between Member State B and C there is no legal base for such sales to be taxed at the rate applicable in Member State A. Since the goods are not destined to be taken back to the Member State of departure they have to be taxed in Member State B, and subsequently in Member State C, according to Article 7(1) and (2).

Goods sold for immediate consumption on board ferries and aircraft

The VAT and excise regime applicable to goods sold to passengers for immediate consumption on board ferries and aircraft will remain unchanged after 1 July 1999. For exemption to apply, Member States may continue to avail themselves of the option laid down in Article 23(5) of Directive 92/12/EEC to exempt supplies of goods to be sold for immediate consumption on board ferries and aircraft. Where national legislation in accordance with Community legislation, provides for exemption for goods sold or supplied free of charge for immediate consumption on board, ferry operators and airlines will still be able to carry untaxed alcoholic beverages or tobacco products. Exemption does not apply where products are sold to passengers to be carried away, even if these products are, or may be consumed on board the ferry or the aircraft.

Goods sold by shops situated at airports and the Channel Tunnel terminals

According to existing Community VAT and excise legislation (Article 8(1)(b) of Directive 77/388/EEC and Article 6 of Directive 92/12/EEC), goods supplied at these shops shall be taxed under the conditions and subject to the VAT and excise duty rates applicable in the Member State where the goods are located when the supply takes place. Like other retail sales, it means that these sales will be subject to both VAT and excise at rates applicable where the shop is situated.

ANNEX

EXAMPLE 1

A ferry operator working between the United Kingdom and France have the opportunity to sell excisable goods like alcoholic beverages or tobacco products according to French tax rates on the way from France to the United Kingdom until the fiscal territory of the United Kingdom is reached. Then he will have the choice to stop selling excisable goods in order not to trigger another taxation or to continue to sell these goods and account for the United Kingdom excise duty. If he decides to continue sales this does not automatically mean that a double price marking is necessary. It is open to the operator to calculate one single price according to the expected profit margins or to use different prices on both parts of each leg. On the way back from the United Kingdom to France the ferry operator can start to sell goods according to French tax rates as soon as the ferry has left the United Kingdom fiscal territory.

EXAMPLE 2

In the case of a ferry travelling between Germany, Denmark and Sweden with stopovers in each of these Member States each leg of the journey has to be regarded separately. Starting from Germany the excisable goods can be sold according to German tax rates until the ferry enters the fiscal territory of Denmark. Goods sold within the Danish territory have to be taxed according to Danish tax rates. During the journey between Denmark and Sweden it would not be possible to apply German tax rates even if international waters have to be crossed. If the ferry operator wishes to continue sales in Swedish waters Swedish tax rates would become applicable.

EXAMPLE 3

An aeroplane starts in Madrid and goes without any intermediate call straight to Copenhagen crossing the air space of France and Germany. In this case the excisable goods loaded on board and taxed in Spain can be sold on board without further taxation in France or in Germany. During the flight French or German tax rates would not be applicable even if the air space of these countries has to be crossed.

EXAMPLE 4

A ferry travels from Stockholm to Tallinn (in Estonia), makes an intermediate call there and then travels from Tallinn to Helsinki. On arrival in Finland customs provisions concerning imports from third countries and customs controls would apply. In particular, quantitative restrictions based on third country travellers' allowances would apply in respect of any goods purchased on the vessel.
