

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 249 final

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AMENDMENTS TO THE PROPOSAL FOR A SEVENTH COUNCIL
DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER
STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF
VALUE ADDED TAX TO BE APPLIED TO WORKS OF ART,
COLLECTORS' ITEMS, ANTIQUES AND USED GOODS

(presented by the Commission to the Council pursuant
to the second paragraph of Article 149 of the EEC Treaty)

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EXPLANATORY MEMORANDUM

Introduction.

- 1) On 11 January 1978, the Commission presented to the Council a proposal for a Seventh Council Directive on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax to be applied to works of art, collectors' items, antiques and used goods (1).

The Economic and Social Committee and Parliament, which had been consulted on this proposal, delivered their opinions on 1 June 1978 and 12 March 1979 respectively.

It became evident that a number of amendments could be made to the text of the proposal as long as they did not affect the fundamental options made, and general approach adopted, by the Commission in the initial version. Although the Economic and Social Committee considers in its opinion that all supplies covered by the proposal should be subject to the normal VAT scheme, the Commission, with the support of Parliament and bearing in mind the views of the trade associations consulted, still believes that special rules are needed for these transactions in order to avoid double taxation.

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(1) OJ No C 26, 1.2.1978, p. 2

Concerning Article 1.

2) At the plenary session of Parliament, an amendment aimed at excluding sales by auctioneers from the proposal was put forward. Although the amendment was withdrawn during the session, the Commission has, in the interests of clarity, reviewed the matter once again. As was emphasized in the explanatory memorandum accompanying the initial proposal, treatment of an intermediary as if he were a taxable person wishing to resell, which is simply an extension of the scope of Article 5 (4) (c) of the Sixth Directive, meets the need to prevent deflections of trade within the Community as well as distortions of competition inside national boundaries. The contacts the Commission has had with various trade organizations have shown that the dangers this provision is intended to eliminate do exist, notably where sales at public auctions are concerned. Consequently, the Commission remains convinced of the correctness of its initial approach.

Concerning Articles 2 and 3.

3) The Commission has incorporated the main amendment proposed by Parliament, introducing a third scheme, namely taxation of the actual value added, i.e. the difference between the purchase price and the selling price of an item, for taxable persons wishing to resell works of art, antiques or used goods.

Paragraph 3 of Article 2 and paragraph 2 of Article 3 have been amended accordingly.

As a consequence, a taxable person wishing to resell may choose between three schemes :

- (a) the normal scheme ;
- (b) the flat-rate scheme ;
- (c) the new scheme proposed.

The scheme chosen must be applied to each transaction carried out by the taxable person wishing to resell, who is required to comply with the obligations of persons liable for payment of tax, including the obligation to issue an invoice.

However, for control purposes and administrative and accounting simplicity, it is not feasible for a taxable person to be permitted to choose between the three schemes for every transaction. This would also be contrary to the principle of equity in taxation.

It is evident that, if this option could be exercised on a transaction-by-transaction basis, a taxable person could opt for flat-rate taxation where the profit margin exceeded 30 % of the selling price, for taxation based on the difference in price where this margin was less than 30 % of the selling price and for the normal scheme whenever it was in his interests to deduct input tax from output tax.

With a view to avoiding all these drawbacks, it has been thought advisable to stipulate that the option for one of the two special schemes, like the option for application of the normal scheme provided for in the third paragraph of Article 1, must apply for a tax period equal to not less than one year.

- 4) Introduction of the scheme involving taxation of the difference between the selling price and the purchase price calls amendment of Articles 2 (5) and 3 (5) of the initial proposal. This is because a taxable person who has opted for this scheme must be permitted to deduct all costs incurred in

respect, say, of the restoration of a work of art, the exhibition of a collectors' item or the repair of a used good since such costs will be included in the difference between the selling price and the purchase price. By contrast, where flat-rate taxation is concerned, these costs cannot be deducted since any form of flat-rate taxation based on the selling price rules this out. However, in order to meet the wish expressed by Parliament, it has been provided that, even where the latter scheme is applied, tax paid at the time of acquisition of capital goods or of goods and services ranking as overhead expenses will be deductible.

- 5) As regards the amendment to Article 2 (6) proposed by Parliament, the Commission has reexamined the case for exempting imports of works of art made for resale purposes by a taxable person wishing to resell. This examination revealed that such exemption would be inexpedient since there would no longer be equality of treatment between taxable persons wishing to resell acquiring such items on the domestic market and those importing them.

However, in accordance with the wish expressed by Parliament that the importation works of art should be encouraged with a view to adding to the cultural riches of the Community, the Commission has deleted the last sentence in paragraph 6 of Article 2 of its initial proposal so as to permit immediate deduction of 70 % of the amount of the tax paid at the time of importation of works of art, collectors' items and antiques by a taxable person wishing to resell.

It should also be noted that, pursuant to Article 23 of the Sixth Directive, Member States may provide that the value added tax payable on importation of goods by certain categories of taxable person need not be paid at the time of importation, on condition that the tax is mentioned as such in a return to be submitted under Article 22 (4) of the above Directive.

Concerning Article 4.

6) As regards the amendments to Article 4 (1) proposed by Parliament with a view to including farm tractors and industrial vehicles in this scheme, the Commission had not taken into account trade in used vehicles as falling within these categories since, in the normal course of events, they are acquired by taxable persons and used for the purposes of their taxable activity.

When such vehicles are acquired, the taxable persons benefit from the deduction arrangements laid down in Directive 77/388/EEC, so that such goods constitute a tax-free component of the taxable persons' assets. However, when supplying such goods, the user is required to issue an invoice and to charge VAT on the selling price. A taxable person wishing to resell may thus immediately deduct all the tax invoiced to him. However, with a view to resolving a number of borderline cases involving supplies effected by a taxable person wishing to resell such vehicles acquired from a non-taxable person or from a taxable person excluded from the right to deduct, the Commission proposes that the scheme laid down in Article 4 be extended to officially registered vehicles.

As regards the proposal that all items shown in the books kept by a taxable person wishing to resell be included in the scheme, the Commission notes that the scheme provided for in Article 4 was designed specifically for officially registered items and that, for this reason, the proposed extension cannot be considered.

7) The Commission is unable to incorporate the proposed amendment to paragraphs 3 and 4 concerning the amount of tax deductible since the limit imposed on that amount is a safeguard measure aimed at preventing such evasion of tax as application of this scheme might permit. By contrast, the proposed amendment concerning exercise of the right to deduct tax paid on the costs of repairing goods is merely an amendment as to form, the exercise of this right not having been excluded in the text of the initial proposal. However, to avoid any ambiguity, the wording of paragraph 2 has been amended so as to grant express authorization for such a deduction.

Amendments

to the proposal

for a Seventh Council Directive on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax to be applied to works of art, collectors' items, antiques and used goods (1)

(presented by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty)

The Commission hereby amends its proposal as follows :

Article 2

Scheme for works of art, collectors' items and antiques.

- Paragraph 3 is amended to read as follows :

" 3. The taxable amount in respect of each supply of works of art, collectors' items or antiques shall be either :

(a) 30 % of the selling price, or

(b) the difference, duly proved, between the selling price and the purchase price.

A taxable person wishing to resell must opt for one of the schemes referred to in the preceding subparagraph in respect of all supplies effected during a tax period equal to not less than one year."

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(1) OJ No C 26, 1.2.1978, p. 2.

- Paragraph 5 is amended to read as follows :

"5. The following shall not be deductible :

- tax paid by a taxable person wishing to resell at the time of acquisition of the items referred to in paragraph 1 ;
- tax paid at the time of acquisition of goods and services used for the purposes of his activity by a taxable person wishing to resell who has opted for the scheme provided for at (a) in paragraph 3. However, the tax paid by such a taxable person at the time of acquisition of capital goods or of goods and services ranking as administrative costs shall be deductible, under the conditions and within the limits laid down by each Member State in accordance with Article 17 of Directive 77/388/EEC."

- Paragraph 6 is amended as follows :

The last sentence is deleted.

Article 3

Scheme for used goods

- Paragraph 2 is amended to read as follows :

" 2. The taxable amount in respect of each supply of used goods, other than those referred to in Article 4, acquired from a non-taxable person or from a taxable person not entitled to deduct the value added tax shall be equal to either :

- (a) 30 % of the selling price, or
- (b) the difference, duly established, between the selling price and the purchase price.

A taxable person wishing to resell must opt for one of the schemes referred to in the preceding subparagraph in respect of all supplies effected during a tax period equal to not less than one year."

- Paragraph 5 is amended to read as follows :

"5. The following shall not be deductible :

- tax paid by a taxable person wishing to resell at the time of acquisition of the items referred to in paragraph 1 ;

- tax paid at the time of acquisition of goods and services used for the purposes of his activity by a taxable person wishing to resell who has opted for the scheme provided for at (a) in paragraph 3.

However, the tax paid by such a taxable person at the time of acquisition of capital goods or of goods and services ranking as administrative costs shall be deductible, under the conditions and within the limits laid down by each Member State in accordance with Article 17 of Directive 77/388/EEC."

- The following paragraph 6 is added :

" 6. Where goods acquired with a view to resale are dispatched or transported outside the territory referred to in Article 3 of Directive 77/388/EEC, the taxable person shall be entitled to deduct the value added tax due or paid at the time of acquisition of those goods. The right to deduct may be exercised only after the export formalities have been completed."

Article 4

Scheme for certain used goods

- The following indent is added to paragraph 1 :

" - "other vehicles" shall mean any registered vehicle, whether or not fitted with a motor, designed for use in connection with an agricultural, commercial or industrial activity."

- Paragraph 2 is amended to read as follows :

"2. Without prejudice to the provisions of Articles 17 and 18 of Directive 77/388/EEC, supply of an item referred to in paragraph 1 by a taxable person wishing to resell shall entitle him to deduct an amount of value added tax calculated on the basis of the acquisition price of that item at the rate in force at the time of acquisition, where :

- the item was acquired from a non-taxable person,
- the item was acquired from a taxable person but is excluded from the right to deduct provided for in Article 17 of Directive 77/388/EEC."
