

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 721 final.

Brussels, 3 January 1978.

PROPOSAL FOR AN EIGHTH 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 THE TERRITORY OF THE COUNTRY

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(presented by the Commission to the Council)

COM(77) 721 final.

EXPLANATORY MEMORANDUM

I. GENERAL CONSIDERATIONS

In view of the extremely wide divergences that at present exist between Member States in the field in question, Article 17, paragraph 3 of the Sixth Directive provides for Community rules to accord equal treatment to all taxable persons in the Community, regardless of the member country in which they incur expenditure attracting VAT. If no such rules were introduced, there would be a danger of deflection of trade giving rise to distortions of competition and operating to the detriment of the countries that applied less generous arrangements. For instance a country that accepted refund claims from foreign carriers without imposing any restrictive conditions might become a haven for the undertakings concerned on account of a tax concession that would distort the conditions of competition.

Conversely, a Member State that refused the refund would give rise to the risk of economic double taxation in so far as a foreign taxable person unable to deduct input tax would have no choice but to pass it on in the prices of the goods or services he sold.

It was with a view to remedying this situation that the Council, in Article 17 (4) of the Sixth Directive, provided for the early adoption of Community rules laying down arrangements governing tax refunds.

The position of each Member State vis-à-vis non-member countries differs so widely that it proved impossible, in the Sixth Directive, to impose common refund arrangements that all member countries could apply in respect of taxable persons established in non-member countries. As a result, the Directive has left it to each Member State to determine the conditions governing the refund or refusal of the refund to such taxable persons (e.g. conditions of reciprocity). However, with a view to avoiding the drawbacks referred to

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above (deflection of trade, etc.), the refund arrangements may not be more favourable than those accorded to Community taxable persons.

## II. COMMENTARY ON THE ARTICLES

### Concerning Article 1

This Article determines the persons (foreign taxable persons) eligible for the refund under this Directive. There is no alternative but to adopt the criterion already implicitly laid down in the Sixth Directive, namely that a person is liable for tax in the country in which he carries out an activity within the meaning of Article 4 of the Directive. For instance, a multinational company carrying out all its activities in the United States and possessing only a "nominal" place of business in the Community will be treated as a taxable person of a non-member country.

The reasons for extending this concept to international carriers are set out below, under "Concerning Article 2".

### Concerning Article 2

This Article refers only to taxable persons of Member States; Community rules for taxable persons of non-member countries are laid down in Article 8. The definition of taxable person contained in Article 4 of the Sixth Directive remains of course valid for non-member countries as well as for member countries. For the purposes of the proposed Directive, therefore, the existence or otherwise of a VAT system in the relevant non-member country is of no consequence, and taxable persons claiming refunds are required to satisfy only the criteria laid down in Article 4.

The reference in Article 17(4) of the Sixth Directive ("in accordance with paragraph 3") has the effect that the refund is to be made solely in respect of the tax charged on the purchases of goods and services or on the importation of goods used by the foreign taxable person for the activities specified in Article 17(3) of the Directive. Of the three cases referred to in subparagraphs (a), (b) and (c) of this paragraph, only the first two would seem to be relevant.

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Subparagraph (a) covers cases in which a taxable person of country A carries out no taxable activity (whether taxed or exempted) in country B, which is the country of refund (e.g. participation at international fairs).

Subparagraph (b), on the other hand, concerns a number of cases in which a taxable person of country A carries out in country B a transaction exempted under Article 14(1)(i), Article 15, Article 16(1)(B), (C) or (D), or Article 16(2) of the Sixth Directive. In these cases, the taxable person of country A becomes "de jure" a taxable person of country B for the purposes of these transactions. However, as regards transport services supplied by carriers established abroad, the latter should be treated as taxable persons who do not carry out any taxable transaction in the country, firstly, because the transport services in question do not necessarily give rise to invoicing in respect of the distance covered in the country of refund and, secondly, because it is not in the interests of this country, either from a budgetary or an administrative viewpoint, to impose on such carriers the same obligations as it imposes on its "national" taxable persons.

As for the cases covered by subparagraph (c) of Article 17(3) of the Directive, a person from a member country carrying out insurance or banking transactions referred to in that paragraph can never, since such transactions invariably occur in a non-member country, be regarded as carrying out a transaction in the country of refund: consequently, these cases rank with those referred to in subparagraph (a) (foreign taxable person not carrying out any taxable transaction in the country of refund) and are governed by the rules set out therein.

### Concerning Article 3

This provision covers the cases that are referred to in Article 17(3)(a) and (c) of the Sixth Directive and in which no taxable transaction (whether taxed or exempted) is carried out by the foreign taxable person applying for the refund.

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The question arose as to whether, in order to refuse the refund, the country of refund should take account of any exemptions for small undertakings in the taxable person's country "of origin" and, in particular, whether a refund granted to a foreign taxable person entitled to such an exemption in his country would give rise to distortions of competition operating to the detriment of taxable persons of the country of refund or to deflection of trade to the detriment of taxable persons of the country of origin. Now, there is no danger of distortions of competition because the foreign taxable person does not carry out any taxable activity in the country of refund and does not, therefore, compete with "national" taxable persons. As for the danger of trade deflection, the fact that account is not taken in the country of refund of the existence of an exemption in the country of origin is not expected to act as an incentive in this respect since goods purchased by the foreign taxable person in the country of refund must normally be taxed upon importation into the country of origin. The possibility of making such purchases is, in any case, confined strictly to Article 5.

But refusal of the refund on the grounds that the foreign taxable person is a small entrepreneur might lead to double taxation in the event of importation into his country of origin.

For the reasons set out above, no provision has been made for refusing the refund on the basis of the existence of an exemption. For similar reasons, no provision has been made for limiting the refund to the extent of the foreign taxable person's deductible proportion.

Concerning Article 4

It was stated above, in "Concerning Article 2", that, in accordance with the Sixth Directive, foreign taxable persons who carry out taxable transactions in the territory of a country are treated as taxable persons of that country, with all the attendant consequences, deduction included. Where transport transactions are concerned, the reasons why foreign carriers must be treated as foreign taxable persons not carrying out any transaction in the country were also given.

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By analogy with the provisions of Article 3, the existence of an exemption for small enterprises in the country of origin has not been considered a reason for refusing the refund ; moreover, such a refusal could create a number of difficulties. Example : a carrier of country A who provides a transport service in country B (departure point in country B) and who is charged tax in respect of repair work carried out in that country would, if he could not - being a small entrepreneur - claim a refund, be obliged to include the tax in question in the price of the transport service. This would give rise to a residual tax and consequently to a distortion of competition vis-à-vis carriers of country B, for whom the amount of tax charged is always deductible.

The refund might also have been refused on the grounds of the existence of an exemption in the country of refund - a criterion that could be deemed valid in view of the fact that the foreign taxable person carries out transactions in the country of refund - but this was found to be impracticable on account of the administrative difficulties it would have entailed : e.g. it would be impossible to convert the turnover relating to a single transport service into an annual turnover figure and it would also be difficult to enforce the submission of returns.

With regard to the production of evidence to prove the status of taxable person provided for in paragraph a), it seemed desirable that the obligation to provide such evidence for each application be made more flexible, as the taxable persons concerned are, in general, likely to make regular applications for refunds.

The declaration required under Article 4 (b) is aimed at ensuring that any taxable activity (whether taxed or exempted) referred to in Article 17 (3) (b) of the Sixth Directive other than transport transactions will result in the foreign taxable person being treated as a " national " taxable person, with all the attendant consequences.

.../...

### Concerning Article 5

Article 5(1) reflects the need to ensure that refund arrangements that differ from the deduction arrangements in force in the country of refund, notably as regards the exclusions provided for in Article 17(6) and (7) of the Sixth Directive (e.g. the tax charged on travel costs; total or partial exclusion of the deduction for "cyclical economic reasons"), are not applied in respect of foreign taxable persons.

The purpose of Article 5(2) is to limit the scope of application of the refund arrangements specified in Article 3. Goods, for example, that are purchased with a view to resale within a business do not qualify. Where such goods are resold in the country of refund, the latter's normal taxation arrangements are applied, with all the ensuing consequences, including deductions. Where the goods are resold in the country of the foreign taxable person, the arrangements for the remission of tax on exportation and for taxation on importation must apply.

The purpose of Article 5(3) is to limit the scope of application of the refund arrangements specified in Article 4 by excluding cases in which purchases are not "entailed" by a transport service carried out in the country of refund. In the case of such purchases, there is no reason to depart from the arrangements governing exemption in the event of exportation. In spite of this exclusion, the tax may, it is true, be refundable in respect of certain durable goods, but the possibility of imposing the tax in the event of importation into the country of origin, provided for, in theory, by the Sixth Directive, should enable cases of non-taxation to be avoided.

### Concerning Article 6

This Article, which is a restrictive provision when compared with Article 22 of the Sixth Directive, is designed to ensure that Member States do not introduce obligations other than those that would be strictly necessary for the purpose of justifying the refund application.

Concerning Article 7

This Article is designed to facilitate the procedures to be carried out by the administration and by taxable persons and to prevent evasion.

Concerning Article 8

The proposed directive is concerned primarily with cases of refund in respect of intra-Community trade. As for refunds to taxable persons of non-member countries, the last sentence of Article 17(4) merely states that Member States may refuse the refund or impose supplementary conditions. Provisions are however, still needed to prevent a Member State from introducing a refund procedure featuring more favourable arrangements than those provided for in respect of Community taxable persons other than the procedure laid down in Article 30 of the Sixth Directive. Article 8 of this proposal is intended to meet this need.

Concerning Article 9

The purpose of this Article is to provide foreign taxable persons with information concerning the authorities to whom applications must be submitted and to introduce for the national official departments centralized administrative arrangements that will facilitate verification procedures.

It is also with a view to facilitating verification procedures that statements certifying that the person concerned is a taxable person should be made out on a standard form, as should the list of the authorities responsible for preparing these statements since these authorities are not necessarily the same as those referred to in the first paragraph of Article 9.



Concerning Articles 10 and 11

These provisions do not call for any special comments.

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- ARRANGEMENTS FOR THE REFUND OF VALUED ADDED TAX TO TAXABLE  
PERSONS NOT ESTABLISHED IN THE TERRITORY OF THE COUNTRY

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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 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 17 (4) of the Sixth Council Directive 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) (77/388/EEC) (1) provides  
that the Council shall adopt Community rules laying down the arrangements governing  
refunds of value added tax, mentioned in paragraph 3 of the said Article, to  
taxable persons not established in the territory of the country ;

Whereas rules are required to ensure that a taxable person established in the  
territory of one member country can claim for tax he has paid in another member  
country, thus avoiding economic double taxation ;

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(1) O.J. N° L 145 of 13 June 1977, p.1

.../...

Whereas discrepancies between the arrangements currently in force in Member States, which give rise in some cases to deflection of trade and distortions of competition, should be eliminated;

Whereas the introduction of Community rules in this field will mark progress towards the effective liberalization of the movement of persons, goods and services, thereby helping to complete the process of economic integration;

Whereas such rules must not lead within the Community, to the treatment of taxable persons differing according to the Member State in whose territory they are established;

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

Whereas, under Article 17(4) of the Sixth Council Directive of 17 May 1977, Member States may refuse the refund or impose supplementary conditions in the case of taxable persons not established in the territory of the Community; whereas steps should, however, also be taken to ensure that such taxable persons are not eligible for tax refunds on more favourable terms than provided for in respect of Community taxable persons,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, " taxable person not established in the territory of the country " shall mean any person whose economic activities within the meaning of Article 4 (2) of the Sixth Council Directive of 17 May 1977 occur, during the period mentioned in Article 7, outside that country even if, within that same country, he carries out exempted transport transactions coming under Article 17 (3) (b) of the said Directive.

Article 2

Each Member State shall grant any taxable person established in another Member State the right to claim, subject to the conditions laid down below, refund of any value added tax charged in respect of services or goods supplied to him by other taxable persons in the territory of the country 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) of the Sixth Council Directive of 17 May 1977.

Article 3

To qualify for refund, any taxable person as referred to in Article 2 who does not carry out any taxable transaction in the territory of the country must :

- (a) submit to the competent authority an application modelled on the specimen contained in Annex A to this Directive, attaching originals of invoices or import documents ;
- (b) produce evidence, in the form of a certificate issued by the relevant official department of the State in which he is established, that he ranks as a taxable person for the purposes of VAT in that State ;

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(c) certify by means of a written declaration that he has not carried out in the territory of the country, any taxable transaction in connection with the goods and services on which the tax of which he is claiming a refund has been paid.

#### Article 4

To be eligible for the refund, any taxable person referred to in Article 2 who carries out in the territory of the country exempted transport transactions falling within the scope of Article 17 (3) (b) of the Sixth Council Directive of 17 May 1977 must :

- (a) satisfy the requirements laid down in Article 3 (a) and (b) ; however, Member States may exempt those concerned from fulfilling the obligation laid down in Article 3 (b), where the competent authority mentioned in the first paragraph of Article 9 already holds this evidence.
- (b) certify by means of a written declaration that he has not carried out, in connection with the goods or services on which the tax of which he is claiming refund has been paid, any taxable transaction in the territory of the country other than exempted transport transactions mentioned in this Article.

#### Article 5

For the purposes of this Directive, goods and services in respect of which tax may be refundable must satisfy the conditions laid down in Article 17 of the Sixth Council Directive of 17 May 1977, as applicable in the country of refund.

Goods in respect of which tax may be refundable in the cases referred to in Article 3 must not have been purchased with a view to their resale, even processed.

Goods in respect of which tax may be refundable in the cases referred to in Article 4 must be used or consumed in connection with the exempted transport transactions mentioned in the first sentence of the said Article.

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Article 6

Member States may not impose on the taxable persons referred to in Article 2 any obligation other than a requirement that they provide the information necessary to determine whether the refund application is justified.

Article 7

The refund application provided for in Articles 3 and 4 must relate to invoiced purchases of goods or services or importations made during a period of three months or during a calendar year; the taxable person may choose which period he prefers. Such application must be submitted, not later than three months from the end of this period, to the competent authority mentioned in the first paragraph of Article 9.

The application may not be in respect of an amount of tax less than the equivalent in national currency of 25 or 50 European Units of Account, according to whether the period referred to in the paragraph above is three months or one year respectively. The unit of account used shall be that defined in Decision 75/250/EEC (1), as determined on 1 January of the year of the period mentioned in the paragraph above. Member States may round up or down by up to 10% the figures resulting from this conversion into national currency.

The authority referred to in the first paragraph above shall stamp each invoice or document and return these as soon as possible.

The refund must be made not later than six months from the date on which the application was submitted.

Article 8

Member States may, in the case of taxable persons not established in the territory of the Community, refuse the refund or impose special conditions.

The refund cannot be granted on more favourable terms than those applied in respect of taxable persons established in the territory of the Community.

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(1) O.J. N° L 104 of 24.4.1975, p. 35

Article 9

Member States shall make known, in an appropriate manner, the competent authorities to which the applications referred to in Article 3(a) and in Article 4(a) are to be submitted.

The certificates referred to in Article 3(b) and in Article 4(a), establishing that the person concerned is a taxable person, must be modelled on the specimens contained in Annex B to this Directive. The authorities responsible for issuing them are listed in the said Annex.

Article 10

Member States shall bring into force the provisions necessary in order to comply with this Directive within three months of its notification and shall forthwith inform the Commission thereof.

Member States shall transmit to the Commission the texts of any fundamental provisions of national law which they subsequently adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

ANNEX A

SPECIMEN FORM

(Each specimen form will be drawn up in the language of the country of refund and in the language of the applicant's country of origin)

APPLICATION FOR REFUND OF VALUE ADDED TAX PRESENTED BY  
A TAXABLE PERSON ESTABLISHED IN ANOTHER MEMBER STATE  
OF THE COMMUNITY FOR THE PERIOD FROM.....TO.....(1)

(References to the provisions of national law)

The undersigned,

.....  
(FULL NAME)

.....  
(NATURE OF ACTIVITY)

.....  
(ADDRESS OF THE ESTABLISHMENT IN THE MEMBER STATE OF ORIGIN)

.....  
(TAXABLE PERSON FOR VAT PURPOSES IN THE SAID MEMBER STATE  
UNDER REGISTRATION NO. (2)

- requests refund of the sum of

.....  
(IN WORDS)

in connection with the VAT charged in respect of services or goods supplied to him in the territory of the country, or charged on importation of goods into the country, the details of these goods being given in the attached return (3)

- hereby declares :

(a) that the goods or services referred to above have been used for the purposes of the following activities, in which he was involved or which he carried out in the country (4) :

.....  
.....  
.....



(b) that he has not carried out any transaction liable to VAT in the territory of the country and in connection with the goods or services specified on the attached return and that the goods mentioned therein have not been purchased with a view to their resale, even processed;

(point (b) to be deleted where (c) alone is applicable)

(c) that he has not carried out any transaction liable for VAT in the territory of the country and in connection with the goods or services specified in the attached return other than certain exempted transport transactions (5), and that the goods mentioned therein are used or consumed in connection with these transport transactions;

(point (c) to be deleted where (b) alone is applicable)

(d) that the particulars in this application are true (6);

- requests that the amount to be refunded be paid into the following bank / postal account (7)

.....  
(NO)

.....  
(NAME)

.....  
(AT)

DATE:.....

SIGNATURE:.....

ANNEXES:

ANNEX A

Return (8) itemizing VAT amounts concerning the period  
from ..... to.....

| Nature of goods<br>or services | Name and address<br>of supplier | Date of invoice<br>or import document | Amount of<br>tax |
|--------------------------------|---------------------------------|---------------------------------------|------------------|
|                                |                                 |                                       |                  |
| TOTAL                          |                                 |                                       |                  |

EXPLANATORY NOTES

- (1) The applicant may choose whether the refund application covers a period of three months or one year; it must be submitted not later than three months following the end of this period, to the competent authorities in :
  - Belgium .....
  - Denmark .....
  - Germany .....
  - France .....
  - Ireland .....
  - Italy .....
  - Luxembourg .....
  - the Netherlands .....
  - United Kingdom .....
  
- (2) A statement issued by the administration of the State in which the applicant is established certifying that he is a taxable person for VAT purposes in that State must be attached to the application (The applicant may be exempted from fulfilling this obligation where the competent authority already holds this document)
  
- (3) The total amount of tax claimed may not be less than :
  - ..... (if the application covers three months)
  - ..... (if the application covers one year)
  - (amount in national currency)
  
- (4) For example : Participation at the international fair on ..... held in ....., on ..... at which the applicant occupied exhibition stand n°..... For example : International transport of goods in transit (cf. the attached customs documents) from ..... to ....., on .....
  
- (5) These being exempted transport transactions carried out in connection with international goods trade, i.e.g. - subject to certain conditions - transport transactions involving the transit, export or import of goods.
  
- (6) Any refund obtained improperly will expose the offender to the following fines or penalties ;  
.....
  
- (7) Delete where appropriate.
  
- (8) Invoices or original documents evidencing the amounts of tax for which the refund is claimed must be attached to the return.

S P E C I M E N

STATEMENT CERTIFYING THE STATUS OF TAXABLE PERSON  
TO BE COMPLETED BY THE COMPETENT AUTHORITIES DESIGNATED BELOW

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for

- Belgium: .....
- Denmark: .....
- Germany: .....
- France: .....
- Ireland: .....
- Italy: .....
- Luxembourg: .....
- the Netherlands: .....
- United Kingdom: .....

The undersigned

.....  
(NAME AND POSITION OF THE AUTHORIZED OFFICIAL OF THE  
COMPETENT AUTHORITY)

certifies that

.....  
(FULL NAME)

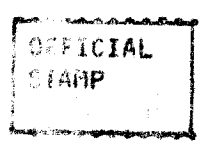
.....  
(NATURE OF ACTIVITY)

.....  
(ADDRESS OF THE ESTABLISHMENT)

is a taxable person for the purposes of value added tax, his Registration No being

.....

DATE: .....



.....  
(SIGNATURE)