

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Request by the Irish Government for authorization to introduce a measure derogating from the Sixth VAT Directive (77/388/EEC), based on Article 27(1) and (2) of that Directive, in respect of the charging of tax on sales of immovable property or rights treated as such.

Request by the Irish Government for authorization to introduce a measure derogating from the Sixth VAT Directive (77/388/EEC), based on Article 27(1) and (2) of that Directive, in respect of the charging of tax on sales of immovable property or rights treated as such.

(Communication from the Commission to the Council)

1. Introduction

- (a) In accordance with Council Directive 77/388/EEC,¹ Member States are required to apply the common system of value added tax. Under Article 27(1) of that Directive, the Council may authorize any Member State to introduce special measures for derogation from the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- (b) In a letter from the Office of the Irish Permanent Representative, received by the Commission's Secretariat-General on 2 June 1994, the Commission was informed of a measure aimed at simplifying the charging of tax on supplies of immovable property or rights treated as such.
- (c) In a letter from the Commission's Secretariat-General dated 28 June 1994, the other Member States were informed, in accordance with Article 27(3) of the above Directive, of the measure proposed by the Irish Government. Under paragraph 4 of the same Article, the Commission or any Member State may request that the matter be raised by the Council.

2. Description of the measure

The Irish Government is proposing to incorporate into its legislation an arrangement whereby the recipient of a supply of immovable property or certain property rights and interests as referred to in Article 5(3) of the same Council Directive 77/388/EEC could be designated as the person liable to pay the tax to the Treasury.

This measure, which derogates from the principles laid down in Article (21) of the above Directive, would apply only where the recipient is entitled to full deduction of the VAT chargeable.

The Irish authorities justify this measure by the need to simplify the charging of VAT on supplies of immovable property. They further argue that it would have the advantage of avoiding any prefinancing of tax, which can be burdensome for firms in this sector, particularly in start-up situations.

¹ OJ No L 145 of 13.6.1977, p. 1. The Directive was last amended by Directive 94/5/EC (OJ No L 60 of 3.3.1994, p. 16).

3. Commission's Opinion

The procedure provided for in Article 27 of the Sixth Directive permits Member States to introduce special measures for derogation from that Directive in order to simplify the arrangements for charging the tax or to prevent certain types of tax evasion or avoidance.

The Irish authorities justify their request by the need to simplify the charging of VAT on supplies of immovable property.

Article 21 of the Sixth Directive establishes the principle that it is the taxable person carrying out the taxable transaction who is liable to pay the tax. Responsibility for meeting the accounting, declaration and payment obligations lies in principle with the person liable to pay the tax (Article 22 of the Sixth Directive).

Article 21 provides for derogations from the principle that the taxable person carrying out the transaction is himself liable for payment of the tax only where that taxable person is not established in the country.

Traders not established in a given Member State would encounter practical difficulties in completing the formalities associated with carrying out taxable transactions in that Member State.

Article 21 accordingly provides for a tax representative or the recipient of a transaction to be designated as the person liable to pay the tax, which relieves the non-established taxable person of the need to meet the obligations laid down in Article 22 in the Member State in which the taxable transaction is effected. This provision is justified by its benefit for traders.

However, the designation of a person other than the taxable person carrying out the taxable transaction, and in particular of the recipient of a supply of goods, as the person liable to pay the VAT must be limited to exceptional cases because it undermines the very principles of VAT (fractioned payments, invoicing of the VAT by the supplier and deduction by the purchaser).

It should also be pointed out that the proposed measure does not even aim to relieve the supplier of the immovable property or rights treated as such of the obligations laid down in Article 22, with the exception of the payment of the tax, since he will have to justify and declare the fact that he is carrying out a transaction for which the tax is payable by the recipient.

Furthermore, as the measure proposed would apply only where the recipient is entitled to full deduction of VAT, the supplier of the property would be required to check the recipient's status. The authorities would also have to check whether the arrangement was being legitimately applied.

It does not therefore seem that the proposed measure would really simplify the charging of VAT on supplies of immovable property or rights treated as such as compared with the application of the rules of the common VAT system.

The real aim of the measure would seem instead to be to enable firms operating in this sector to avoid the cost of prefinancing the tax.

It should be pointed out that the real cost to traders of prefinancing the tax depends on a number of factors, notably the frequency with which returns have to be submitted, the deadlines for refunding a tax credit and the payment periods applied in business dealings between traders. In the Commission's view, the problem of prefinancing the tax can be solved without it necessitating any derogation from the principles of the Sixth Directive.

The Commission is accordingly of the opinion that a derogation from Article 21, based on Article 27, cannot be justified since the real aim pursued (to avoid prefinancing the tax) is neither to simplify charging of the tax nor to combat tax evasion or avoidance.

4. Conclusion

Since the arrangements in question give rise to fundamental objections, the Commission requests that the matter be raised by the Council in accordance with Article 27(4) of the abovementioned Directive.

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