



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.11.1997
COM(97) 613 final

Proposal for a

COUNCIL DECISION

**authorising the United Kingdom to extend application
of a measure derogating from Articles 6 and 17 of the
Sixth Council Directive (77/388/EEC) of 17 May 1977
on the harmonisation of the laws of the Member States
relating to turnover taxes**

(presented by the Commission)

EXPLANATORY MEMORANDUM

By letter registered by the Commission's Secretariat-General on 6 October 1997, the United Kingdom Government requested authorisation, pursuant to Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment,¹ to extend application of the derogation granted to it by Council Decision 95/252/EC of 29 June 1995.²

In accordance with the above-mentioned Article 27, the other Member States were informed of the United Kingdom's request by letter dated 23 October 1997.

The United Kingdom was authorised by Decision 95/252/EC to apply a special measure restricting to 50% the right of the hirer or lessee of a car to deduct input tax on charges for its hire or lease where it is used for private purposes. That restriction of the right to deduct replaces the collection of the VAT which would be due in respect of the private use of the car.

This measure derogates, firstly, from Article 17 of the Sixth Directive (by introducing a restriction on the right to deduct) and, secondly, from Article 6(2), which treats as supplies of services for consideration the private use of goods forming part of the assets of a business (by not levying VAT on the private use of the cars in question).

According to the United Kingdom Government, this restriction of the right to deduct is the simplest possible manner of taxing the private use of cars hired or leased by taxable persons. Moreover, the United Kingdom considers that this flat-rate restriction is justified since, overall, half the motoring in company cars is private motoring.

This provision also minimises the administrative burden on traders, who are not required to keep records distinguishing between business mileage and private mileage. In addition, it facilitates administration of the tax.

The introduction of this measure was part of a thorough recasting of the rules on the deduction of VAT on cars. As a result of the amendment in question, the

United Kingdom's tax legislation has been brought more closely into line with the general principles of the common VAT system.

Besides the fact that the measure relieves traders of certain administrative obligations and so constitutes a simplification of the procedure for charging tax within the meaning of Article 27 of the Sixth Directive, the Commission considered that the derogation was justified because it formed part of a thorough recasting of the rules on the deduction of VAT on vehicles, the results of which were largely positive.

¹ OJ No L 145, 13.6.1977, p. 1. Directive as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

² OJ No L 159, 11.7.1995, p. 19.

However, the derogation was granted only temporarily, either until the entry into force of the Community rules, laid down by the Council, determining what expenditure is not to be eligible for the deduction of VAT or until 31 December 1997 at the latest if the Community rules in question had not come into force by that date.

Those Community rules were the subject of the proposal for a twelfth VAT Directive, which the Commission has since decided to withdraw because it no longer reflects current circumstances.

The Commission therefore considers that the United Kingdom should be authorised to extend application of the measure in question temporarily.

On 10 July 1996 the Commission adopted a work programme for introducing a common VAT system,³ which provides for stage-by-stage progress towards the new system.

On that basis, the Commission intends within the next few months to present a proposal for a directive on limitations of the right to deduct VAT on certain expenditure, including all expenditure relating to cars. The aim of that proposal is to bring about an approximation of the relevant national rules, which currently differ very widely.

The Commission therefore considers it appropriate to limit the period of validity of this decision to 31 December 1998 so as to enable an assessment to be made at that time as to whether the derogation is consistent with the global approach adopted in the proposal for a directive.

³ COM(96) 328 final, 22.7.1996.

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of the Sixth Council Directive (77/388/EEC) of 17 May 1977
on the harmonisation of the laws of the
Member States relating to turnover taxes**

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 harmonisation 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 previous Council Decision 95/252/EC of 29 June 1995,²

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27(1) of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce or extend special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas, by letter registered at the Commission's Secretariat-General on 6 October 1997, the United Kingdom Government requested authorisation to extend application of the derogation previously granted to it by Council Decision 95/252/EC of 29 June 1995;

Whereas the other Member States were informed on 23 October 1997 of the United Kingdom's request;

Whereas the United Kingdom was authorised by Council Decision 95/252/EC of 29 June 1995 to apply until 31 December 1997 a measure derogating from Articles 6 and 17 of the Sixth Directive;

Whereas the derogation in question is designed, firstly, to restrict to 50% the right of the hirer or lessee of a car to deduct the VAT on the hire or leasing transaction where the car

¹ OJ No L 145, 13.6.1977, p. 1. Directive as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

² OJ No L 159, 11.7.1995, p. 19.

Whereas the derogation in question is designed, firstly, to restrict to 50% the right of the hirer or lessee of a car to deduct the VAT on the hire or leasing transaction where the car is used for private purposes and, secondly, to waive the VAT payable on the private use of the car in question;

Whereas the objective of this restriction of the right to deduct is to tax the private use of cars hired or leased by taxable persons at a flat rate;

Whereas the measure, by reducing the administrative burden on traders, who are not required to keep records of private mileage, constitutes a simplification of the procedure for charging tax within the meaning of Article 27 of the Sixth Directive;

Whereas the Commission adopted on 10 July 1996 a work programme,³ accompanied by a schedule of proposals, providing for gradual, stage-by-stage progress towards a common VAT system for the single market;

Whereas the authorisation is being granted until 31 December 1998 so as to enable an assessment to be made at that time as to whether the derogation is consistent with the Community approach to limitations of the right to deduct VAT on certain expenditure, which will be adopted under that programme;

Whereas the derogation has no adverse impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

³ COM(96) 328 final, 22.7.1996.

Article 1

By way of derogation from Article 17(2) and (3) of the Sixth Council Directive (77/388/EEC) of 17 May 1977, the United Kingdom is hereby authorised to restrict to 50% the right of the hirer or lessee of a car to deduct the VAT on the cost of hiring or leasing that car where it is used for private purposes.

Article 2

By way of derogation from Article 6(2)(a) of the Sixth Council Directive (77/388/EEC) of 17 May 1977, the United Kingdom is hereby authorised not to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person.

Article 3

This authorisation shall expire on 31 December 1998.

Article 4

This Decision is addressed to the United Kingdom.

Done at Brussels,

**For the Council
The President**

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