COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.06.1998
COM(1998) 375 final

Proposal for a

COUNCIL DECISION

authorising the Italian Republic to apply a measure derogating from Articles 2 and 10 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 with the Secretariat-General of the Commission on 19 March 1998, the Italian Government requested authorisation - under 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 for assessment[1] - to apply a special measure as regards trade in used and waste materials.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed of Italy's request by letter dated 17 April 1998.

The special measure that Italy wishes to introduce contains the following provisions:

- exemption, without the right to deduct input tax, of supplies of scrap metal and other recyclable materials (waste paper, rags, etc.) made by firms which either:

  (1) have a fixed establishment and generated a turnover excluding tax of not more than ITL 2 billion during the previous year, or

  (2) do not have a fixed establishment;

- a possibility of opting for the normal taxation arrangements, available to firms in category (1) which generated a turnover excluding tax of more than ITL 150 million during the previous year, subject to the provision of an appropriate guarantee;

- mandatory application of the normal taxation arrangements to firms in category (1) which generated a turnover excluding tax of more than ITL 2 billion during the previous year;

- suspension of payment of tax, with the right to deduct input tax, on supplies of non-ferrous scrap (including scrap which has undergone rudimentary initial processing reducing it to the primary state with the aid of minimal, elementary technical facilities), irrespective of the turnover of the firm concerned.

Italy's request also specifies that firms dealing in both non-ferrous scrap and other recyclable materials would be covered by the arrangements for non-ferrous metals.

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1 OJ L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ L 338, 28.12.1996, p. 89).

According to the Italian Government, the purpose of the measure is to combat the tax evasion or fraud which is becoming increasingly prevalent in this area.

In this connection, the Italian Government would point to the existence of fictitious companies which charge VAT but do not make it over to the Treasury, while the purchasers are thus able to deduct it as input tax.

The Commission considers that exemption of supplies by small firms both simplifies matters and helps to combat fraud since a category of taxable persons where checks and efforts at collection would be disproportionate to the revenue generated can be excluded from the VAT system.

Allowing firms which have a fixed establishment and generated a turnover excluding tax of between ITL 150 million and ITL 2 billion during the previous year to opt for the normal taxation arrangements is also likely to bring into the normal VAT scheme operators who offer guarantees that are deemed sufficient.

The Commission also takes the view that VAT suspension arrangements should be applied to supplies of non-ferrous scrap, including scrap which has undergone initial processing, in order to provide a secure basis for transactions that present a higher risk of fraud as a result of the value of the goods involved.

According to the Commission's information, it is a feature of the Italian market in used and waste materials that most traders deal in both non-ferrous scrap and other recyclable materials (ferrous metals, paper and textiles).

In the interests of the simplicity of the special VAT measure, the Commission considers that Italy should be authorised to apply the suspension arrangements to all the activities of taxable persons who deal in both non-ferrous scrap and other recyclable materials.

This rule should not apply, however, where transactions involving non-ferrous metals are incidental in relation to transactions involving other recyclable materials.

The Commission considers that the Italian Republic may be authorised to apply the proposed derogation until 31 December 2000.

On 10 July 1996 the Commission adopted a work programme for the introduction of a common VAT system[2] that provides for step-by-step progress towards the new system. It therefore seems appropriate to allow implementation of the proposed measure only until 31 December 2000, so that an assessment can then be made of its compatibility with the approach developed within the framework of the new common system of VAT.

Any extension of this derogation beyond 31 December 2000 could be granted only after an assessment of its application. If the Italian Republic were to request such an extension, it would have to provide all the necessary information for that assessment.

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2 COM(96) 328 final, 22.7.1996.

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(presented by the Commission)

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 for assessment,[3] and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce 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 and avoidance;

Whereas, by letter to the Commission registered on 19 March 1998, the Italian Republic requested authorisation to introduce a measure derogating from Articles 2 and 10 of Directive 77/388/EEC;

Whereas, in accordance with Article 27(3) of that Directive, the other Member States were informed on 17 April 1998 of the request submitted by the Italian Republic;

Whereas the first purpose of the special measure is to exempt, without granting the right to deduct input tax, supplies of scrap metal and other recyclable materials made either by firms which have a fixed establishment and generated a turnover excluding tax of not more than ITL 2 billion during the previous year or by firms which do not have a fixed establishment;

Whereas the second purpose of the measure is to grant firms which have a fixed establishment and generated a turnover excluding tax of between ITL 150 million and ITL 2 billion during the previous year the right to opt for the normal taxation arrangements;

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3 OJ L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ L 338, 28.12.1996, p. 89).

Whereas the third purpose of the measure is to apply VAT suspension arrangements, with the right to deduct input tax, to supplies of non-ferrous scrap, irrespective of the turnover excluding tax of the firm making them;

Whereas this measure is likely to prove an effective means of combating the evasion or fraud which is becoming increasingly prevalent in this area;

Whereas, consequently, the special measure satisfies the conditions laid down in Article 27 of the Sixth Directive;

Whereas the Commission adopted on 10 July 1996 a work programme[4] and a timetable of proposals providing for gradual, step-by-step progress towards a common VAT system for the single market;

Whereas authorisation should be granted until 31 December 2000 so that an assessment can then be made of the compatibility of the measure with the overall approach adopted for the new common system of VAT;

Whereas this derogation will have no impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

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[4] COM(96) 328 final, 22.7.1996.

Article 1

The Italian Republic is hereby authorised until 31 December 2000 to apply a special measure for the taxation of used and waste materials that contains provisions derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977.

The provisions in question are laid down in Articles 2 and 3 below.

Article 2

By way of derogation from Article 2(1) of the Sixth Directive, and without prejudice to Article 3 of this Decision, supplies of used and waste materials consisting *inter alia* of paper, board, rags or glass shall be exempt from VAT where they are made by firms which either:

- have a fixed establishment and generated a turnover excluding tax of less than ITL 2 billion during the previous year, or

- do not have a fixed establishment.

The firms referred to in the first indent which generated a turnover excluding tax of more than ITL 150 million during the previous year may be allowed not to apply the special measure provided for in the preceding paragraph in respect of the supplies concerned.

Article 3

By way of derogation from Article 10(2) of the Sixth Directive, supplies of non-ferrous scrap, including scrap which has undergone rudimentary initial processing reducing it to the primary state with the aid of minimal, elementary technical facilities, shall be subject to VAT suspension arrangements.

These suspension arrangements shall also apply to supplies of used and waste materials other than non-ferrous metals made by taxable persons who deal in both non-ferrous scrap and other recyclable materials, provided that the transactions involving non-ferrous metals are not of an incidental nature.

__Article 4__

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council

The President

ISSN 0254-1475

COM(98) 375 final

DOCUMENTS

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09 06 10

Catalogue number : CB-CO-98-383-EN-C

ISBN 92-78-37149-1

Office for Official Publications of the European Communities

L-2985 Luxembourg

8