



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.10.1999
COM(1999) 497 final

Proposal for a

COUNCIL DECISION

authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Acting on the basis of 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 the Danish and Swedish governments have requested authorisation to apply a measure derogating from Article 17 of that Directive.
2. In accordance with Article 27(3) of the Sixth Directive, the Commission informed the other Member States by letter dated 3 September 1999 of the requests presented by Denmark and Sweden.
3. These requests concern the VAT rules applying to the operation of the Öresund fixed link between Denmark and Sweden, which is scheduled to open in July 2000.
4. The link will be operated by a consortium of two companies set up for the purpose, one owned by the Danish State and the other by the Swedish. This consortium will charge users a toll for using the link. The only toll gates will be sited on Swedish territory.
5. Under Article 9(2)(a) of the Sixth Directive, use is taxable in the Member State where the link is situated, namely partly on Danish territory and partly on Swedish.
6. In accordance with Article 17 of the Directive, VAT on the use of the link has to be deducted in the Member State where it was paid: VAT on tolls for using the Öresund link will therefore be deductible in the Member States concerned according to the usual rules.
7. This means that taxable persons based in Denmark or Sweden would normally have to recover part of the VAT on tolls by entering it on the periodic returns lodged in their Member State of establishment and the rest via the refund procedure laid down in the Eighth VAT Directive. Moreover, taxable persons who are not established in either Member State would have to lodge two requests for refunds, under the Eighth or the Thirteenth VAT Directive, as the case may be.
8. The Swedish and Danish authorities consider that applying the normal VAT rules would create excessive paperwork for taxpayers and administrations alike.
9. To avoid this situation, the Danish and Swedish authorities wish to introduce simplified rules to enable the deduction and refund of VAT to be handled by a single country. The rules would be as follows:
 - In their periodic returns taxable persons established in Denmark or Sweden would be entitled to deduct the whole amount of deductible VAT on tolls, including that relating to the use of the link on the territory of the Member State in which they are not established.

¹ OJ L 145, 13.06.1977, p. 1. Last amended by Directive 99/59/EC (OJ L 162, 26.06.1999, p. 63).

- To recover the VAT deductible via the procedure laid down in the Eighth or Thirteenth Directive, taxable persons who are not established in either of the Member States concerned would have to apply to the Swedish authorities only.
10. The Commission considers the procedure in question, which derogates from the rules laid down in Article 17(2), (3) and (4) of the Sixth Directive, as amended by Article 28f of that Directive, a simplification satisfying the conditions of Article 27 of the Directive.
 11. The Commission would, however, emphasise that the adoption of the proposal for a Council Directive regarding the rules governing the right to deduct value added tax, which it presented to the Council on 17 June 1998,² would render the measure in question unnecessary for taxable persons established in the Community.
 12. The authorisation should therefore be for a limited period, expiring at the entry into force of the said Directive and on 31 December 2001 at the latest. This will enable the need for the derogation to be reviewed in the light of the Council's discussions of the proposal for a Directive, should the Directive not yet have entered into force.

² OJ C 219,15.7.98, p.16.

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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, and in particular Article 27 thereof,¹

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 27(1) of the Directive allows the Council, acting unanimously on a proposal from the Commission, to authorise any Member State to introduce special measures derogating from the provisions of the Directive to simplify the procedure for charging the tax or prevent certain types of tax evasion or avoidance.
- (2) The Danish and Swedish governments have requested authorisation to apply a measure derogating from Article 17 of the Directive.
- (3) The other Member States were informed of the requests from Denmark and Sweden on 3 September 1999.
- (4) These requests relate to the operation of the Öresund fixed link between Denmark and Sweden, and in particular to the recovery of VAT paid on tolls for the use of the link. Under the rules of territoriality, part of the VAT on tolls is payable to Denmark and part to Sweden.
- (5) In derogation from the provisions of Article 17, as amended by Article 28f, requiring taxable persons to exercise their right to deduct or obtain a refund of VAT in the Member State where it was paid, the Swedish and Danish authorities intend to introduce a special measure enabling taxpayers to recover VAT from a single administration.
- (6) The intended measure fulfils the conditions laid down in Article 27 of the Directive by virtue of its limited scope and the fact that it is intended to simplify matters.

¹ OJ L 145; 13.06.1977, p. 1. Last amended by Directive 99/59/EC (OJ L 162, 26.06.1999, p. 63).

- (7) On 17 June 1998 the Commission presented a proposal for a Council Directive amending the Sixth Directive as regards the rules governing the right to deduct value added tax,² adoption of which would render the special measures unnecessary in the majority of cases, which involve taxable persons established in the Community.
- (8) Authorisation should therefore be granted until the new Directive enters into force, but expires on 31 December 2001 if the Directive has still not entered into force, thereby enabling the need for the derogation to be reviewed in the light of the Council's discussions on the proposal.
- (9) The derogation does not adversely affect the own resources derived by the European Communities from value added tax.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from the provisions of Article 17(2), (3) and (4) of the Sixth Council Directive 77/388/EEC of 17 May 1977, as amended by Article 28f thereof, the Kingdom of Sweden and the Kingdom of Denmark are hereby authorised to apply the following procedure for the recovery of VAT on tolls paid for the use of the Öresund fixed link between the two countries:

- Taxable persons established in Denmark may exercise their right to deduct the VAT paid when using the part of the link located on Swedish territory by entering it in the periodic returns to be lodged in Denmark.
- Taxable persons established in Sweden may exercise their right to deduct the VAT paid when using the part of the link located on Danish territory by entering it in the periodic returns to be lodged in Sweden.
- Taxable persons who are not established in either of the above Member States must apply to the Swedish authorities to obtain refunds of the VAT on tolls, including that paid for using the section of the link located on Danish territory, under the procedure laid down in Directive 79/1072/EEC or Directive 86/560/EEC.

Article 2

This authorisation shall expire on the date of entry into force of Community rules determining the expenditure not eligible for the deduction of value added tax, in accordance with the first subparagraph of Article 17(6) of the Sixth Directive, and by 31 December 2001 at the latest.

² OJ C 219, 15.7.98, p.16.

Article 3

This Decision is addressed to the Kingdom of Sweden and the Kingdom of Denmark.

Done at Brussels,

*For the Council
The President*