



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.1.2001
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Proposal for a

COUNCIL DECISION

authorising Austria to apply a measure derogating from Article 11 of 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. The Austrian authorities have requested authorisation under Article 27 of the Sixth Council Directive 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 assessment¹ - to extend application of a special measure derogating from Article 11 of the said Directive.
2. In accordance with Article 27(3) of the Sixth Directive, the other Member States have been notified of Austria's request by letter dated 4 December 2000.
3. ANNEX XV, List provided for in Article 151 of the Act of Accession, IX. TAXATION, of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded stipulates that for the purposes of applying Article 27(1) Austria may continue to tax international passenger transport carried out by taxable persons not established in Austria by means of motor vehicles not registered in Austria under the following conditions:
 - this transitional measure may apply until 31 December 2000;
 - the distance covered in Austria shall be taxed on the basis of an average taxable amount per person and per kilometre;
 - the system shall not involve fiscal controls at frontiers between Member States;
 - such a measure, intended to simplify the procedure for charging the tax, shall not affect, except to a negligible extent, the amount of tax due at the final consumption stage.
4. According to Article 9(2)(b) of the Sixth VAT Directive, the place where transport services are supplied is the place where transport takes place, having regard to the distances covered. The carriage of passengers from an East European country through Austrian territory to another Member State is subject to VAT on the basis of the number of kilometres covered on Austrian territory.
5. In order to calculate the basis for taxation in Austria, the total price of the transport service must also be broken down in relation to the distance travelled inside the country and the distance outside. According to the normal rules of the common VAT system, a carrier not established in Austria should comply with the requirements to have VAT identification and make regular returns.
6. Since before its accession to the European Union, Austria applied a special regime by which international passenger transport through Austria that is carried out by taxable persons not established in Austria by means of motor vehicles not registered in Austria is taxed on the basis of an average taxable amount per person and per kilometre. The Act of Accession provided an authorisation to extend the application of this special regime until 31 December 2000.

¹ OJ L 145, 13.6.1977, p. 1, last amended by Directive 2000/65/EC (OJ L 269, 21.10.2000, p. 24).

7. The VAT due is payable immediately at the border customs office either at entry into or exit from the EU. Normal tax rules apply when the taxable person does not pass by a customs office on either entry or exit (VAT payment by regular returns). The application of this simplified regime has dispensed non-established taxable persons carrying out passenger services in Austria using motor vehicles not registered in Austria from the requirements of having VAT identification and lodging regular returns.
8. However, the Commission has noted that in practice Austria exempts passenger transport on its territory if the transport is carried out by a vehicle registered in a country with which a bilateral reciprocity agreement has been concluded. As a result of these bilateral agreements, the simplified regime only operates when the passenger transport is supplied by a taxable person established in a country with which The Republic of Austria has made no such agreement.
9. Obviously, it would be contrary to Community law to have different VAT treatment for the same type of service according to the country of establishment of the service provider. The aim of VAT harmonisation is to eliminate wherever possible factors liable to distort competition, whether at national or Community level.
10. Consequently, the Commission believes that Austria should be authorised to continue to apply this special measure, as long as the simplified regime applies under the same conditions to all operators not established in Austria.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union,

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 assessment², and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Under 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 the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- (2) By letter registered by the Secretariat-General of the Commission on 25 August 2000 Austria requested authorisation to extend application of a special measure derogating from Article 11 of the said Directive.
- (3) In accordance with Article 27 of the Directive, the other Member States have been notified of Austria's request by letter dated 4 December 2000.
- (4) The special measure is a simplified tax regime for international passenger transport carried out by taxable persons not established in Austria by means of motor vehicles not registered in Austria. VAT is collected through payment at the border of an amount calculated on the basis of an average taxable amount per person and per kilometre.
- (5) Austria was authorised to apply this special measure until 31 December 2000 under the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (Annex XV, Title IX, Chapter 2, point d)³.

² OJ L 145, 13.6.1977, p. 1, last amended by Directive 2000/65/EC (OJ L 269, 21.10.2000, p. 24).

³ OJ C 241, 29.8.1994, p. 335.

- (6) The special measure is a simplification measure satisfying the conditions of Article 27 of Directive 77/388/EEC as long as it applies to all operators not established in Austria that fulfil the same conditions, regardless of their country of establishment.
- (7) The authorisation should be accorded, with this proviso, until 31 December 2005 when the appropriateness of the derogation will be reviewed

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 11(A) of Council Directive 77/388/EEC of 17 May 1977, Austria is hereby authorised to tax until 31 December 2005 international passenger transport carried out by taxable persons not established in Austria by means of motor vehicles not registered in Austria under the following conditions:

- the distance covered in Austria shall be taxed on the basis of an average taxable amount per person and per kilometre;
- the system must apply to all taxable persons not established in Austria, whatever the country where their place of business is established
- the system shall not involve fiscal controls at frontiers between Member States.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels,

*For the Council
The President*