



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.12.2006  
COM(2006) 796 final

Proposal for a

**COUNCIL DECISION**

**extending the application of Decision 2000/91/EC 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) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Pursuant to Article 27(1) 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, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply 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.

By letter registered with the Secretariat-General of the Commission on 22 March 2006, the Danish authorities requested an extension to their existing derogation from Article 17(2), (3) and (4) of Directive 77/388/EEC authorised under Decision 2000/91/EC (as amended by Decision 2003/65/EC). In accordance with Article 27(2) of Directive 77/388/EEC, the Commission, in a letter dated 4 October 2006, informed the other Member States of the request by Denmark. By letter dated 5 October 2006, the Commission notified Denmark that it had all the information it considered necessary for appraisal of the request.

By letter registered with the Secretariat-General of the Commission on 22 March 2006, the Swedish authorities requested an extension to their existing derogation from Article 17(2), (3) and (4) of Directive 77/388/EEC authorised under Decision 2000/91/EC (as amended by Decision 2003/65/EC). In accordance with Article 27(2) of Directive 77/388/EEC, the Commission, in a letter dated 4 October 2006, informed the other Member States of the request by Sweden. By letter dated 5 October 2006, the Commission notified Sweden that it had all the information it considered necessary for appraisal of the request.

- **General context**

Both Denmark and Sweden have introduced simplified rules on the recovery of VAT in connection with tolls on the Öresund fixed link between Denmark and Sweden. This was deemed necessary as the normal VAT rules would create excessive paperwork for taxpayers and administrations alike.

Under the normal VAT rules as contained in Article 17 of the Sixth Directive, VAT must be deducted in the Member State where it was due or paid. As the Öresund fixed link is based partly in the territory of Denmark and partly in the territory of Sweden the VAT paid on the toll charge for using the link would be recoverable to the extent that the charge relates to the territory of each country. Specifically 50% would be recoverable from Denmark and 50% from Sweden.

In practice this would mean taxable persons established in either Denmark or Sweden would only be able to recover 50% of the VAT on their periodic VAT returns in the Member State of registration. The remaining 50% would be claimed via an Eighth Directive refund from the other Member State. Also, taxable persons in Member States other than Denmark and Sweden would be required to recover VAT via two Eighth Directive refund claims, one submitted to Denmark and the other to Sweden. Likewise

taxable persons established outside the territory of the Community would need to send Thirteenth Directive refund claims both to Denmark and to Sweden.

The existing derogation for Denmark and Sweden simplifies the VAT rules concerning the recovery of VAT. In effect they allow a single claim for recovery of VAT in relation to the toll. The simplified rules are:

- Taxable persons established in Denmark and Sweden are entitled to deduct, on their normal VAT return, the full amount of deductible VAT on the tolls including that part relating to the use of the link in the territory of the Member State in which they are not established.

- To recover VAT deductible via the procedure laid down in the Eighth Directive regarding taxable persons established in a Member State other than Denmark or Sweden or via the procedure laid down in the Thirteenth Directive for taxable persons established outside of the Member States, the application should be made to the Swedish authorities only.

Denmark and Sweden request that these existing simplification rules be extended for a further period. As the current simplification of the VAT rules appears to be working well, the Commission considers that a further extension is appropriate.

- **Existing provisions in the area of the proposal**

An existing derogation granted to Denmark and Sweden on 24 January 2000 and renewed on 21 January 2003.

- **Consistency with other policies and objectives of the Union**

Not applicable.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposed Decision aims at simplifying the procedure for recovery of VAT on tolls for taxable persons using the Öresund fixed link between Denmark and Sweden and therefore potentially has a positive economic impact.

Impact will in any case be limited because of the narrow scope of the derogation.

## 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Authorisation for Denmark and Sweden to apply a measure derogating from Article 17(2), (3) and (4) of the Sixth Council Directive 77/388/EEC as regards the right of deduction for taxable persons.

- **Legal basis**

Article 27(1) 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.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s):

This Decision concerns an authorisation granted to two Member States upon their own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s):

Under Article 27 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual member state.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5) ADDITIONAL INFORMATION**

- **Review/revision/sunset clause**

The proposal includes a sunset clause.

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**(Only the Danish and Swedish versions are authentic)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/CEE 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<sup>1</sup>, and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By letters registered by the Secretariat-General of the Commission on 22 March 2006, Denmark and Sweden requested authorisation to extend the application of the derogation granted to them by Council Decision 2000/91/EC of 24 January 2000 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<sup>2</sup>.
- (2) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 4 October 2006 of the requests made by Denmark and Sweden. By letter dated 5 October 2006, the Commission notified Denmark and Sweden that it had all the information it considered necessary for appraisal of the requests.
- (3) These applications relate to the recovery of value added tax (hereinafter VAT) paid on tolls for the use of the Öresund fixed link between Denmark and Sweden. Under the VAT rules on the place of supply of immovable property, part of the VAT on tolls for the Öresund fixed link is payable to Denmark and part to Sweden.

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<sup>1</sup> OJ L 145, 13.6.1977, p.1. Directive as last amended by Directive 2006/69/EC (OJ L 221, 12.08.2006, p. 9).

<sup>2</sup> OJ L 28, 3.2.2000, p. 38. Decision as last amended by Decision 2003/65/EC (OJ L 25, 30.1.2003, p. 40).

- (4) By way of derogation from the provisions of Article 17 of Directive 77/388/EEC, in the version set out in Article 28f thereof, requiring taxable persons to exercise their right to deduct or obtain a refund of VAT in the Member State where it was paid, Denmark and Sweden were authorised to introduce a special measure enabling taxpayers to recover VAT from a single administration.
- (5) The authorisation granted by Decision 2000/91/EC expires on 31 December 2006. Since it will not be possible to adopt rules under the Commission proposal for a Council Directive<sup>3</sup> amending Directive 77/388/EEC as regards the rules governing the right to deduct VAT on the basis of the first subparagraph of Article 17(6) of Directive 77/388/EEC before that date and considering that the legal situation and the facts which justified this authorisation have not changed, that authorisation should be extended.
- (6) The derogation has no negative effect on the Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 2 of Decision 2000/91/EC is replaced by the following:

*"Article 2*

This Decision shall expire on 31 December 2013."

*Article 2*

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

Done at Brussels,

*For the Council*

*The President*

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<sup>3</sup> OJ C 219, 15.7.1998, p. 16