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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 746 final

Brussels, 12 December 1979



REQUEST

THAT THE COUNCIL RAISE THE MATTER OF A REQUEST BY THE
BELGIAN GOVERNMENT FOR AUTHORIZATION TO INTRODUCE IN
THE SECOND-HAND CAR TRADE A MEASURE FOR DEROGATION FROM
THE PROVISIONS OF THE SIXTH VAT DIRECTIVE IN ACCORDANCE
WITH ARTICLE 27(1) TO (4) THEREOF

(Communication from the Commission to the Council)

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1. Introduction

- 1.1. Under the Sixth Council Directive (77/388/EEC), the Member States are required to apply the common system of value added tax. Article 27(1) of the Directive states that the Council may authorize any Member State to introduce special measures for derogation from the provisions of the Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- 1.2. By letter dated 9 October 1979 and received on 11 October 1979, the Permanent Representation of Belgium informed the Commission of a measure planned to be introduced into Belgian law and described as designed to prevent certain fraudulent practices in the second-hand car trade (the letter together with the description of the measure are given in Annex 1).
- 1.3. On 26 October 1979, the Secretariat-General of the Commission wrote to the other Member States informing them, in accordance with Article 27(3) of the Directive, of the measure proposed by Belgium. Under paragraph 4 of the said Article, the Commission or the Member States may request that the matter be raised by the Council.

2. Description of the measure

- 2.1. The aim of the measure proposed by Belgium is to require that tax due when a second-hand car is purchased should be paid to the Treasury by the buyer, whereas, under the common system of VAT, this obligation is normally incumbent upon the taxable person selling the car, even if he passes the tax on to the buyer.

3. Opinion of the Commission

The Commission considers that a special measure cannot be authorized under Article 27 of the Sixth Directive unless the measure, while derogating from the arrangements for implementing the common system of VAT, is consistent with the basic principles and main provisions of the system. However, the measure proposed by the Belgian Government does not meet this condition, since it conflicts with three of the main provisions of the Sixth Directive :

- a) Article 2(1), which defines the concept of taxable transactions, namely the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such.
However, the measure proposed is intended to tax not the sale within the meaning of this provision, but the purchase of the good supplied;
- b) Article 4(1), which defines a taxable person as being any person who carries out an economic activity.
However, the effect of the measure proposed would be to relieve from the tax (for reasons of tax evasion) the real taxable person who must be the seller;
- c) Article 21(1)(a), which defines persons liable to pay tax as being taxable persons who carry out taxable transactions.
However, the measure proposed would result in the buyer rather than the seller of the good supplied being made liable for payment of the tax.

4. Conclusion

Since the measure in question gives rise to fundamental objections, the Commission requests that the matter be raised by the Council, in accordance with the provisions of Article 27(4) of the abovementioned Directive.

TRANSLATIONKINGDOM OF BELGIUMNotice pursuant to Article 27(2) of the sixth Council Directive
of 17 May 1977 concerning a measure to combat tax evasion

The numerous checks made by the administration on the secondhand car market revealed that tax evasion was being practised on a large scale.

For one thing, dealers of doubtful morality are selling secondhand cars to other dealers but not paying to the Treasury the value added tax that they invoice to their customers, who then deduct the tax.

For another, it has been found that consumers have been able to have cars registered by using false declarations or declarations issued by taxable persons who do not pay to the Treasury the tax that the declaration says they will be paying.

In both situations the chances of recovering the unpaid tax have turned out to be illusory, particularly as many of the dealers are insolvent.

The Belgian Government has accordingly decided that the tax payable upon the purchase of secondhand cars will have to be paid by the buyer.

The obligation of the buyer to pay the tax in place of the taxable person selling the car relates to purchases of secondhand cars, mixed-used vehicles and minibuses. It applies regardless of the status of the person who buys the vehicle from the taxable person.

Where the buyer is himself required to file a monthly or quarterly return and does not apply for registration of the vehicle at the Road Traffic Office, the tax will be payable by the buyer and assessed from his periodic returns.

In other cases value added tax will be paid by means of revenue stamps affixed and cancelled on a declaration that the buyer must submit to an Inspection Office; if the declaration is not submitted, he cannot register the vehicle.

While the taxable person who sells a secondhand vehicle is released from the obligation to pay the tax falling due by reason of the sale, he remains subject to all his other obligations, notably the obligation to issue an invoice.

It goes without saying that a buyer who is a taxable person and pays value added tax either following an assessment on the basis of his return or in the form of revenue stamps may deduct that tax in accordance with the ordinary rules.

As a result of the precautions that will be taken, transferring the obligation to pay value added tax to the buyer will involve no extra difficulties as regards calculation of VAT own resources. The turnover of taxable persons that deal in secondhand vehicles will be known as a result of their periodic returns. The amount of the tax due on sales of secondhand vehicles to taxable persons who do not have the vehicles registered will also appear from their monthly or quarterly returns just like the other taxes that they have to pay to the Treasury. The amount of the tax due for secondhand vehicles for which registration has been applied for will be known exactly as a result of the information obtained by Inspection Offices when they receive the declaration required for registration of the vehicle.