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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 527 final

Brussels, 24 October 1975

Proposal for a

COUNCIL DIRECTIVE

on tax exemptions within the Community for certain means
of transport temporarily imported

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

I. General considerations

The international convention relating to the temporary importation of private road vehicles, signed in New York on 4 June 1954, and the international convention on the taxation of road vehicles for private use in international circulation, signed in Geneva on 18 May 1956, no longer meet in full the needs of the Common Market, and a solution has therefore had to be found, at Community level and in line with Community requirements, for the problems arising when various means of transportation cross internal Community frontiers.

The concept of an internal market necessitates relaxation of the conditions previously agreed for the duty-free movement within a Member State of means of transportation belonging to the residents of another Member State, and the intra-Community use of private cars for business purposes. In fact, it has become clear that improvements were needed in both these fields, one aim being to avoid double taxation and to reduce frontier formalities.

The present proposal for a directive is designed to establish a system of tax exemptions applicable in the Community to the various means of transportation used for private purposes by individuals and to private cars used for business purposes by natural persons. The exemptions will be available under intra-Community arrangements only to Member States' residents.

The proposed system will make it possible to dispense with the levying of taxes, in the country of temporary importation, on certain means of transportation for private use and on private cars used for business purposes in the Community. Excepted from these provisions are those taxes deriving from an immediate use of these vehicles in the country of temporary importation, such as taxes on fuel, repairs, parking charges and highway tolls, etc.

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II. Commentary on the articles

Articles 1 and 2

The purpose of Article 1 is to grant exemption at importation, for the means of transportation quoted, from all the taxes charged in a Member State, whether these taxes arise from the acquisition, the entry into use or the use itself of these means of transportation.

Article 2 contains a number of definitions. Attention is drawn to the definition of business use of a means of transportation. Thus a private car used to travel to work is not used for "business purposes", but a car which is indispensable for the execution of the work itself does come under this definition.

Article 3

Article 3 enables a Community resident to import temporarily duty free into a Member State, other than that of his residence, certain means of transportation from another Member State of the Community provided the vehicle is for private use only and that he does not dispose of or lend the means of transportation in the Member State of temporary importation. In order to take account of a specific problem which arises for car hire, a special arrangement has been included which detracts partly from these principles.

Article 4

Article 4 allows, under certain conditions, the business use of private cars in the Member State of temporary importation. In addition to the provisions laid down for other means of transport, the private car must have been acquired under the general conditions of taxation of the domestic market of the Member State of registration and must not have enjoyed, because of exportation, any consumption tax refund or exemption.

Article 5

Article 5 provides for a duty-free amount of 125 u.a. for portable tools, commercial literature and non-marketable samples which are transported by temporarily imported vehicles. The article does, however, provide for exceptions. The normal formalities apply for items exceeding 125 u.a. in value.

Article 6

Because riding horses can easily become the object of various trading deals, no blanket authorization appears possible for their temporary importation.

However, in order to eliminate obstacles to riding excursions, exemption can be granted, on application, to riders in accordance with the terms provided for in this Article.

Articles 7 and 8

Articles 7 and 8 establish general and supplementary rules for proving residential status. Both definitions refer, of course, to the same concept of residence - that of principal residence. However, the supplementary rules provide a set of criteria and presumptions with more substantial evidential value, which gives the State of temporary importation a better guarantee as to the residential status of the natural persons concerned.

Hence, if the place of principal residence does not appear to have been proved as fully as is desirable on the basis of the general rules, the authorities of the Member State of temporary admission will have power, where a private car is being used for business purposes, to request all appropriate additional information.

In exceptional cases, the authorities of the State of temporary importation can request security. This security must be refunded within two months where the natural person provides a certificate of liability for all earned income with regard to the income tax of another Member State. The Member State of temporary importation must consequently show that, for the current year, the individual whose principal residence is disputed has in fact established this residence in that Member State.

The limitation of Member States' scope in demanding security is justified by the anxiety to harmonize frontier formalities and to avoid extensive resort to the usage of securities which constitutes a by no means negligible obstacle to free movement. Moreover, no possibility of fraud is to be feared since either the importer is not a resident of the

Member State of temporary importation and, therefore, the security will be unnecessary, or the centre of business activity of the importer for the current year is in fact in the State of temporary importation, and this State will therefore be in a position to prosecute effectively the person concerned.

Article 9

This proposal contains a number of measures which are to be regarded as a minimum to be accepted by all the Member States. There is no reason why the Member States should not take other measures implementing further the principle of freedom movement of persons within the Community. However, the criteria for the establishment of residence may in no circumstances be changed lest assurances guaranteed to persons by the system are jeopardized.

Proposal for a Council Directive of
on tax exemptions within the Community for certain
means of transport temporarily imported
..... the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof;

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee,

Whereas the freedom of movement of Community residents within the Community is hampered by the taxation arrangements applied to the temporary importation of certain means of transportation for private or business use,

whereas the elimination of the obstacles resulting from these taxation arrangements must be achieved if an economic market having features similar to those of a domestic market is to be established,

Whereas it must be possible, in certain cases, to establish definitely whether or not a person is in fact resident in a given Member State,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Field of application

Every Member State shall, in accordance with the provisions hereinafter set out, exempt certain means of transport temporarily imported from another Member State from turnover tax, excise duty, other consumption taxes, taxes on the use and/or for entry into use of vehicles and taxes levied on the possession or use of motor-driven road vehicles, including trailers but excluding commercial vehicles, of caravans, of pleasure boats, of private aircraft, of bicycles and of riding horses. The exemption shall not cover temporary residence taxes levied on tourists or charges made for services rendered.

Article 2

Definitions

In this Directive:

- (a) "private car" means any motor-driven vehicle used for the transport of persons which contains not more than eight seats in addition to the driver's seat;
- (b) "commercial vehicle" means any vehicle which, in design and equipment is suitable for and intended for the transport of:
 - (aa) more than nine persons, including the driver;
 - (bb) goods;
- (c) "business use" of a means of transport means the use of that means of transport in the direct exercise of an activity carried on for consideration or with a view of profit;
- (d) "private use", any use other than business use.

Article 3

Temporary importation of certain means of transport for private use

Where an individual imports temporarily a motor-driven road vehicle (including trailers but excluding commercial vehicles), caravan, pleasure boat, private aircraft or bicycle, the item imported shall be exempt, for a period of six months in any twelve months, from the taxes specified in Article 1, provided that:

(a) the individual importing such goods:

(aa) has his principal residence in a Member State of the Community other than that into which the property is temporarily imported;

(bb) employs the means of transport in question for his private use;

(b) the said means of transport is not disposed of or hired out in the Member State of temporary importation or lent to a resident of that State. However, private cars belonging to a car-hire firm having its head office in the Community may be re-hired to a non-resident of the State of temporary importation for the re-exportation of the vehicle, or returned by an employee of the car-hire firm, to the Member State where it was originally hired even if such employee is not resident in the Member State of temporary importation.

Article 4

Temporary importation of private cars for business use

A private car imported temporarily for business use shall be exempt for six months in any twelve months from the taxes specified in Article 1 provided that:

(a) the natural person importing the private car;

(aa) has his principal residence in a Member State of the Community other than that of temporary importation;

(bb) does not use his car in the Member State of temporary importation in order to carry passengers for hire or material reward of any kind, or for the transport of goods, whether for reward or not;

- (b) the private car is not disposed of, hired out or lent in the Member State of temporary importation;
- (c) the private car has been acquired in accordance with the general conditions of taxation in force on the domestic market of the Member State of registration and has not been subject by reason of its exportation to any exemption or refund of turnover tax, excise duty or any other consumption tax.

This condition shall be presumed to be satisfied if the private car bears a registration plate from the normal series of the Member State of registration, all types of temporary plates being excluded.

However, in the case of private cars registered in a Member State where the issue of number plates from the normal series is not conditional upon compliance with the general conditions of taxation in force on the domestic market, users shall be required to prove, by the production of any appropriate evidence, payment of consumption taxes ⁽¹⁾.

Article 5

Importation of tools, commercial literature and trade samples in vehicles imported duty-free

1. Portable tools temporarily imported in temporarily imported vehicles, and commercial literature and non-marketable samples imported in such vehicles, shall be exempt, without special authorization, from the taxes specified in Article 1.

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- (1) It is suggested that the following declaration be included in the minutes of the appropriate Council meeting:

"Member States which issue registration plates from the normal series to motor-driven road vehicles which have not been acquired under the general conditions of taxation of the domestic market undertake to remedy this situation and to resume the normal series of registration plates for vehicles acquired under the conditions of the domestic market. However, these States may issue normal series registration plates for vehicles which have not been acquired under the general taxation conditions of the domestic market, where such plates bear an indelible and irremovable mark easily recognizable by the authorities responsible for the granting of the exemptions referred to in this Directive."

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2. The exemption referred to in paragraph 1 shall be subject to the condition that the overall value of the goods concerned does not exceed 125 units of account. However, those items subject to excise duty which are specified in Article 4 (1) of Council Directive 69/169/EEC of 28 May 1969, as amended by subsequent Directives, shall not qualify for this exemption.
 3. If the value of the goods exceeds 125 units of account or if they are items subject to excise duty their importation shall not affect the entitlement to tax exemption in respect of the vehicle concerned.

Article 6

Exemption for the temporary importation of horses on horse-riding excursions

Riding horses imported temporarily into a Member State shall be exempt for three months from the taxes specified in Article 1 provided that:

- (a) the said horses enter the territory of the Member State of temporary importation for the purpose of and/or in the course of horse-riding excursions by their riders;
- (b) exemption is requested at the time of entry into the territory of the Member State of temporary importation;
- (c) the said horses are neither hired out nor lent to any person other than the rider, nor disposed of to a third party residing in the Member State of temporary importation, nor used for purposes other than that of the excursion.

Article 7

General rules for proving residential status

For the purposes of this Directive, natural persons shall provide evidence of the place of their principal residence by producing their passport, their identity card, or, in the absence thereof, any other identity document recognized as valid by the Member State of importation.

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Supplementary rules concerning proof of residence in the case of business use of a private car

1. Where the competent authorities of the Member State of temporary importation have serious doubts as to the truth of a statement as to principal residence made on the basis of the documents referred to in Article 7, those authorities may request any appropriate additional information or evidence.

2. In exceptional cases, where, even after being provided with the additional information referred to in paragraph 1, the competent authorities of the Member State of importation still have doubts, those authorities shall authorize temporary importation on the condition that the importer produces in respect of a period not exceeding six months appropriate security.

However, where the user of the car produces a certificate that he is liable in respect of the totality of his earned income to the income tax of another Member State, the authorities of the Member State of temporary importation;

(a) not require the security if the certificate is produced at the time of importation;

(b) refund or release the security within two months from the date of subsequent production of the certificate.

3. The competent authorities of the State of temporary importation shall have powers to request additional information from the competent authorities of the Member State which has issued the certificate referred to in paragraph 2, particularly if there is reason to believe that the centre of commercial or professional activity of the importer is in respect of the current year no longer in that Member State.

4. The competent authorities shall on request issue to any natural person a certificate as referred to in paragraph 2, for production by that person to the competent authorities of the Member State of temporary importation.

Article 9

Special arrangements

1. The Member States may introduce more liberal arrangements than those provided for in this Directive.
2. The Member States shall inform the Commission of these arrangements at the same time as they supply the information required under Article 10.

Article 10

Miscellaneous provisions

1. Member States shall bring into force the measures necessary to comply with this Directive within three months of its adoption and shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the text of the main provisions of internal law which they subsequently adopt in the field covered by this Directive.
3. Every two years, the Commission shall, after consulting the Member States, send the Council a report on the operation of the provisions of this Directive in the Member States.

Article 11

This Directive is addressed to the Member States.

Done at Brussels,