SEVENTEENTH COUNCIL DIRECTIVE

of 16 July 1985

on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value added tax on the temporary importation of goods other than means of transport

(85/362/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is important to reduce fiscal barriers to the movement of goods within the Community in order to facilitate the supply of services and thus develop and strengthen the internal market;

Whereas the widest possible exemption from value added tax for goods temporarily imported from one Member State to another will contribute towards the realization of this objective;

Whereas it is advisable to exclude from the scope of such an exemption the products which are intended for final consumption when first used;

Whereas, pursuant to Article 14 (1) (c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (4), Member States shall, without prejudice to other Community provisions and under conditions which they shall lay down for the purpose *inter alia* of preventing any possible evasion, avoidance or abuse, exempt importation of goods declared to be under temporary importation arrangements and which thereby qualify for exemption from customs duties or would so qualify if they were imported from a third country;

Whereas, in accordance with Article 14 (2) of Directive 77/388/EEC, the Commission is required to submit to the Council proposals designed to lay down Community tax rules clarifying the scope of the exemptions referred to in paragraph 1 of the said Article and detailed rules for their implementation;

Whereas, in accordance with Article 16 (1) (D) of the abovementioned Directive, Member States may take special measures designed to relieve from value added tax supplies of goods still subject to temporary importation arrangements;

Whereas, in accordance with Article 16 (3) of Directive 77/388/EEC, the Commission is required to submit to the Council proposals concerning common arrangements for applying value added tax to the transactions referred to in paragraph 1 of the said Article;

Whereas, for imports from third countries it is desirable to achieve the greatest possible degree of uniformity between the system for customs duties and that for value added tax, particularly since many temporary importation exemptions stem from multilateral international conventions which apply to all duties and taxes payable on or in connection with importation;

Whereas it must be possible in certain circumstances for Member States to refuse or withdraw the benefit of temporary importation exemption for value added tax or to require security in order to prevent avoidance or abuse;

Whereas temporary importation exemption from value added tax should apply only in cases where goods are intended to be used for the purposes which qualify them for exemption and then to be re-exported; whereas it is therefore necessary to provide for the surveillance of the arrangements in order to ensure that value added tax becomes chargeable in cases when goods cease to be eligible for exemption;

Whereas, as an exception to the basic rules on temporary importation arrangements, there would be an administrative simplification if certain goods which are imported with a view to sale were to be allowed the benefit of temporary importation exemption from value added tax for a strictly limited period;

Whereas provision should be made for appropriate periods to allow for adjustment to national legislation in certain fields,

(1) OJ No C 244, 13. 9. 1984, p. 4 and OJ No C 68, 15. 2. 1985, p. 6.
(2) OJ No C 12, 14. 1. 1985, p. 111.
(3) OJ No C 25, 28. 1. 1985, p. 8.
(4) OJ No L 145, 13. 6. 1977, p. 1.

HAS ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL

Article 1

1. Member States shall, in accordance with this Directive, exempt from value added tax temporary imports of the goods referred to therein, and shall lay down the conditions for ensuring that such exemptions are correctly and simply applied and for preventing any evasion, avoidance, or abuse.

Member States may also, for any subsequent supply of services using these goods, lay down conditions to ensure correct and straightforward taxation and prevent any evasion, avoidance or abuse.

2. Means of transport, pallets and containers shall be excluded from the scope of this Directive.

3. This Directive defines, for goods other than those referred to in paragraph 2:

(a) the scope of the exemption from value added tax for imported goods declared to be under the customs arrangements for temporary importation referred to in Article 14 (1) (c) of Directive 77/388/EEC and the detailed rules for its implementation referred to in Article 14 (2) thereof;

(b) the common arrangements referred to in Article 16 (3) of Directive 77/388/EEC for relieving from value added tax supplies of goods still subject to temporary importation arrangements.

4. For the purposes of this Directive:

(a) the 'territory of a Member State' means the 'territory of the country' as defined in Article 3 of Directive 77/388/EEC;

(b) 'temporary importation exemption' means the arrangements whereby goods which are intended to remain temporarily in the territory of a Member State and to be re-exported may be imported with exemption from value added tax in accordance with the conditions laid down by this Directive;

(c) 'competent authorities' means the authorities of the Member State to whom application must be made for goods to benefit from temporary importation exemption;

(d) 'person' means a natural or legal person.

Article 2

1. The competent authorities shall, using an authorization procedure, grant the benefit of temporary importation exemption to any person who, on his own responsibility, uses or causes to be used the goods for which exemption is requested.

2. The competent authorities shall take all measures which they consider necessary to ensure that the goods can be identified and that the use to which they are put can be verified.

3. The competent authorities may:

(a) refuse to grant temporary importation exemption if it is considered impossible to identify the goods in question or to verify their use;

(b) refuse to grant the benefit of exemption to persons who do not provide all the guarantees considered necessary, and in particular to persons who have previously made improper use of a temporary importation exemption or who have committed a serious infringement of customs or fiscal legislation.

Article 3

1. At the time when the benefit of temporary importation exemption is granted, the competent authorities may require security to be given to ensure payment of value added tax which may become due when a chargeable event occurs within the meaning of Article 8.

2. For goods imported temporarily from one Member State to another, if security is required, the person to whom the benefit of temporary importation exemption has been granted may choose whether it shall be given by:

(a) making a cash deposit in the currency of the Member State in which security is required;

(b) a guarantor who has his normal residence or an establishment in the Member State in which security is required and who is approved by the competent authorities of that Member State; or

(c) any other guarantee acceptable to the competent authorities of the Member State in which security is required.

3. If a security is required it shall not exceed the amount of value added tax that would have been due on the value of the goods at the time of their importation if they had been declared for home use at that time.

4. No security shall be required:

(a) for goods covered by the procedure provided for in Council Regulation (EEC) No 3/84 of 19 December 1983 introducing arrangements for movement within the Community of goods sent from one Member State for temporary use in one or more other Member States [1];

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[1] OJ No L 2, 4. 1. 1984, p. 1.

(b) for goods imported either from another Member State or a third country in the cases determined in accordance with Articles 3 and 33 of Council Regulation (EEC) No 3599/82 of 21 December 1982 on temporary importation arrangements [1].

Article 4

1. Persons to whom the benefit of temporary importation exemption has been granted shall be required to submit to the surveillance and inspection measures prescribed by the competent authorities.

2. The competent authorities may revoke the benefits of temporary importation exemption if they find that a person benefiting from them has not complied with one or more of the conditions under which they were granted.

Article 5

1. The competent authorities shall fix the period during which the goods may remain in the territory under the temporary importation exemption arrangements by reference to the authorized use. Without prejudice to the limits laid down in Articles 14, 15, 16, 18, 21, 26, 28 and 29, the maximum duration of this period shall be 24 months.

2. However, where exceptional circumstances so justify, the competent authorities may, at the request of the holder of the authorization, extend within reasonable limits and subject to the conditions laid down by this Directive, the periods referred to in paragraph 1, with the exception of that referred to in Article 28, in order to permit the authorized use.

Article 6

The competent authorities shall authorize the transfer of the benefit of temporary importation exemption to any other person, at that person's request, where he satisfies the conditions laid down in this Directive and assumes all obligations incumbent on the holder of the original authorization, particularly those arising from the fixing of the period during which the goods may remain under temporary importation exemption.

Article 7

Member States shall exempt supplies of goods within the meaning of Article 5 of Directive 77/388/EEC from value added tax provided that the purchaser is a person established outside the territory of the Member State of importation and the goods continue to remain eligible for temporary importation exemption.

Article 8

1. The benefit of temporary importation exemption shall terminate without the occurrence of a chargeable event if goods benefiting from the exemption are :

(a) exported outside the territory of the Member State ;

(b) placed with a view to their subsequent exportation :

— under warehouse arrangements,

— in a free zone, or

— under Community transit arrangements, or one of the sets of international transport arrangements referred to in Article 7 (1) of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit [2], provided that Community law allows the use of such arrangements ; or

(c) destroyed under customs control or are proved, to the satisfaction of the competent authorities, to have been totally destroyed or irretrievably lost as the result of the nature of the goods or of unforeseeable circumstances or *force majeure*. For the purposes of this subparagraph, goods shall be irretrievably lost, if, following their disappearance, they are incapable of being used by anyone.

2. A chargeable event shall occur and tax shall become chargeable :

(a) when, in exceptional cases and cases covered by Article 13, the competent authorities authorize goods benefiting from temporary importation exemption to be declared for home use ;

(b) when goods which are recoverable in the form of waste products resulting from duly authorized destruction are declared for home use ; or

(c) when the goods referred to in Article 29 are declared for home use.

3. If one of the conditions under which the benefits of temporary importation exemption were granted ceases to be fulfilled and the exemption is not terminated in accordance with paragraph 1, the goods shall cease to be covered by these arrangements. In such cases a chargeable event shall be considered to have occurred and value added tax shall become chargeable accordingly either at the moment when the condition ceased to be fulfilled or at the time when the goods entered the territory of the Member State if it is established that the condition was never fulfilled.

4. Where goods are released for home use and the importer is a non-taxable person or a taxable person not entitled to deduct the tax in full, Member States

[1] OJ No L 376, 21. 12. 1982, p. 1.

[2] OJ No L 38, 9. 2. 1977, p. 1.

may deem a chargeable event to have occurred at the time when the goods entered the territory of the Member State in order to combat major distortions of competition.

Article 9

1. Without prejudice to Article 28, temporary importation exemption shall not be granted for goods temporarily imported from third countries with partial or total relief from import duties under the provisions of Title III of Regulation (EEC) No 3599/82.

2. For goods which are eligible for partial relief from import duties, the chargeable event for value added tax shall occur at the time when the goods enter the territory of the Member State. In such cases, Member States may provide for value added tax to become chargeable either at the moment when the chargeable event occurs or when the import duties are levied.

If the tax is charged at the moment when the chargeable event occurs, the taxable amount shall be adjusted accordingly when the amount of import duties due under partial relief is levied. Member States may, however, waive the requirement for adjustment when the importer is a taxable person entitled to deduct the full amount of value added tax due in respect of the imported goods.

TITLE II

SCOPE OF THE TEMPORARY IMPORTATION EXEMPTION FOR GOODS IMPORTED INTO ONE MEMBER STATE FROM ANOTHER

Article 10

Temporary importation exemption shall be granted for goods temporarily imported into one Member State from another provided that such goods :

(a) are intended to be re-exported without alteration ;

(b) satisfy the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community, or in the case of goods falling under the Treaty establishing the European Coal and Steel Community, are in free circulation ;

(c) have been acquired subject to the rules governing the application of value added tax in the Member State of exportation, and have not benefited, by virtue of their exportation, from any exemption from value added tax ;

(d) belong to a person established outside the territory of the Member State of importation ; and

(e) are not consumable goods.

Article 11

Any goods imported into one Member State from another which do not qualify for exemption under Article 10 shall qualify for temporary importation exemption if, had they been imported from a third country, they would qualify for such exemption under Title III.

However, temporary importation exemption is not granted in instances where :

(a) the goods meet the condition laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community ;

(b) the goods were not acquired pursuant to the rules governing the application of value added tax in the Member State of exportation or, by virtue of being exported, benefited from exemption from value added tax ; and

(c) the importer is a non-taxable person or is a taxable person not entitled to deduction in full.

TITLE III

SCOPE OF THE TEMPORARY IMPORTATION EXEMPTION FOR GOODS IMPORTED FROM A THIRD COUNTRY

Chapter 1

Professional equipment

Article 12

1. Temporary importation exemption shall be granted for professional equipment.

2. 'Professional equipment' means the equipment and accessories needed for the exercise of his trade or profession by a person established outside the territory of a Member State who is in that Member State to perform a particular job of work, inasmuch as such equipment falls within the scope of Article 7 of Regulation (EEC) No 3599/82.

3. The exemption referred to in paragraph 1 shall be granted, provided that the professional equipment is :

(a) owned by a person established outside the territory of the Member State ;

(b) imported by a person established outside the said territory ; and

(c) to be used exclusively by the person entering the said territory, or under his supervision.