Council Directive of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (83/182/EEC)

COUNCIL DIRECTIVE

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(83/182/EEC)

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[(1)],

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

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

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 transport for private or business use;

Whereas the elimination of the obstacles resulting from these taxation arrangements is particularly necessary 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;

Whereas it appears desirable in a first stage to limit the scope of this Directive concerning certain means of transport to those acquired or imported in accordance with the general conditions of taxation in force on the domestic market of a Member State.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1 Member States shall, under the conditions laid down below, exempt temporary imports from another Member State of motor-driven road vehicles (including their trailers), caravans, pleasure boats, private aircraft, bicycles, tricycles and saddle-horses from:

— turnover tax, excise duties and any other consumption tax,

— the taxes listed in the Annex hereto.

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2 The exemption referred to in paragraph 1 shall also apply to the normal spare parts, accessories and equipment imported with these means of transport.

3 Commercial vehicles shall be excluded from the exemption referred to in paragraph 1.

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a

The scope of this Directive shall not extend to the temporary importation of private vehicles, caravans, pleasure boats, private aircraft, bicycles and tricycles for private use which have not been acquired or imported in accordance with the general conditions of taxation in force on the domestic market of a Member State and/or which are subject by reason of their exportation to any exemption from or refund of turnover tax, excise duty or any other consumption tax.

For the purposes of this Directive, means of transport acquired under the conditions referred to in Article 15 (10) of Directive 77/388/EEC[(4)] shall be deemed to have satisfied the general conditions of taxation in force on the domestic market of a Member State; however, Member States may deem means of transport acquired under the conditions referred to in the third indent of the said point 10 not to have satisfied these conditions.

b The Council, acting unanimously on a proposal from the Commission, shall, before 31 December 1985, adopt Community rules on the grant of exemption to the means of transport referred to in the first paragraph of (a) above, taking into account the need to avoid cases of double taxation and the need to ensure normal, full taxation of means of transport for private use.

Article 2

Definitions

For the purpose of this Directive:

(a) ‘commercial vehicle’ means any road vehicle which, by its design or equipment, is suitable for and intended for transporting, whether for payment or not:

— more than nine persons, including the driver,

— goods,

as well as any road vehicle for special use other than transport as such;

(b) ‘private vehicle’ means any road vehicle, including its trailer, if any, other than those referred to in subparagraph (a);

(c) ‘business use’ of a means of transport means the use thereof in the direct exercise of an activity carried out for consideration or financial gain;

(d) ‘private use’ means any use other than business use.

Article 3

Temporary importation of certain means of transport for private use

Where a private vehicle, caravan, pleasure boat, private aircraft, tricycle or bicycle is imported temporarily, the item imported shall be exempt from the taxes specified in

Article 1 for a period, continuous or otherwise, of not more than six months in any 12 months, provided that:

(a) the individual importing such goods:

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

(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 vehicles belonging to a car-hire firm having its head office in the Community may be re-hired to non-residents with a view to being re-exported, if they are in the country as a result of a hire contract which ended in that country. They may also be returned by an employee of the car-hire firm to the Member State where they were originally hired, even if such employee is resident in the Member State of temporary importation.

Article 4

Temporary importation of private vehicles for business use

1 A private vehicle imported temporarily for business use shall be exempt from the taxes specified in Article 1, provided that:

a the individual importing the private vehicle:

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

(bb) does not use the vehicle within the Member State of temporary importation in order to carry passengers for hire or material reward of any kind, or for the industrial and/or commercial transport of goods, whether for reward or not;

b the private vehicle is not disposed of, hired out or lent in the Member State of temporary importation;

c the private vehicle has been acquired or imported in accordance with the general conditions of taxation in force on the domestic market of the Member State of normal residence of the user and is not subject by reason of its exportation to any exemption from or refund of turnover tax, excise duty or any other consumption tax.

This condition shall be presumed to be satisfied if the private vehicle bears a standard registration plate of the Member State of registration, all types of temporary plate being excluded.

However, in the case of private vehicles registered in a Member State where the issue of standard registration plates is not conditional upon compliance with the general conditions of taxation in force on the domestic market, users shall be required to produce any appropriate evidence as proof of payment of consumption taxes.

2 The exemption provided for in paragraph 1 shall apply for a period, whether continuous or not, of:

— seven months in any 12, in the case of private vehicles imported by one of the commercial intermediaries referred to in Article 3 of Directive 64/224/EEC[(5)],

— six months in any 12 in all other cases.

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Article 5

Specific cases of temporary importation of private vehicles

1 Private vehicles imported temporarily shall be exempt from the taxes referred to in Article 1 in the following cases:

a where a private vehicle registered in the country of normal residence of the user is used regularly for the journey from his residence to his place of work in an undertaking in the territory of another Member State, and vice versa. Exemptions under this head shall not be subject to any time limit;

b where a student uses a private vehicle registered in the Member State of his normal residence in the territory of another Member State in which the student is residing for the sole purpose of pursuing his studies.

2 Grant of the exemptions provided for in paragraph 1 shall be subject to the sole condition that the provisions of Article 4 (1) (a), (b) and (c) are satisfied.

Article 6

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

Saddle-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 purposes of and/or in the course of horse-riding excursions by their riders. Member States may exclude from this exemption the importation by their residents of horses carried on board means of transport;

(b) exemption is requested not later than the time of entry into the territory of the Member State of temporary importation. Where exemption is requested before temporary importation, the rider may be exempted from the requirement to enter the territory of the Member State of temporary importation via a frontier post;

(c) the said horses are not hired out, lent, or disposed of to a third party in the Member State of temporary importation, or used for purposes other than that of the excursion.

Article 7

General rules for determining residence

1 For the purposes of this Directive, ‘normal residence’ means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task