DIRECTIVES

COUNCIL DIRECTIVE 2007/74/EC

of 20 December 2007

on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 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 European Economic and Social Committee,

Whereas:

(1) Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel [1] established a Community system of tax exemptions. While it remains necessary to maintain that system in order to prevent double taxation, as well as in cases where, in view of the conditions under which goods are imported, the usual need to protect the economy is absent, it should still apply only to non-commercial imports of goods in the personal luggage of travellers from third countries.

(2) However, given the number of amendments required, as well as the need to adapt Directive 69/169/EEC to enlargement and to the new external borders of the Community, and to restructure and simplify certain provisions for the sake of clarity, the complete revision and repeal and replacement of Directive 69/169/EEC is justified.

(3) The quantitative limits and monetary thresholds to which the exemptions are subject should meet the current needs of Member States.

(4) The monetary threshold should take account of changes in the real value of money since the last increase in 1994 and should also reflect the abolition of quantitative limits on goods subject to excise duties in some Member States which will now fall into the general threshold on VAT.

(5) The ease of shopping abroad could cause problems to Member States which share land-borders with third countries with significantly lower prices. It is justifiable, therefore, to set a lower monetary threshold for forms of travel other than air and sea travel.

(6) In the experience of the Commission, the quantities for tobacco products and alcoholic beverages have, in general, been shown to be appropriate and should therefore be maintained.

(7) The quantitative limits for the exemption of excise goods should reflect the current scheme of taxation of such goods in the Member States. Accordingly, it is appropriate to provide for a limit for beer whereas the limits for perfume, coffee and tea should be discontinued.

(8) It is appropriate to allow Member States to set lower limits with regard to the monetary threshold for children and to exclude under-aged persons from the exemptions for tobacco products and alcoholic beverages, in order to ensure a high level of health protection.

(9) Given the need to promote a high level of human health protection for Community citizens, it is appropriate to allow Member States to apply reduced quantitative limits for the exemption of tobacco products.

[1] OJ L 133, 4.6.1969, p. 6. Directive as last amended by Directive 2005/93/EC (OJ L 346, 29.12.2005, p. 16).

(10) In order to take account of the special situation of certain people with regard to their location or working environment, it should also be possible for Member States to apply narrower exemptions in the case of frontier workers, persons residing near Community frontiers and the crew of the means of transport used in international travel.

(11) It is to be recalled that Austria shares a land border with Samnauntal, a Swiss enclave where a specific tax system is applied which results in significantly lower taxation than that applicable under the rules applying in the rest of Switzerland and, indeed, in the Kanton of Graubünden of which Samnauntal forms part. In view of that special situation, which has led Austria to apply lower quantitative limits for tobacco products with respect to that enclave in accordance with Article 5(8) of Directive 69/169/EEC, it is appropriate to allow that Member State to apply the lower limit provided for tobacco products by this Directive only to Samnauntal.

(12) For Member States which have not introduced the euro, a mechanism should be set up to enable amounts expressed in national currencies to be converted into euro and thus ensure equal treatment in the Member States.

(13) The amount on which Member States are free not to levy taxes on the import of goods should be increased in order to reflect current monetary values,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT-MATTER AND DEFINITIONS

Article 1

This Directive lays down rules relating to the exemption from value added tax (VAT) and excise duty of goods imported in the personal luggage of persons travelling from a third country or from a territory where the Community provisions on VAT or excise duty, or both, as defined in Article 3, do not apply.

Article 2

Where a journey involves transit through the territory of a third country, or begins in a territory as referred to in Article 1, this Directive shall apply if the traveller is unable to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refunding of VAT or excise duty.

Overflying without landing shall not be regarded as transit.

Article 3

For the purposes of this Directive, the following definitions shall apply:

1. 'third country' means any country which is not a Member State of the European Union;

   In view of the Fiscal Agreement between France and the Principality of Monaco dated 18 May 1963 and the Agreement of friendship and neighbourly relations between Italy and the Republic of San Marino dated 31 March 1939, Monaco shall not be regarded as a third country and San Marino shall not be regarded as a third country in respect of excise duty;

2. 'territory where the Community provisions on VAT or excise duty, or both do not apply' means any territory, other than a territory of a third country, where Directives 2006/112/EC [1] or 92/12/EEC, or both do not apply;

   In view of the Agreement between the Governments of the United Kingdom and the Isle of Man on Customs and Excise and associated matters dated 15 October 1979, the Isle of Man shall not be regarded as a territory where the Community provisions on VAT or excise duty, or both do not apply;

3. 'air travellers' and 'sea travellers' means any passengers travelling by air or sea other than private pleasure-flying or private pleasure-sea-navigation;

4. 'private pleasure-flying' and 'private pleasure-sea-navigation' means the use of an aircraft or a sea-going vessel by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for purposes other than commercial and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities;

5. 'frontier zone' means a zone which, as the crow flies, does not extend more than 15 kilometres from the frontier of a Member State and which includes the local administrative districts part of the territory of which lies within the zone; Member States may grant exemptions therefrom;

6. 'frontier-zone worker' means any person whose normal activities require that he should go to the other side of the frontier on his work days.

[1] OJ L 347, 11.12.2006, p. 1. Directive as amended by Directive 2006/138/EC (OJ L 384, 29.12. 2006, p. 92).

CHAPTER II

EXEMPTIONS

SECTION 1

Common provisions

Article 4

Member States shall, on the basis of either monetary thresholds or quantitative limits, exempt from VAT and excise duty goods imported in the personal luggage of travellers, provided that the imports are of a non-commercial character.

Article 5

For the purposes of the application of the exemptions, personal luggage shall be regarded as the whole of the luggage which a traveller is able to present to the customs authorities upon arrival, as well as luggage which he presents later to the same authorities, subject to proof that such luggage was registered as accompanied luggage, at the time of his departure, with the company which has been responsible for conveying him. Fuel other than that referred to in Article 11 shall not be regarded as personal luggage.

Article 6

For the purposes of the application of the exemptions, imports shall be regarded as being of a non-commercial character if they meet the following conditions:

(a) they take place occasionally;

(b) they consist exclusively of goods for the personal or family use of the travellers, or of goods intended as presents.

The nature or quantity of the goods must not be such as to indicate that they are being imported for commercial reasons.

SECTION 2

Monetary thresholds

Article 7

1. Member States shall exempt from VAT and excise duty imports of goods, other than those referred to in Section 3, the total value of which does not exceed EUR 300 per person.

In the case of air and sea travellers, the monetary threshold specified in the first subparagraph shall be EUR 430.

2. Member States may lower the monetary threshold for travellers under 15 years old, whatever their means of transport. However, the monetary threshold may not be lower than EUR 150.

3. For the purposes of applying the monetary thresholds, the value of an individual item may not be split up.

4. The value of the personal luggage of a traveller, which is imported temporarily or is re-imported following its temporary export, and the value of medicinal products required to meet the personal needs of a traveller shall not be taken into consideration for the purposes of applying the exemptions referred to in paragraphs 1 and 2.

SECTION 3

Quantitative limits

Article 8

1. Member States shall exempt from VAT and excise duty imports of the following types of tobacco product, subject either to the following higher or lower quantitative limits:

(a) 200 cigarettes or 40 cigarettes;

(b) 100 cigarillos or 20 cigarillos;

(c) 50 cigars or 10 cigars;

(d) 250 g smoking tobacco or 50 g smoking tobacco.

Each amount specified in points (a) to (d) shall represent, for the purposes of paragraph 4, 100 % of the total allowance for tobacco products.

Cigarillos are cigars of a maximum weight of 3 grams each.

2. Member States may choose to distinguish between air travellers and other travellers by applying the lower quantitative limits specified in paragraph 1 only to travellers other than air travellers.

3. By derogation from paragraphs 1 and 2, Austria may, as long as the tax system in the Swiss enclave of Samnauntal differs from that applicable in the rest of the Kanton of Graubünden, limit the application of the lower quantitative limit to tobacco products brought into the territory of that Member State by travellers who enter its territory directly from the Swiss enclave of Samnauntal.

4. In the case of any one traveller, the exemption may be applied to any combination of tobacco products, provided that the aggregate of the percentages used up from the individual allowances does not exceed 100 %.

Article 9

1. Member States shall exempt from VAT and excise duty alcohol and alcoholic beverages other than still wine and beer, subject to the following quantitative limits:

(a) a total of 1 litre of alcohol and alcoholic beverages of an alcoholic strength exceeding 22 % vol, or undenatured ethyl alcohol of 80 % vol and over;

(b) a total of 2 litres of alcohol and alcoholic beverages of an alcoholic strength not exceeding 22 % vol.

Each of the amounts specified in points (a) and (b) represent, for the purposes of paragraph 2, 100 % of the total allowance for alcohol and alcoholic beverages.

2. In the case of any one traveller, the exemption may be applied to any combination of the types of alcohol and alcoholic beverage referred to in paragraph 1, provided that the aggregate of the percentages used up from the individual allowances does not exceed 100 %.

3. Member States shall exempt from VAT and excise duty a total of 4 litres of still wine and 16 litres of beer.

Article 10

Exemptions under Articles 8 or 9 shall not apply in the case of travellers under 17 years of age.

Article 11

Member States shall exempt from VAT and excise duty, in the case of any one means of motor transport, the fuel contained in the standard tank and a quantity of fuel not exceeding 10 litres contained in a portable container.

Article 12

The value of goods referred to in Articles 8, 9 or 11 shall not be taken into consideration for the purposes of applying the exemption provided for in Article 7(1).

CHAPTER III

SPECIAL CASES

Article 13

1. Member States may lower the monetary thresholds or the quantitative limits, or both, in the case of travellers in the following categories:

(a) persons resident in a frontier zone;

(b) frontier-zone workers;

(c) the crew of a means of transport used to travel from a third country or from a territory where the Community provisions on VAT or excise duty, or both do not apply.

2. Paragraph 1 shall not apply where a traveller in one of the categories listed therein produces evidence to show that he is going beyond the frontier zone of the Member State or that he is not returning from the frontier zone of the neighbouring third country.

However, it shall apply where frontier-zone workers or the crew of the means of transport used in international travel import goods when travelling in the course of their work.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

Article 14

Member States may choose not to levy VAT or excise duty on the import of goods by a traveller when the amount of the tax which should be levied is equal to, or less than, EUR 10.

Article 15

1. The euro equivalent in national currency which shall apply for the implementation of this Directive shall be fixed once a year. The rates applicable shall be those obtaining on the first working day of October. They shall be published in the *Official Journal of the European Union* and shall apply from 1 January of the following year.

2. Member States may round off the amounts in national currency resulting from the conversion of the amounts in euro provided for in Article 7, provided such rounding-off does not exceed EUR 5.

3. Member States may maintain the monetary thresholds in force at the time of the annual adjustment provided for in paragraph 1 if, prior to the rounding-off provided for in paragraph 2, conversion of the corresponding amounts expressed in euro would result in a change of less than 5 % in the exemption expressed in national currency or in a lowering of this exemption.

Article 16

Every four years and for the first time in 2012 the Commission shall forward a report on the implementation of this Directive to the Council, where appropriate accompanied by a proposal for amendment.

Article 17

In Article 5(9) of Directive 69/169/EEC the date of 31 December 2007 shall be replaced by 30 November 2008.

Article 18

Directive 69/169/EEC shall be repealed and replaced by this Directive with effect from 1 December 2008.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in the Annex.

Article 19

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 15 of this Directive with effect from 1 December 2008. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 20

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply with effect from 1 December 2008.

However, Article 17 shall apply with effect from 1 January 2008.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, 20 December 2007.

For the Council
The President
F. NUNES CORREIA

ANNEX

CORRELATION TABLE

Directive 69/169/EEC	This Directive
Article 1(1)	Article 7(1)
Article 1(2)	Article 7(2)
Article 1(3)	Article 7(3)
Article 2	—
Article 3, point one	Article 7(4)
Article 3, point two	Article 6
Article 3, point three, first subparagraph	Article 5
Article 3, point three, second subparagraph	Article 5 and 11
Article 4(1), introductory phrase	Article 8(1) introductory phrase, Article 9(1) introductory phrase
Article 4(1), second column	—
Article 4(1)(a), first column	Article 8(1)
Article 4(1)(b), first column	Article 9(1)
Article 4(1)(c), (d) and (e), first column	—
Article 4(2) first subparagraph	Article 10
Article 4(2) second subparagraph	—
Article 4(3)	Article 12
Article 4(4)	Article 2
Article 4(5)	—
Article 5(1)	—
Article 5(2)	Article 13(1)
Article 5(3)	—
Article 5(4)	Article 13(2)
Article 5(5)	—
Article 5(6), introductory phrase, first indent	Article 3(5)
Article 5(6), introductory phrase, second indent	Article 3(6)
Article 5(7)	—
Article 5(8)	—
Article 5(9)	—
Article 7(1)	—

Directive 69/169/EEC	This Directive
Article 7(2)	Article 15(1)
Article 7(3)	Article 15(2)
Article 7(4)	Article 15(3)
Article 7(5)	—
Article 7a(1)	—
Article 7a(2)	Article 14
Article 7b	—
Article 7c	—
Article 7d	—
Article 8(1)	Article 19(1), first subparagraph
Article 8(2), first subparagraph	Article 19(1), first subparagraph
Article 8(2), second subparagraph	—
Article 9	Article 21