



EU pilot 6035/14/TAXU

You replied on 20 June 2013 to a request for information concerning the application in Sweden of the scope of excise duty exemption for the purpose of air navigation and navigation within EU waters (Article 14(1)(b) and Article 14(1)(c) of Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity).

In your letter you explain that in Swedish legislation, the excise duty reduction for the consumption of fuel used for air and maritime navigation services supplied for consideration is provided for in Chapter 6a, Section 1(3)–(5) and Chapter 9 Section 3 of the Energy Tax Act (*lagen om skatt på energi*) (1994:1776). The reduction for the consumption of fuel in ships and aircraft has been limited in Swedish legislation by defining the exemption in negative terms, i.e. using a technique corresponding to that in Article 14(1)(b) and Article 14(1)(c) of Directive 2003/96/EC. Use is restricted to air navigation other than private leisure air travel and to sea navigation other than in private leisure craft, thus excluding non-commercial purposes – known as private purposes – from the possibility of reduction.

A tax reduction pursuant to Chapter 6a Section 1 may be obtained by a tax subject through a request for a deduction which reduces the tax to be paid. A tax reduction pursuant to Chapter 9 Section 3, in the form of repayment of already paid tax, may be obtained following an application. An extract is attached containing the aforementioned provisions.

It would appear from the information available on the webpage of Skatteverket that, as regards sea navigation, the only examples of private use that are mentioned are commuting to work, private holidays and other spare time use. As regards air navigation the definition of commercial use explicitly includes transports by a company in its own business.

The Commission services would like to recall the rulings of the Court in Case C-79/10 *Helmholz GmbH*,¹ where the Court provided that Article 14(1)(b) of Directive 2003/96/EC has to be interpreted as meaning that the tax exemption on air fuel can only apply in the case of a company which uses the fuel for the supply, by that company, of air services for consideration, and in Case C-250/10 *Haltergemeinschaft LBL* ², where the Court laid down that in the case of chartering of a plane, the exemption only applies, if the charterer himself directly supplies services for consideration. Renting out, leasing out or similar activities do not fall within the scope of the exemption.

In these rulings the Court observed that a diverging interpretation at national level of the exemptions provided for by Directive 2003/96 would not only undermine the objective of

¹ Judgement of 1 December 2011.

² Judgement of 21 December 2011.

harmonisation of the EU legislation and legal certainty, but could also introduce unequal treatment between the economic operators concerned. Consequently, the Court found that the provisions concerning exemptions must receive an autonomous interpretation, based on their wording and on the objectives pursued by that directive.

By analogy, the reasoning in the rulings should also apply to navigation within EU waters. This follows from the fact that in both judgements mentioned above the Court made numerous references to other judgements concerning the navigation within the EU waters to interpret the said provision³. Further the structure and the wording of Article 14(1)(b) and Article 14(1)(c) are in principle identical. Finally the Court has held in constant case law that the Directive does not seek to establish general exemptions and therefore the provisions have to be interpreted restrictively.⁴

Consequently, the Commission's services are of the opinion that Article 14(1)(c) of Directive 2003/96/EC has to be interpreted as meaning that the tax exemption on fuel can only apply in the case of a company which uses the fuel for the supply, by that company, of sea navigation services for consideration. In case a company rents out (leases out) a boat, the exemption only applies, if the tenant (lessee, charterer) himself directly supplies services for consideration. Renting out, leasing out or similar activities do not fall within the scope of the exemption.

Against this background, the Commission services would like the Swedish authorities to clarify within ten weeks how they ensure that the Swedish provisions are construed in compliance with EU law as expressed in the court cases mentioned above, including any possible measures to be adopted and the relevant timetable for the adoption of these measures.

In the light of such observations, the services will decide about further action to be undertaken with regard to the above mentioned issue, including the possibility of opening an infringement procedure.

³ C-389/02 *Deutsche See-Bestattungs-Genossenschaft*, C-391/05 *Jan De Nul* and C-505/10 *Sea Fighter*; see C-79/10 *Helmholz GmbH*, paragraphs 19, 21, 23, 30 and 31 and C-250/10 *Haltergemeinschaft LBL*, paragraphs 18 and 21.

⁴ Cf. C-250/10 *Haltergemeinschaft LBL*, paragraph 23 with further references.