EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
The Director

Brussels, - 5 FEV. 2008
TAXUD/ 3 D(2008) 27187
PC/og – QJ/TVA/08/Denmark/follow up

Peter Loft
Ministry of Taxation
Nicolai Eigtveds Gade 28
DK-1402 COPENHAGEN K

Subject: **Exempt supply of aircraft**

Dear Mr Loft,

During a meeting held on 31 January 2008 between my services and representatives of the Ministry of Taxation, the current practice applied by Denmark to exempt the supply and hiring of aircraft regardless of the status of the customer, was discussed. This had to be seen in the context of the draft legislation under scrutiny by Parliament which has queried the need for the changes proposed to the current legislation.

It is worth noting that, pursuant to Article 148(f) of the VAT Directive, only the supply and hiring of aircraft used by airlines operating for reward chiefly on international routes is exempt from VAT. To exempt the supply and hiring of aircraft irrespective of the status of the customer therefore clearly goes beyond what is permitted under Community law.

As to whether there would nevertheless be a legal basis allowing Denmark to continue its current practice, fully or in part only, based on a stand-still derogation obtained under the then Article 27(5) of the Sixth VAT Directive, I can only confirm that the Commission firmly believes that in this case no such derogation may be evoked.

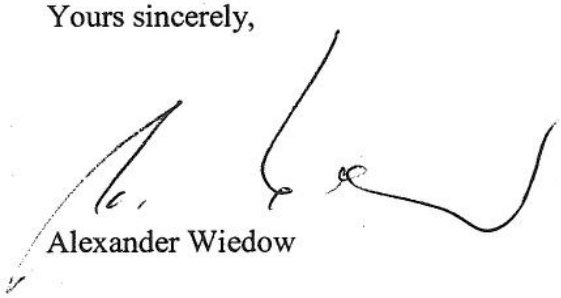
Since this issue has never been notified by Denmark[1], the formal condition for applying a derogation has not been met. When aircraft are included in the list of derogations featuring on the website of DG TAXUD, this only reflects the situation as recorded by the Commission in its report from 1983[2]. Albeit included, it is however clearly pointed

Even if notified, a provision by which the supply of aircraft is exempted without any restriction, would not have qualified as a measure to simplify the procedure for collecting VAT under Article 394 of the VAT Directive. To exempt the supply of any aircraft when only those used by airlines operating chiefly on international routes are supposed to benefit from exemption, clearly goes beyond what may be regarded as simplification. Since such an exemption also affects the overall amount of the tax revenue of the Member State collected at the stage of final consumption, there is no question this could ever have been authorised as a derogation retained by a Member State pursuant to Article 394.

Nor would it in my view be possible for Denmark pursuant to Article 395 of the VAT Directive to be authorised to apply a measure by which the supply of aircraft would be exempt. If taxable persons without a right of deduction and private individuals were to benefit from the exemption, the impact on tax revenues would in itself prevent the introduction of such a measure under that procedure. Even if limited to taxable persons with a right of deduction, an exemption would still be difficult to classify as a measure to simplify the procedure for collecting VAT. Having shown itself capable to distinguish between aircraft according to their use (as shown in the Cimber Air judgment), it would certainly be difficult for Denmark to make the case for a derogation.

I hope with this to have clarified matters.

Yours sincerely,



Alexander Wiedow

c.c.: Ms Wieme, Mr Diemer, Ms Michelsen, Mr Victoria Sánchez, Ms Carlin