

**Proposal for a Council Directive amending Directive 77/388/EEC as regards the special scheme for travel agents**

(2002/C 126 E/16)

COM(2002) 64 final — 2002/0041(CNS)

(Submitted by the Commission on 8 February 2002)

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 Economic and Social Committee,

Whereas:

- (1) According to the Commission's Communication to the Council and the European Parliament 'A Strategy to improve the functioning of the Internal Market' <sup>(1)</sup>, a more uniform application of the community provisions by Member States is one of the four objectives for improving the functioning of the Internal Market in the short term.
- (2) Member States currently apply different interpretations of the special scheme for travel agents, as set out in Article 26 of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment <sup>(2)</sup>, as last amended by Directive 2001/41/EC <sup>(3)</sup>, resulting in different application of that scheme in the different Member States and leading to distortion of competition for certain operators.
- (3) Extending its scope to include all supplies of travel packages under the conditions of Article 26 of Directive 77/388/EEC would eliminate the different interpretations given by Member States to the supplies covered by this special scheme and ensure that the original objective of taxation in the Member State of consumption is better met.
- (4) A similar scheme whereby the profit margin is taxed is set out in Article 26a of Directive 77/388/EEC for second-hand goods, works of art, collectors' items and antiques. That Article contains detailed definitions, which could be used to clarify the definitions in Article 26 and simplify the application of the special scheme for travel agents.

(5) Due to the special nature of the services supplied by travel agents, which purchase different services from third parties, combine them into a travel package and then sell these packages, it is often very difficult for travel agents to determine their profit margin for each separate supply. A system allowing them to calculate a global profit margin over a certain period of time would simplify the system and could solve many of their problems in this field.

(6) For similar reasons travel agents should be allowed to opt for the normal VAT arrangements in order to ensure the principle of neutrality of the VAT.

(7) Existing derogations under Article 28(3) and Annexes E and F should be abolished in order to ensure a more uniform application of the special scheme for travel agents. Similarly Article 28(3)(g) and Article 15(14) should be deleted as they also allow Member States to apply divergent rules for taxing the services of travel agents.

(8) Council Decision upon request of the Kingdom of Belgium of 13 September 1978, granting to the Kingdom of Belgium a derogation under Article 27(1) should be repealed in order to ensure a more harmonised application of the special scheme of travel agents.

(9) Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 77/388/EEC is amended as follows:

1. Article 26 is replaced by the following:

'Article 26

**Special scheme for travel agents**

1. Member States shall apply a special value added tax scheme to the operations of travel agents in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies of goods and services of other taxable persons in the provision of travel facilities.

<sup>(1)</sup> Communication from the Commission to the Council and the European Parliament — A Strategy to improve the operation of the VAT system within the context of the Internal Market (COM(2000) 348 final of 7.6.2000).

<sup>(2)</sup> OJ L 145, 13.6.1977, p. 1.

<sup>(3)</sup> OJ L 22, 24.1.2001, p. 17 and corrigendum OJ L 26, 27.1.2001, p. 40.

That scheme shall not apply to travel agents, who are acting only as intermediaries and accounting for tax in accordance with Article 11(A)(3)(c).

For the purposes of this Article, tour operators and any other taxable person who supplies travel services in the same way shall be considered as travel agents.

2. All transactions performed by the travel agent in respect of a journey under the conditions set out in paragraph 1 shall be treated as a single service supplied by the travel agent. That single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has provided the services.

When the travel agent is not established in the Community or has a fixed establishment outside the Community from where the service is supplied and he supplies a travel service the effective use and enjoyment of which takes place within the Community, the single service shall be taxable at the place where the customer has established his business or has a fixed establishment to which the service is supplied or in the absence of such a place, the place where he has his permanent address or usually resides.

3. The taxable amount of the single service supplied by the travel agent shall be the profit margin made by the travel agent, less the amount of value added tax included in the profit margin. That profit margin shall be equal to the difference between the selling price charged by the travel agent for a travel package and the actual cost to the travel agent of this travel package. For the purposes of this paragraph, the following definitions shall apply:

- (a) selling price means everything which constitutes the consideration, which has been, or is to be, obtained by the travel agent from his customer or a third party, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission and insurance costs charged by the travel agent to the customer but excluding the amounts referred to in Article 11(A)(3),
- (b) actual cost of the travel package means everything which constitutes the consideration, defined in the first indent, including VAT, obtained or to be obtained from the travel agent by his taxable suppliers, for the supplies and services provided to him, where these transactions are for the direct benefit of the customer excluding overhead costs used to compose the travel package.

4. In order to simplify the procedure for charging the tax and subject to the consultation of the VAT Committee, Member States may provide that the taxable amount of supplies of all travel services subject to the special arrangements for taxing the margin shall be determined globally for each tax period during which the travel agent

must submit the return referred to in Article 22(4), as replaced by Article 28 (h).

In that event, the taxable amount for the supplies of travel services shall be the total margin made by the travel agent less the amount of value added tax included in that margin.

The total margin shall be equal to the difference between:

- (a) the total amount of supplies of travel services subject to the special arrangements for taxing the margin effected by the travel agent during the period; that amount shall be equal to the total selling prices determined in accordance with paragraph 3, and
- (b) the total amount of purchases of goods and services as referred to in paragraph 1, effected during that period, by the travel agent; that amount shall be equal to the total actual costs determined in accordance with paragraph 3.

5. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as an exempted intermediary activity under Article 15(14).

Where those transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

6. Tax charged to the travel agent by another taxable person on the transactions described in paragraph 2, which are for the direct benefit of the travel agent's customer, shall not be eligible for deduction or refund in any Member State.

7. The travel agent may apply the normal value added tax arrangements to any supply covered by the special arrangements for taxing the margin.

8. Where the travel agent applies the normal value added tax arrangements to the supply of a travel service, he shall be entitled to deduct from his tax liability the value added tax due or paid for the services supplied to him by his suppliers, where these transactions are for the direct benefit of his customer.

The right to deduct shall arise at the time when the tax due for the supply in respect of which the travel agent opts for application of the normal value added tax arrangements become chargeable.

9. Where the travel agent is led to apply both the normal arrangements for value added tax and the special arrangements for taxing the margin, the travel agent must follow separately in his accounts the transactions falling under each of these arrangements, according to rules laid down by the Member States.'

2. In Article 15(14) the second subparagraph is deleted;
3. In Article 28(3) point (g) is deleted;
4. In Annex E point 15 is deleted;
5. In Annex F point 27 is deleted.

*Article 2*

Council decision upon request of the Kingdom of Belgium of 13 September 1978, granting to the Kingdom of Belgium a derogation under Article 27(1) of Directive 77/388/EEC is repealed.

*Article 3*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this

Directive by 1 January 2003 at the latest. They shall forthwith inform the Commission thereof.

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

*Article 4*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 5*

This Directive is addressed to the Member States.

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