

**Proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means**

(2000/C 337 E/07)

COM(2000) 349 final — 2000/0148(CNS)

*(Submitted by the Commission on 7 June 2000)*

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) The rules currently applicable to VAT on certain services supplied by electronic means under Article 9 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>(1)</sup> are inadequate for taxing such services consumed within the Community and for preventing distortions of competition in this area.

(2) In the interests of the proper functioning of the internal market, such distortions should be eliminated and new harmonised rules introduced for this type of activity. Action should be taken to ensure, in particular, that such services where effected for consideration and consumed by customers established in the Community are taxed in the Community and are not taxed if consumed outside the Community.

(3) To this end, certain services supplied by electronic means to persons established in the Community or to recipients established in third countries should, in principle, be taxed at the place of the recipient of the services. For the purpose of establishing a special rule for determining the place of supply it has to be defined when services are supplied 'by electronic means'.

(4) To facilitate the compliance with their fiscal obligations, economic operators established outside the Community should be given the possibility to choose for a single VAT identification in the Community.

(5) Such VAT identification by a non-EU supplier in an EU Member State should be for the purposes of this directive only and does not constitute establishment within the meaning of the Articles 43 or 48 of the EC Treaty or of other Community directives and a non-EU supplier should not benefit from the Internal Market freedoms enshrined in the EC Treaty or in Community directives merely by becoming identified for VAT.

(6) Subject to conditions which they lay down, Member States should allow statements and returns to be made by electronic means.

(7) By reason of administrative simplification supplies of services by electronic means within a threshold indicating a negligible economic activity in the Community should benefit from a special scheme for small undertakings and this threshold should be reviewed and changed if necessary.

(8) The change of the place of supply involves adjustments in the area of Directive 77/388/EEC as to the modalities of the definition of the person liable to tax and its obligations.

(9) It appears appropriate to ensure certainty on the rate of taxation to be applied to the services supplied by electronic means, which will be in principle the normal VAT rate.

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

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 77/388/EEC is amended as follows:

1. In Article 9(2), the following point (f) is added:

'(f) the place of supply by electronic means of services mentioned in point (c) first indent as well as of software, of data processing, of computer services including web-hosting, web-design or similar services and of information, shall be 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, when these services are supplied by a taxable person

<sup>(1)</sup> OL L 145, 13.6.1977, p. 1, as last amended by Council Directive 1999/85/EC.

- established in the Community to customers established outside the Community; or
- established in the Community to taxable persons established in the Community but not in the same country as the supplier; or
- established outside the Community to persons established in the Community.

For such services however, when they are supplied by a taxable person identified in accordance with the provisions in force to non-taxable persons established in the Community, the place of supply shall be the place where the supplier has established his business or has a fixed establishment from which the service is supplied. For the purposes of point f, a taxable person established outside the Community shall be deemed to have a fixed establishment in the Member State of identification for services covered by this provision and supplied under that identification.

For the purpose of this Article the term "supply by electronic means" shall mean a transmission sent initially and received at its destination by means of equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electronic means, including television broadcasting within the meaning of Directive EEC/89/552 and radio broadcasting.'

2. In Article 12(3)(a), the following fourth sub-paragraph is added:

'With the exception of the reception of broadcasting services mentioned in Category 7 of Annex H, the third sub-paragraph shall not apply to the services referred to in Article 9(2)(f).'

3. In Article 24 the following point (2a) is added:

'2(a) Member States shall exempt from tax persons supplying services under Article 9(2)(f) third indent where these are their only supplies made in the Community and their annual turnover does not exceed EUR 100 000.

This threshold shall be calculated in accordance with paragraph 4.'

4. In Article 28g, Article 21(1) is amended as follows:

- (a) in point (a) the following sub-paragraph is added:

'Where a supplier of services under Article 9(2)(f) has acted with all possible diligence normally used in commercial practice of a given sector and has verified by a consistent set of data from an independent source, notably by means of the individual number referred to

in Article 22 paragraph (1) point (c), that his customer is a taxable person established in the Community, Member States shall provide that the supplier be discharged from being liable for tax and that the tax is payable by the person to whom the service is supplied.'

- (b) Point (b) is replaced by the following:

'(b) taxable persons to whom services covered by Article 9(2)(e) and (f) first sub-paragraph second and third indent are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b (C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person established abroad; however, without prejudice to the third sub-paragraph of point (a) Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax.'

5. In Article 28h, Article 22(1) is amended as follows:

- (a) Point (a) is replaced by the following:

'(a) Every taxable person shall state when his activity as a taxable person commences, changes or ceases. Subject to conditions which they lay down, Member States shall allow such statements to be made by electronic means.'

- (b) In paragraph 1, the following is added:

'(f) A taxable person established outside the Community supplying services by electronic means as defined in Article 9(2)(f) third indent to non-taxable persons established in the Community in excess of the threshold provided for in Article 24(2a) shall be required to identify for VAT purposes in a Member State into which he supplies services.

On the basis of a report from the Commission, the Council shall, no later than 31 December 2003, review this provision. The Council, acting unanimously on a proposal from the Commission, may decide on whatever changes are necessary'

- (c) In paragraph 4, point (a) is replaced by the following:

'(a) Every taxable person shall submit a return by a deadline to be determined by Member States. That deadline may not be more than two months later than the end of each tax period. The tax period shall be fixed by each Member State at one month, two months or a quarter. Member States may, however, set different periods provided they do not exceed one year. Subject to conditions which they lay down, Member States shall allow such returns to be submitted by electronic means.'

(d) In paragraph 6, point (a) is replaced by the following:

'(a) Member States may require a taxable person to submit a statement, including all the particulars specified in paragraph 4, concerning all transactions carried out in the preceding year. That statement shall provide all the information necessary for any adjustments. Subject to conditions which they lay down, Member States shall allow such statements to be made by electronic means.'

6. In Annex H, Category 7, the words 'Reception of broadcasting services.' are replaced by the following: 'Reception of broadcasting services, including television broadcasting within the meaning of Directive 89/552/EEC and radio broadcasting.'

*Article 2*

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

Directive by 1 January 2001. They shall inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall 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 provisions of domestic law which they adopt in the field covered by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

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