COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC with a view to simplifying value added tax obligations

Proposal for a

COUNCIL DIRECTIVE

laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation arrangements in the context of the one-stop scheme and the refund procedure for value added tax

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

In October 2003, the Commission presented a communication reviewing the VAT strategy it launched in June 2000 and setting out new initiatives to be taken in the future under that strategy[1]. This strategy provided for an action programme, geared to four main objectives: the simplification, modernisation and more uniform application of current rules and closer administrative co-operation arrangements between Member States to combat fraud.

In the communication, the simplification of tax obligations was identified as one of the key areas for future work. Simplification can notably be achieved through greater use of electronic means of communication between taxable persons and tax authorities and between national tax authorities.

The objective of simplifying business obligations in the field of VAT is in line with the request of the European Council of 25 and 26 March 2004 to identify areas for simplification. As a response to this request, the Competitive Council adopted at its meeting on 17 and 18 May 2004 conclusions on better regulation.

Following these conclusions, the Irish and incoming Dutch Presidencies invited in June 2004 other Member States to submit concrete suggestions for simplification, based on their own national experiences. Several Member States suggested simplification of the Sixth VAT Directive, but it was decided not to take into account this suggestion within the context of the Competitiveness Council since it was already part of the Commission's VAT simplification program.

At the informal ECOFIN meeting of 11 September 2004, the Dutch Presidency also raised the issue of "Fostering growth by reducing administrative burdens". The present proposal fits perfectly within this objective.

Moreover, the recently published European Tax Survey[2] conducted by the Commission in the second half of 2003 confirmed that taxable persons who have VAT obligations in a Member State where they are not established are those for which the burden of compliance is the highest. A substantial part of those taxable persons even seem to abstain from having VAT activities in another Member States because of the burden imposed by having to comply with VAT obligations there. This is confirmed by a document produced by the European Consumer Center Network in 2003 on e-commerce. This report identifies the current VAT regime as one of the reasons why operators refuse to sell goods to consumers who are living in a Member State other than the Member State of establishment of the company. The simplification of the VAT regime will therefore benefit businesses but also consumers who will have access to a wider range of goods throughout the Internal Market.

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1 COM(2003) 614 final
http://europa.eu.int/comm/taxation_customs/publications/official_doc/com/com.htm

2 SEC(2004) 1128
http://europa.eu.int/comm/taxation_customs/publications/working_doc/working_doc.htm

In addition, the present refund procedure under the Eighth VAT Directive[3] seems to be so burdensome that more than an estimated 53.5% of large companies have not requested refunds to which they were entitled at some point due to these problems.

The main objective of the present proposal is therefore to introduce simplification measures aimed at easing the burden of VAT compliance on taxable persons who have no establishment in the Member State where they are carrying out activities.

The proposal contains six concrete measures to achieve the objective:

– the introduction of the one stop scheme for non-established taxable persons;

– the introduction of a one-stop scheme to modernise the Eighth Directive refund procedure;

– a harmonisation of the scope of the goods and services for which Member States may apply restrictions to the right to deduct;

– an extension of the use of the reverse charge mechanism for certain business-to-business (B2B) transactions carried out by non-established taxable persons;

– a review of the special scheme for small traders;

– a simplification of the distance selling arrangements.

This is done through three different legislative proposals: a modification of the Sixth VAT Directive[4], the replacement of the Eighth VAT Directive and a modification to Council Regulation (EC) No 1798/2003 on VAT administrative cooperation[5].

This initiative has already been extensively discussed with Member States and has been the subject of a wide consultation process on the Internet.

2. THE INTRODUCTION OF THE ONE-STOP SCHEME

Under the current rules, a taxable person having taxable transactions for which he is liable to pay the tax in more than one Member State, will have to fulfil VAT obligations

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3 Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country OJ L 331, 27.12.1979, p.11.Directive as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Annex II: List referred to in Article 20 of the Act of Accession - 9. Taxation.

4 Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1). Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

5 Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92(OJ L 246, 15.10.2003, p. 1). Regulation as last amended by Council Regulation (EC) No 885/2004(OJ L 168, 1.5.2004, p. 1).

(identification, returns, payment) in each of these Member States. Since Member States have considerable discretion in defining VAT obligations (the content of the return and its frequency), a taxable person may be faced with a raft of different obligations to be discharged in several Member States.

The special scheme for non-established persons supplying electronic services to non-taxable persons provided for under Article 26c of the Sixth VAT Directive constitutes at this stage the only exception to this principle. In its proposal on services supplied by electronic means (e-commerce)[6], the Commission considered that compliance for non-EU e-commerce operators should be made as easy and simple as possible. To this end, the Commission proposed that non-EU e-commerce operators should be required to register only in a single Member State. They would then charge VAT at the rate applicable in that Member State and would only have to deal with a single tax administration within the EU.

During the negotiations in the Council, this proposal was amended in order to ensure that VAT would be charged at the rate applicable in the Member State where the customer is resident. However, Council Directive 2002/38/EC[7] adopted in June 2002 maintained the principle according to which non-EU e-commerce operators only had to deal with one VAT authority in the Member State of their choice (a one-stop scheme).

The Commission is convinced that the one-stop model could simplify tax obligations for a considerable larger number of traders than it does today. On the basis of information received from Member States, the Commission estimates that there are currently in the region of 250,000 VAT registrations in the European Union which relate to traders established in other Member States. In particular, EU businesses carrying out cross-border activities for which they become liable to pay VAT in Member States where they have no physical presence could benefit from the more extensive use of such a system. Taxable persons covered by the distance selling arrangements are certainly one of the main categories of businesses concerned. However it could also be used for other transactions, in particular supplies involving installation or assembly, work on immovable property, removals, sales at exhibitions, fairs or markets, etc.

Given the proposed extension of the use of the reverse charge to supplies involving installation or assembly, work on immovable property and 9(2)(c) services, the one-stop scheme would, for these types of transactions, only cover B2C transactions. On the other hand, B2B transactions for which the reverse charge is not applicable, would be covered by the one stop scheme.

As a result, when an EU trader carries out taxable transactions in a Member State where he is not established:

– either the customer accounts for the VAT under the reverse charge mechanism and the non-established trader has no declarative obligations in the Member State of taxation;

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6 COM(2000) 349 final.

7 Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (OJ L 128, 15.5.2002, p. 41).

– or the non-established trader is the person liable to pay the tax, and he could comply with his declarative obligations under the one stop scheme.

Consequently, this trader would, if he opts for the use of the one-stop scheme, only need to be identified for VAT purposes in his Member State of establishment.

This one-stop scheme should be an option for taxable persons as it may be the case that some businesses who are already directly identified in another Member State than their own will wish to maintain this situation. For example, a trader having to submit an annual return in a single Member State where he is not established might not be interested in the use of the one-stop scheme. On the other hand, a trader opting for the special scheme would have to comply with a single and harmonised set of obligations covering all its supplies taxable in the Member States where he is not established. These obligations would be fulfilled through electronic means, in order for the information to be easily transmitted to each Member State of consumption.

Responsibility for the assessment and control of the tax would remain in the hands of the Member State of consumption, whose own VAT legislation (particularly in respect of rates) would continue to apply. However, the non-established taxable person would benefit from the ability to contact (for registration and returns) only his national administration and to apply a harmonised set of compliance rules (covering registration form, content and frequency of the tax return, and payment and refund rules).

It should however be noted that:

– transfers of money will have to be done directly between the taxable person and each Member State of consumption. Experience with the existing electronic commerce special scheme has shown that dealing with the re-distribution of money received from taxable is very burdensome for the Member State of identification. Developing the kind of major treasury function needed to handle the volume of money flows which would be inherent to a much wider application would not be a realistic option. It is however probable that financial intermediaries or other trusted third party service providers might offer a payment handling function to operators under this scheme which would relieve them from the burden of multiple payments. Such a commercial service would be particularly attractive to smaller operators but would have to be based on commercial realities.

– national obligations would not be part of the special scheme and the domestic compliance rules (such as declaration periods, payment and refund rules) would continue to apply. Those Member States that wish to do so may include these obligations into the one-stop scheme. The reason for this exclusion is that the one-stop scheme is not intended to lead to a complete harmonisation of national obligations, which the Commission considers to be neither realistic nor necessary at this stage.

Discussions with the Member States made it clear that since the number of potential traders under an intra-Community one-stop system will be far greater than the number today covered by the electronic commerce special scheme (potentially over 200,000 traders as compared to well under 1,000 identified under the e-services arrangements), a mere duplication of this system is not a realistic approach.

Under the current arrangements, businesses which have obligations in Member States in which they are not established are obliged to make direct payment to the Members States where the transactions are subject to VAT. This situation applies both for traders established within the EU and traders established outside the EU. Similarly, as regards repayments of tax, Member States may either make a refund or carry forward the excess to the following tax period. The Commission believes that the current arrangements for the payment and repayment of the tax should be continued for traders availing of the one-stop scheme.

The supplies of electronic services by non-established taxable persons to non-taxable persons constitute an exception to the normal principle regarding payments and repayments. Non-established traders making use of the special scheme for electronically supplied services make a single payment to the Member State of identification, which then re-distributes the appropriate amount to the Member States of consumption. There are special arrangements for the recovery of input tax incurred by non-established taxable persons providing electronic services. The Commission is of the opinion that, at this stage, that special scheme should not be affected by the current proposal.

Under Article 5 of Council Directive 2002/38/EC, the Council on the basis of a report from the Commission shall review before 30 June 2006 the current special scheme for electronic supplied services. The relation between the proposed one-stop scheme and the e-commerce arrangements, and the possibility to subsume the latter into the one-stop scheme will be examined within that context.

3. REVIEW OF THE EIGHTH VAT DIRECTIVE

The malfunctioning of the Eighth Directive refund procedure has posed considerable problems for many years to both traders and the national administrations of the Member States. Complaints have been received from traders and their representative organisations deploring the length of time taken to receive refunds due.

Therefore, the Commission put forward in June 1998[8] a proposal for a Directive with the objective of replacing the VAT refund procedure laid down in the Eighth VAT Directive with a new system for recovering VAT paid in another Member State. Under the proposed system, taxable persons would recover VAT directly through VAT declarations they submitted in the Member State where they were established (the so-called cross-border deduction). This system would substantially simplify matters for traders since they would be able to recover VAT charged to them in any other Member State in the same way as their national VAT.

This proposal obtained large support from traders and a favourable opinion from the Parliament and the Economic and Social Committee. However, the Council has not yet managed to agree on the proposal.

One of the key issues which has prevented the Council from agreeing was the fact that under the proposed system, the trader would recover the VAT in accordance with the deduction rules (in particular the tax blocking rules) of the Member State of establishment, while under the current procedure VAT is recovered in accordance with the deduction rules of the Member State where the expenses are incurred. This would have had a negative impact on

[8] COM(1998) 377 final.

VAT receipts for those Member States where VAT has been paid where they currently have a more restrictive deduction regime.

The Commission remains convinced that the proposal from 1998 is conceptually the best way of reforming the current refund procedure. However, it also has to acknowledge that after 6 years the Council has been unable to agree on the proposal, despite the considerable effort of some Council Presidencies to look for a compromise. As a result, traders remain confronted with the current unsatisfactory situation.

The Commission therefore proposes an alternative way of modernising the current refund procedure laid down in the Eighth Directive, but without changing its fundamental principles. Under the proposed procedure, requests for refunds would continue to be dealt with by the Member State where the VAT was paid, the amount refundable would be determined under the deduction rules of the Member State where the expenses are incurred, and the repayments made directly by that Member State to the requesting taxable person.

The proposed changes firstly concern the use of modern technology for presenting the requests for a refund. In a similar way to the envisaged one-stop scheme, a taxable person would present his requests for a refund by electronic means via a portal website managed by the fiscal administration where the taxable person is established. Originals of invoices or import documents would no longer have to be submitted; only the relevant information concerning these documents would be submitted electronically.

This portal would then ensure that the request is directed to the Member State where the expenses were incurred. The Member State of establishment would carry out an initial verification of its database of taxable persons. This initial verification would in fact replace the current certificate by which the Member State of establishment confirms the status of the taxable person. The transmission of the data from the Member State of establishment to the Member State of refund would be the confirmation that the request is made by an active taxable person.

Transforming the current procedure into an electronic one would mean less work by the refunding Member States and accordingly, the Commission believes that the processing time for requests should be reduced from 6 to 3 months. Within this interval, the Member State where the expenses were incurred should take a decision on the application. In some cases, this decision could be a request for additional information. In that case, a final decision on the application should be taken within three months from the date the requested information is provided.

In order to improve the legal position of the taxable persons under the procedure, it is foreseen in addition, that once the deadline is exceeded, the application can no longer be refused. Moreover, interest of 1% a month, calculated on the amount refunded, would be due on unpaid refunds. This interest would run from the day on which the refund was due to the day it was actually made to the taxable person.

4. EXCLUSIONS FROM THE RIGHT TO DEDUCT

The abovementioned proposal presented by the Commission in 1998 contains, beside the section on the replacement of the Eighth VAT Directive refund procedure, a section on expenditure not eligible for a full deduction of VAT. The objective was to approximate the

national rules that are currently very divergent in this area. This was an essential prerequisite to enable deductions to be made under the rules prevalent in the Member State of establishment.

The Commission proposed an alignment of the rules in respect of passenger cars, accommodation, food and beverages, luxury goods, amusements and entertainment.

The budgetary impact for some Member States of the Commission's proposal was, however, a major issue in the discussion. Member States insisted in the Council for a more flexible approach. As indicated above, the Council has not managed to agree on this proposal.

Such approximation of the rules on the right to deduct would not be necessary under the revised approach which the Commission is now putting forward. However, in order to facilitate the functioning of the proposed refund procedure, it would be desirable to harmonise at least the scope of the expenses for which exclusions of the right to deduct may apply.

By doing so, traders presenting requests for a refund under the procedure set out above would know exactly for which goods and services there might be some specific rules in each Member State. The normal deduction rules would apply to all goods and services not specifically referred to in the Sixth VAT Directive.

Under this approach, Member States could only apply exclusions from the right to deduct to:

– motorised road vehicles, boats and aircraft;

– travel, accommodation, food and drink;

– luxuries, amusements and entertainment;

Under the standstill provision of Article 17(6), there is no definition of goods and services to which Member State can apply tax blockings. The current proposal would oblige Member States to abolish the tax blockings applied to goods and services not identified within the proposed Article 17a. On the other hand, for the goods and services identified within Article 17a, it provides Member States full flexibility of reviewing their national restrictions which they do not have under the current rules.

5. AN EXTENSION OF THE USE OF THE REVERSE CHARGE MECHANISM

For B2B transactions subject to VAT in the Member State where the customer is established, making the business customer the person liable to pay the tax (reverse charge mechanism) implies that taxation occurs in the place of consumption without the supplier being subject to tax obligations in the Member State of consumption.

For certain transactions, this mechanism is already obligatory. Moreover, where the taxable supply of goods or services is effected by a non-established taxable person, Member States have the option to lay down in their national legislation the transactions for which this mechanism should be used for the payment of the VAT.

The Commission is now proposing to broaden the scope of the obligatory reverse charge mechanism in cases where a non-established taxable person is making supplies of goods which are installed or assembled by or on behalf of the supplier, supplies of services

connected with immovable property and services covered by Article 9(2)(c) of the Sixth VAT Directive and the customer is a taxable person identified for VAT purposes.

The use of the reverse charge discharges the non-established trader from certain VAT obligations, such as submitting VAT returns. Consequently, when that trader has been charged VAT on expenses incurred in the Member State where the transaction takes place, he will have to claim this VAT back via the refund procedure, since he cannot deduct the input VAT *via* a VAT return. This is why this part of the proposal is clearly connected to that concerning the introduction of a one-stop scheme for the refund procedure.

In cases where it is clear that the non-established trader will be regularly charged substantial amounts of input VAT in order to carry out his activities, however, the use of the reverse charge mechanism results in an additional administrative burden for the reclaim of input VAT. This is for instance the case when non-established taxable persons intervene in a chain of domestic supplies of goods on the national territory of a Member State. These types of transactions are therefore not covered by the Commission's proposed extension of the reverse charge.

Article 21 of the Sixth VAT Directive needs to be amended accordingly.

6. SIMPLIFICATION OF VAT OBLIGATIONS OF SMALL AND MEDIUM SIZED ENTERPRISES

At present, the Sixth VAT Directive lays down some fairly strict arrangements under which Member States may grant small enterprises an exemption to tax. Numerous derogations from these provisions have been granted in successive enlargements, creating a situation where Member States are not at all on an equal footing. Furthermore, Member States which already had an exemption threshold higher than that provided by the Sixth VAT Directive at the time of the adoption of that Directive were permitted to maintain these thresholds and even permitted to increase them so as to maintain their value in real terms.

The Commission considers that Member States should have more flexibility in determining the threshold under which taxable persons can be exempt. Therefore, a maximum of 100.000 euro is proposed, which should give Member States the autonomy to set up a regime they consider the most appropriate in view of the structure of their national economy.

Nevertheless, this new threshold would not have any impact on the current methodology used for calculating Member States' contributions to the Community budget as regards VAT own resources.

Moreover, it should be clarified in the legal text that Member States are able to apply different thresholds, for instance in order to differentiate between taxable persons making supplies of goods and those making supplies of services. This differentiation would be applied on a non-discriminatory basis taking objective criteria into account.

The threshold of 100.000 euro would apply on the date of entry into force of the present Directive. This amount could be exceeded at a later stage but only in order to maintain its value in real terms in the Member States.

7. DISTANCE SELLING ARRANGEMENTS

When the Single Market came into being on 1 January 1993, special arrangements were incorporated into the common system of VAT to provide for taxation at destination in the case of intra-Community sales of new means of transport, intra-Community sales to exempt taxable persons or non-taxable legal persons whose purchases exceeded a certain threshold, and distance sales to private consumers. It is clear that the rationale for setting up these special schemes in 1993 - i.e. the risk of insufficiently harmonised tax rates leading to distortion of competition - still exists. The Commission is therefore not proposing to abolish these schemes but instead to simplify their application.

The VAT arrangements applicable to distance selling are laid down in Article 28b(B) of the Sixth VAT Directive which provides for a twofold system of taxation. Distance sales of goods are normally taxable in the Member State of arrival of goods dispatched by the vendor. There is, however, an exception: distance sales remain taxable in the Member State of departure if two conditions are fulfilled:

- the total value of the supplies of goods to the Member State of arrival in the previous calendar year did not exceed 100 000 euro, a sum which may be reduced to 35 000 euro by the Member State of destination where it fears that the threshold of 100 000 euro would lead to serious distortions of the conditions of competition;

- the supplies must not involve excise goods. This means that distance sales of excise goods are always taxed in the country of destination without applying the above thresholds.

Member States must nevertheless allow the taxable person carrying out distance sales to opt for taxation in the Member State of destination where the 35 000/100 000 euro threshold is not reached.

The current arrangements are complicated for taxable persons. Unless they opt for taxation in the Member State of destination, operators have to monitor their turnover in each Member State, keeping track of the different thresholds applicable, to know the place of taxation of the supplies they make. The current system could therefore be simplified by applying a single threshold, calculated globally for all Member States rather than Member State by Member State, as is currently the case.

The threshold should be set at a level which excludes businesses which are not involved in distances sales on a regular basis. On the other hand, the threshold should not be a simple multiplication of the current thresholds and the number of Member States. The Commission instead proposes a threshold of 150.000 euro on the basis of the following considerations:

A threshold set at 150.000 euro should exclude from the distance selling arrangements those traders who, on an occasional basis transport goods to their customers in another Member State. On the other hand, traders involved on a regular basis in distance sales will be liable to pay VAT in Member States where they are not established. By making use of the one-stop system, which constitutes the main part of this proposal, these traders can considerably simplify the VAT obligations to be fulfilled in each Member State where they have taxable transactions.

The Commission further considers that the taxable person should continue to have the possibility to opt for taxation in the Member State of destination. Indeed, while deleting the option would simplify the special scheme from a legal point of view, it can put businesses in a disadvantageous competitive position, especially when trading products subject to a low VAT rate in the Member State of arrival of the goods.

The Commission considers that the taxable person should be allowed, as it is currently the case, to make use of the option separately for each Member State. As long as he did not reach the proposed threshold of 150.000 euro, a taxable person can opt for taxation of his supplies in Member State A, while his transactions in other Member States are taxed in the Member State of establishment. Of course, both the distance sales taxed in the Member State of arrival (as a result of the use of the option) as well as the distance sales taxed in the Member State of establishment would be taken into account for the calculation of the threshold.

8. MODIFICATION OF REGULATION (EC) NO 1798/2003 TO SUPPORT THE EXCHANGE OF INFORMATION WHICH IS NECESSARY TO THE INTRODUCTION OF A ONE-STOP SCHEME MECHANISM AND OF THE REFUND PROCEDURE (REVIEW OF EIGHTH DIRECTIVE)

In order to make it possible for taxable persons to have a single point of contact for VAT compliance in their Member State of identification (both for the VAT one-stop scheme and for the procedure which will replace the Eighth Directive refund procedure), it is necessary to build a system of exchange of information between tax administrations.

In the same way as for the special scheme which has been set up for electronic commerce supplies, such an exchange of information should be built within the legal framework on VAT administrative cooperation (Council Regulation (EC) No 1798/2003) and should be based exclusively on electronic communications.

This electronic system to support the exchanges of information required under the one-stop scheme and the procedure replacing the Eighth Directive is to be integrated within a modernised VIES (VAT Information Exchange System) in order to make it possible to ease the burden on tax administrations. The Commission has, at the beginning of 2004, launched a feasibility study for a new improved VIES (VIES II), which includes the necessary requirements for the one-stop scheme. In particular, it will be necessary to ensure that information supplied electronically by taxable persons to their own Member State can be captured and processed. The information thus captured would have to be passed automatically to the relevant Member State where supplies take place or refunds are requested without any intervention by the Member State of identification.

9. PROPOSED CHANGES

9.1. Amendments to the Sixth VAT Directive (simplification of obligations)

9.1.1. Amendment of Article 17(4)

Point (a) of the second subparagraph of Article 17(4) is deleted. This provision is now integrated in Article 1 of the proposed Directive reviewing the refund procedure for taxable persons who are not established within the territory of the country.

9.1.2. Deletion of Article 17(6)

Article 17(6) is repealed, thus eliminating the provision under which Member States may retain all the exclusions provided for under their national law when the Sixth VAT Directive came into force.

As a result, the normal rules laid down in Article 17(1) to (5) apply to all expenditure that is not explicitly referred to by the new Article 17a.

9.1.3. Insertion of Article 17a

This Article gives Member States the flexibility to apply total or partial restrictions (for example flat rate deductions) to the right to deduct input VAT. This flexibility is however limited to the expenses which are specifically quoted in the Article.

A definition of "motorised road vehicles" and "expenditure relating to motorised road vehicles" is provided in order to ensure that the scope of the potential restrictions applied by the Member States is harmonised.

Moreover, the Article also provides a list of motorised road vehicles for which, given their use, Member State may not restrict the right to deduct.

Besides motorised road vehicles, this Article provides also the possibility for Member States to apply total or partial restrictions to the right to deduct for boats and aircraft, travel, accommodation, food and drink, luxuries, amusements and entertainment.

9.1.4. Amendment of Article 21(1)(b)

The amendment makes it compulsory for all Member States to designate the client as the person liable to pay the tax for supplies of goods which are installed or assembled by or on behalf of the supplier, supplies of services connected with immovable property, and services covered by Article 9(2)(c) such as work on movable tangible property, where the supplier is not established within the territory of the country and where the client is identified for VAT purposes in the Member State where the supply takes place.

It should be noted that the option provided to Member States under Article 21(1)(a), to require that the client is the person liable to pay the tax for the cases not covered by Article 21(1)(b) and (c), is maintained.

9.1.5. Insertion of Article 22b

This Article lays down all the rules relating to the functioning of the one-stop scheme.

9.1.5.1. Point A

This point defines what is, for the purpose of this Article, a "Member State of identification" and a "Member State of consumption".

9.1.5.2. Point B

This point defines the scope of the special scheme, which concerns taxable persons making supplies of goods or services for which they are liable to pay the tax in one or several Member State(s) where they have no establishment. However, the special scheme for non established traders supplying electronic services to non-taxable persons provided for under Article 26c remains in place. Therefore, the traders which make use of that special scheme are excluded from the one-stop scheme.

The scheme is optional for the taxable persons concerned and they can continue to fulfil their VAT obligations under the normal rules laid down by each Member State if they consider this to be more appropriate in their situation.

9.1.5.3. Point C

This point deals with the registration procedure under the special scheme. The primary responsibility for registering taxable persons in the special scheme belongs to the Member State of identification, on request from the taxable person.

The point also lays down procedures for the communication of any modification of the registration data, as well as for deregistration. These procedures are entirely electronic.

This point also lays down specific provisions for taxable persons established in more than one Member State. Its main objective is to specify that each establishment may qualify on a separate basis for the special scheme for its own supplies.

9.1.5.4. Point D

This point lays down rules according to which the Member States of consumption shall not identify for VAT purposes, and therefore not give any VAT number in the meaning of Article 22(1)(c), to those taxable persons that are registered in the special scheme.

9.1.5.5. Point E

This point lays down the obligation for taxable persons registered under the special scheme to submit a VAT return by electronic means.

This VAT return is a single VAT return with a specific part for each Member State of consumption.

It also introduces a special rule regarding recapitulative statements whereby a separate VAT identification number would not be necessary for the purpose of submitting recapitulative statements where these statements are required in cases such as the transfer by a taxable person of his own goods to another Member State. The non-established taxable person using the scheme would use his own VAT identification number issued in his Member State of establishment and identify the Member States into which the goods were transferred on the recapitulative statement.

9.1.5.6. Point F

This point lays down the rules for payments and repayments. All transfers of money will be made directly between the taxable person and the Member State of consumption.

Where for a tax period the amount of deductible tax exceeds the amount of tax due, the Member State of consumption will deal with the excess, under the same conditions it has laid down in accordance with Article 18(4) for taxable persons not applying the one stop scheme.

9.1.5.7. Point G

This point lays down specific provisions for taxable persons established outside the European Union (including the ones currently subject to the electronic commerce special scheme).

9.1.6. Amendment of Article 24

The amended paragraph 2 defines the framework in which Member States may, if they wish to, define an exemption regime for small traders.

Paragraphs 3 and 4 are amended in order to clarify which transactions shall be excluded from the exemption and which transactions are to be taken into account for the calculation of the taxable person's turnover. This is largely a presentational rather than a substantive amendment.

Paragraphs 8 and 9 are deleted because they are no longer up-to-date.

9.1.7. Deletion of Article 24a

Article 24a which provides for thresholds for the 10 new Member States is deleted, as the provisions will be superseded by the new drafting of Article 24.

9.1.8. Amendment of Article 28b (B) (2)

Paragraph 2 of Article 28b(B) is amended in order to introduce within the distance sales arrangements a global threshold applicable to sales to all Member States other than the Member State of establishment, instead of a threshold per Member State.

9.1.9. Article 2

This Article specifies that the Directive will enter into force after 1 July 2006.

9.2. New Directive replacing the Eighth Directive on VAT refunds

9.2.1. Article 1

This article defines the scope of the Directive, which is not different from the existing Eighth Directive.

9.2.2. Article 2

This Article defines the taxable person eligible for refund under this Directive. It also excludes transactions which are exempted, or which could be exempted, under Articles 15 or 28c(A). This exclusion should ensure that VAT is not recovered twice, once by the supplier as a correction of the VAT initially charged on a supply which could be exempted, and once by the purchaser via the refund procedure.

9.2.3. Article 3

This Article defines which transactions are eligible for a refund and is not significantly different from the current drafting of Article 2 of Directive 79/1072/EEC.

9.2.4. Article 4

This article lays down the rules for determining the amount refundable.

Firstly, a taxable person must carry out taxable transactions in the Member State of establishment in order to be eligible for refund. When the taxable person carries out both taxable and exempt transactions, he will have a partial right of refund in relation to the former transactions.

Secondly, the deduction rules, and in particular the exclusions from the right to deduct laid down by the Member State where the expenses where incurred are to be applied.

This Article sets out in a legal provision the principles already laid down by the European Court of Justice in Case C-302/93 (Etienne Debouche) and Case C-136/99 (Société Monte dei Paschi di Siena).

9.2.5. Article 5

Article 5 lays down the procedure under which a taxable person can introduce a request for a refund. This request is to be introduced electronically in the Member State of establishment of the taxable person.

The Member State of establishment will ensure transmission of the data to the Member State where the expenses where incurred.

This Article also lays down which information a taxable person submitting a request has to provide.

9.2.6. Article 6

This Article stipulates the periodicity under which a refund application can be presented, as well as the deadlines under which invoices and import documents can be presented for a refund. It also lays down the minimum amount of the refund to be claimed.

9.2.7. Article 7

This Article determines that competent authorities of the Member State where the request for refund is presented shall inform the applicant of its decision within three months. Refunds shall be made within the same period.

In specific cases, that Member State could ask for additional information. A decision should then be taken within 3 months from the date the requested information is provided. Once the interval of 3 months is exceeded, the refund can no longer be refused.

9.2.8. Article 8

This Article stipulates that an interest of 1% a month is due when the Member State of refund fails to respect the deadlines laid down in the previous Article.

9.2.9. Article 9

The proposed Directive should replace the current Eighth Directive. This Directive is then to be repealed.

9.3. Amendments to Regulation 2003/1798 on administrative cooperation in the field of value added tax

9.3.1. Amendment of Article 1(1)

This is a technical amendment in order to extend the scope of the Regulation to the exchange of information which is necessary for the smooth functioning of the VAT One-Stop scheme.

9.3.2. New Chapter VIa

A new chapter is included to deal specifically with the exchange of information on the One-Stop-Scheme, as from 1 July 2006.

9.3.2.1. Article 34a

This Article defines the scope of the exchange of information under Chapter VI. It also lays down that the definitions relating to the One-Stop-Scheme ("Member State of identification", "Member State of consumption"), which are listed in the amendments to the Sixth VAT Directive, shall also apply to Regulation 1798/2003.

9.3.2.2. Article 34b

This Article lays down the rules for the exchange of information on registration (including modification of registration data and deregistration) of taxable persons under the special scheme.

This exchange of information shall take place without delay, which means that a proper electronic system of communication needs to be put in place.

All Member States shall receive this information, even if no supply is or will be made on their territory.

In addition, it imposes an obligation on the Member State of establishment to monitor that its taxable persons are complying with the distance selling thresholds, and to advise the other Member States where it appears that the distance selling threshold has been exceeded.

All details relating to the definition of the technical messages will be decided according to the Comitology procedure.

9.3.2.3. Article 34c

This Article lays down the obligation for each Member State to keep an updated database of all taxable persons registered within the special scheme.

9.3.2.4. Article 34d

This Article lays down the rules for the exchange of information relating to VAT returns (including their modification).

This exchange of information shall also take place without delay.

The information will be sent only to those Member States for which tax is declared. Each Member State will therefore only receive the part of the return which deals with the supplies made under its own jurisdiction.

All details relating to the definition of the technical messages will be decided according to the Comitology procedure.

9.3.2.5. Article 34e

This Article lays down the obligation for the Member State of identification to keep the information relating to the tax returns which have been sent to the other Member States.

This information should be kept during a minimum time period which is necessary for the technical functioning of the system (for example to enable the system to detect that a taxable person has already made a tax return for a specific period and that only a modification of this data can subsequently be made). This time period will need to be fixed according to the Comitology procedure.

Member States will of course be able to store this information during a longer time period, which may be a very useful source of information for their own future audit controls.

9.3.2.6. Article 34f

This Article deals with the information which will need to be made available to the taxable persons on the Website of each tax administration in order to help businesses comply with their obligations.

The information will deal with the rules applying to the One-Stop Scheme as well as with the different national rules applying in each Member State (such as tax rates).

The Commission will be responsible for the coordination of this task, as well as for translation. Detailed rules will be fixed according to the Comitology procedure.

9.3.2.7. Article 34g

This Article lays down specific rules on control of the taxable persons registered under the special scheme. According to these rules, Member States of consumption will be able to participate in a control initiated by the Member State of identification. The latter will have an obligation of information the former with regard to such controls.

In cases where Member States of consumption choose to participate in such a control, the normal rules laid down in Article 11 (presence of tax officials on the territory of another Member State) would apply.

9.3.3. New Chapter VIb

A new chapter is also included to deal specifically with the exchange of information which is necessary to the functioning of the modernised refund scheme.

According to Article 34h, the Member State of identification shall transmit the refund applications immediately to the Member State of purchase. Again, the technical details will be fixed according to the Comitology procedure.

Article 34i adds that information will need to be provided to taxable persons concerning the proposed Directive laying down the refund procedure and on specific national rules relating to those refunds. This will be done under the procedure laid down in Article 34f.

2004/0261 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC with a view to simplifying value added tax obligations

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[9],

Having regard to the opinion of the European Parliament[10],

Having regard to the opinion of the European Economic and Social Committee[11],

Whereas:

(1) Within the context of the common system of value added tax (VAT), it is necessary to simplify the obligations on businesses, since those obligations are currently disproportionately burdensome and thus compromise the smooth functioning of the internal market by unreasonably hindering the possibility for businesses to engage in economic activities in other Member States.

(2) Common definitions of the goods and services for which Member States may apply total or partial restrictions of the right to deduct should facilitate the use by businesses of the VAT refund procedure in Member States where they are not established.

(3) For transactions between taxable persons where the supplier is not established in the Member State where the supply takes place, an extension of the cases for which the customer is liable to pay the tax should simplify the VAT obligations of the non-established supplier without creating an additional administrative burden for the customer.

(4) The obligations for taxable persons liable to pay VAT in Member States where they are not established should be simplified by making it possible for them to use a "one-stop scheme", that is to say, a scheme enabling them, if they so wish, to have a single point of electronic contact for value added tax identification and declaration.

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9 OJ C […], […], p. […].
10 OJ C […], […], p. […].
11 OJ C […], […], p. […].

(5) Such a scheme should be open not only to taxable persons established within the Community but also to taxable persons who, albeit not established there, out taxable activities within the Community. However, it should not cover taxable persons supplying electronic services to non-taxable persons, leaving in place the scheme introduced in order to facilitate their compliance with fiscal obligations.

(6) No obligation to appoint a tax representative should be imposed on non-Community operators who are registered under the one-stop scheme as such an obligation would cancel out all the benefits derived from the present simplification.

(7) Taxable persons registered under the special scheme should comply with the specific obligations laid down in this Directive.

(8) Transfers of money, by way of payments or refunds, should be made directly between taxable persons and Member States of consumption.

(9) Member States should be allowed a greater measure of flexibility in fixing the threshold below which small businesses may be exempt from VAT obligations. This flexibility should enable each Member State to determine the exemption taking into account the structure of its national economy.

(10) The special distance selling arrangements should be simplified through the provision of a single threshold for supplies to all Member States other than the Member State of establishment, instead of a separate threshold for each Member State of destination.

(11) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(12) 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 17, in the version set out in Article 28f, is amended as follows:

(a) paragraph 4 is amended as follows:

(i) in the first indent of the first subparagraph, the reference to 'Directive 79/1072/EEC' is replaced by 'Council Directive xx/xxx/EC(*)';

(ii) in the second subparagraph, point (a) is deleted;

(iii) in point (c) of the second subparagraph, the reference to 'Directive 79/1072/EEC' is replaced by 'Directive xx/xxx/EC

(*) OJ L […], […], p. […].';

(b) Paragraph 6 is deleted.

(2) The following Article 17a is inserted:

'Article 17a
Restrictions on the right of deduction

1. Member States may, without prejudice to Article 17(5), apply a total or partial restriction on the right of a taxable person to deduct value added tax charged to him on the following:

(a) expenditure on luxuries, amusements or entertainment;

(b) expenditure in respect of travel, accommodation, food or drink other than that incurred by the taxable person in the course of his activity in supplying for consideration travel, accommodation, food or drink;

(c) expenditure relating to motorised road vehicles except the taxable person's stock-in-trade vehicles and vehicles for sale in the exercise of his activity, used as taxis, for instruction by driving schools or used for hire or leasing;

(d) expenditure relating to boats or aircraft except those exclusively intended for use for the commercial transport of persons or goods.

2. Member States may, for the purposes of paragraph 1, set a percentage for minimum use of motorised road vehicles for business purposes.

3. Paragraphs 1 and 2 shall apply to all motor vehicles, other than agricultural or forestry tractors, which are normally used for carrying persons or goods by road, with a maximum authorised mass not exceeding 3500 kilograms and having not more than eight seats in addition to the driver's seat.

The related expenditure shall cover the purchase of a vehicle, including contracts of assembly and the like, manufacture, intra-Community acquisition, importation, leasing or hire, modification, repair or maintenance, and expenditure on supplies or services performed in relation to vehicles and the use thereof.

(3) In Article 21, in the version set out in Article 28g, point (b) of paragraph 1 is replaced by the following:

'(b) taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom goods covered by the arrangements laid down in the second sentence of Article 8(1)(a) or services covered by Article 9(2)(a) and (c) or Article 28b(C), (D), (E) and (F) are supplied, if the supply of the goods is made or the services are carried out by a taxable person not established within the territory of the country;'

(4) The following Article 22b is inserted:

'Article 22b

One-stop scheme for fulfilling obligations in Member States where the taxable person is not established

A. Definitions

For the purposes of this Article, and without prejudice to other Community provisions, the following definitions shall apply:

(1) 'Member State of identification' means the Member State in which the taxable person established within the Community has established his business or has a fixed establishment from which the goods or services are supplied or, if established outside the Community, the Member State of consumption which the taxable person chooses to contact to state when his activity as a taxable person within the Community commences;

(2) 'Member State of consumption' means the Member State in which the supply of the goods or services is deemed to take place in accordance with Articles 8, 9 and 28b.

B. Scope

Member States shall permit any taxable person supplying goods or services for which he is liable to pay value added tax in one or several Member States of consumption where he has not established his business nor has a fixed establishment to fulfil his obligations using the special scheme provided for under this Article, except for those non-established taxable persons supplying electronic services to non-taxable persons who make use of the special scheme provided for under Article 26c.

C. Registration

1. Every taxable person shall state to the Member State of identification when he wants to start to make use of the one-stop scheme. This statement shall be made by electronic means.

   The taxable person shall provide the information necessary for his registration under the one-stop scheme. He shall also state whether he is already identified for value added tax purposes in Member States where he is not established nor has a fixed establishment and, if so, indicate the identification number under which he is registered.

2. The Member State of identification shall register the taxable person referred to in paragraph 1 within a reasonable period of time. For that purpose the Member State shall use the individual number already allocated to the taxable persons in respect of his obligations under the internal system.

   Taxable persons who have an establishment in more than one Member State may request that each establishment be registered under the one-stop scheme in respect of their supplies made in Member States where the taxable person has no establishment.

3. Every taxable person shall notify the Member State of identification of any modification of the registration data provided pursuant to paragraph 1. That notification shall be made by electronic means

4. Every taxable person shall state to the Member State of identification when he wants to cease to make use of the scheme or when his activity changes to the extent that he no longer qualifies for the one-stop scheme. This statement shall be made by electronic means

5. The Member State of identification shall without delay strike from the identification register any taxable person who no longer meets the conditions necessary to qualify for the one-stop scheme.

   In particular, the Member State of identification shall exclude taxable persons from participating in the one-stop scheme in the following cases:

   (a) if the taxable person notifies the Member State of identification that he no longer supplies goods or services in any Member State or Member States other than the Member State of identification;

   (b) if it otherwise can be assumed that the taxable activities of the taxable person have ended;

   (c) if the taxable person no longer fulfils the requirements necessary to be allowed to use the scheme;

   (d) if the taxable person persistently fails to comply with the rules governing use of the scheme.

D. Identification

A taxable person who is registered under the one-stop scheme shall not be identified, within the meaning of Article 22(1)(c), other than in the Member State where he is established.

E. Returns and recapitulative statements

1. Every taxable person registered under the one-stop scheme shall submit to the Member State of identification a value added tax return for each calendar quarter setting out all the supplies of goods and services for which he is liable to pay value added tax in Member States where he has not established his business nor has a fixed establishment. If the taxable person is not established within the Community, the return shall also include the supplies made in the Member State of identification.

   The return, which shall be made by electronic means, shall be submitted within 20 days following the end of the period to which it refers.

2. The return referred to in paragraph 1 shall set out, for each Member State of consumption where value added tax has become due, all the information needed to calculate the amount of tax that has become chargeable and the deductions to be made during the period covered by the return.

3. The return referred to in paragraph 1 shall be made in euro. The Member States of consumption which have not adopted the euro may require the part of the return concerning supplies of goods and services on their territory to be made in their national currency.

4. Where, pursuant to Article 28a(5)(b), a taxable person is obliged to submit data in accordance with Article 22(6)(b), the number referred to in the second indent of the third subparagraph of Article 22(6)(b) shall be the number referred to in the first indent of that subparagraph. The taxable person shall indicate the Member State in which the acquisition was made in a clear way on the recapitulative statement.

F. Payments and repayments

1. The taxable person shall pay the value added tax when submitting the value added tax return. Payment shall be made directly on the bank account and in the currency of each Member State of consumption concerned.

2. When the amount of value added tax to be deducted in a specific calendar quarter is greater than the amount of tax due, the Member States may either make a refund or carry the excess forward to the following period in accordance with the conditions which they have determined pursuant to Article 18(4).

G. Specific provisions for taxable person established outside the Community

The Member State of identification shall identify, within the meaning of Article 22(1)(c), a taxable person who is not established within the Community at the same time as it takes the action referred to in Part C(2) of this Article."

(5) Article 24 is amended as follows:

(a) Paragraphs 2, 3 and 4 are replaced by the following:

‘2. Member States may exempt taxable persons whose annual turnover does not exceed a threshold which may be set no higher than EUR 100 000 or the equivalent in national currency at the conversion rate on 1 July 2006. They may apply one or several thresholds, which may not in any case exceed EUR 100.000 or the equivalent in national currency on 1 July 2006.

Member States may revise annually the thresholds they apply . Under that annual review, the maximum threshold of EUR 100 000, or the equivalent in national currency applicable on 1 July 2006, may be raised only in order to maintain the value in real terms of these thresholds.

Member States which have exercised the option under Article 14 of Directive 67/228/EEC to introduce exemptions or graduated tax relief may retain them and the arrangements for applying them if they conform to the VAT system.

3. The exemption provided for under paragraph 2 shall not apply to the following transactions:

(a) transactions carried out on an occasional basis, as referred to in Article 4(3);

(b) supplies of new means of transport carried out in accordance with the conditions specified in Article 28c(A);

(c) supplies of goods and services carried out by a taxable person who is not established in the Member State in which the value added tax is due.

4. The turnover serving as a reference for the purposes of applying the arrangements provided for in paragraph 2 shall consist of the following amounts, exclusive of value added tax:

(a) the value of goods and services, in so far as they are taxed, including transactions which are exempt, with deductibility of the value added tax paid at the preceding stage, pursuant to Article 28(2);

(b) the value of transactions which are exempt pursuant to Article 15;

(c) the value of real estate transactions, financial transactions as referred to in Article 13(B)(d) and insurance services, unless those transactions are ancillary transactions.

However, disposals of the tangible or intangible capital assets of an enterprise shall not be taken into account for the purposes of calculating the turnover.'

(b) Paragraphs 8 and 9 are deleted.

(6) Article 24a is deleted.

(7) In Article 28b(B), paragraph 2 is replaced by the following:

'Paragraph 1 shall not apply to supplies of goods dispatched or transported to a Member State other than that of the supplier, if the following conditions are met:

(a) the goods supplied are not products subject to excise duty;

(b) the total value of such supplies, exclusive of value added tax, does not exceed EUR 150 000 or the equivalent in national currency in one calendar year;

(c) the total value, exclusive of value added tax, of the supplies of goods other than products subject to excise duty, in the previous calendar year, did not exceed EUR 150 000 or the equivalent in national currency.'

Article 2

1. Member States shall adopt and publish, by 30 June 2006 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 July 2006.

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.

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 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, […]

For the Council
The President

Proposal for a

COUNCIL DIRECTIVE

laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment[12], and in particular Article 29a thereof,

Having regard to the proposal from the Commission[13],

Whereas:

(1) Considerable problems are posed, both for the administrative authorities of Member States and for businesses, by the implementing rules for Directive 77/388/EEC laid down by Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country[14].

(2) The arrangements laid down in that Directive should be amended so that decisions concerning applications for refund can be announced within three months of the date when the applications were submitted and refunds made within the same period. To that end, the procedure should be simplified and modernised by allowing for the use of modern technologies.

(3) The new procedure shall create more legal certainty for businesses, since the refund can no longer be refused when the imposed delays are exceeded.

(4) Directive 77/388/EEC contained a provision which concerned the application of Directive 79/1072/EEC. For clarity and better reading purposes, this provision is now integrated in this Directive and deleted in Directive 77/388/EEC.

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12 OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

13 OJ C […], […], p. […].

14 OJ L 331, 27.12.1979, p. 11. Directive as last amended by the 2003 Act of Accession.

(5) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(16) In the interests of clarity, Directive 79/1072/EEC should therefore be replaced.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive lays down the detailed rules for the refund of value added tax, provided for in Article 17(3) of Directive 77/388/EEC, in the version given in Article 28f thereof, to taxable persons, within the meaning of Article 4(1) of that Directive and subject to paragraph 2 of this Article, who are not established in the territory of the country, but who are established in another Member State, hereinafter "non-established taxable persons".

3. This Directive shall apply to any non-established taxable person, who meets the following conditions:

   (a) during the refund period, he has not had in the territory of the country, hereinafter "the Member State of refund", the seat of his economic activity, or a fixed establishment from which business transactions were effected, or, if no such seat or fixed establishment existed, his domicile or normal place of residence;

   (b) during the refund period, he has not supplied any goods or services deemed to have been supplied in the Member State of refund, with the exception of the following transactions:

      (i) transport services and services ancillary thereto, exempted pursuant to Article 14(1)(i), Article 15 or Article 16(1) B, C and D of Directive 77/388/EEC;

      (ii) supplies of goods and services provided in cases where value added tax is payable solely by the person to whom they are supplied, pursuant to Article 21(1)(a), (b), (c) and (f) of Directive 77/388/EEC.

Article 2

This Directive shall not apply in respect of goods the supply of which is, or may be, exempted under Article 28c(A) of Directive 77/388/EEC when the goods supplied are dispatched or transported by the acquirer or for his account. Nor shall it apply to goods the supply of which is, or may be, exempted under Article 15(2) of Directive 77/388/EEC.

Article 3

Member States shall refund to any non-established taxable person, any value added tax charged in respect of goods or services supplied to him by other taxable persons in their territory or in respect of the importation of goods into their territory, in so far as such goods and services give rise to a right of deduction there and are used for the purposes of the following transactions:

(a) transactions referred to in Article 17(3)(a) and (b) of Directive 77/388/EEC;

(b) transactions for which value added tax is payable solely by the person to whom the goods or services are supplied, pursuant to Article 21(1) (a), (b), (c) and (f) of Directive 77/388/EEC.

Article 4

To be eligible for a refund under Article 3, the non-established taxable person must carry out transactions giving rise to a right of deduction in the Member State in which he is established.

When a non-established taxable person carries out in the Member State in which he is established both transactions giving rise to a right of deduction and transactions not giving rise to a right of deduction, only such proportion of the value added tax may be refunded in the Member State of deduction as it is attributable to the former transactions.

Article 5

1. To obtain a refund under Article 3, the non-established taxable person shall submit an application for refund, hereinafter "the application" in the Member State in which he is established. This application shall be made by electronic means.

2. The refund application shall set out, for each Member State where the taxable person incurred value added tax, the following details:

   (a) name and full address of the supplier;

   (b) except in the case of importation, the value added tax identification number of the supplier or tax reference number, as defined by a Member State in accordance with Article 22(9)(e) of Directive 77/388/EEC;

   (c) except in the case of importation, the ISO code of the Member State of purchase in accordance with Article 22(1)(d) of Directive 77/388/EEC;

   (d) date and number of the invoice or importation document;

   (e) taxable amount and amount of value added tax expressed in the currency of the Member State where the tax was incurred;

   (f) the amount of deductible value added tax expressed in the currency of the Member State where the tax was incurred;

(g) nature of the goods and services acquired, described by the following code:

1. = fuel;

2. = accommodation;

3. = restaurant services;

4. = travel expenses, such as taxi fares, short-term renting of means of transport, public transport fares;

5. = fairs and exhibitions;

6. = leasing of means of transport;

7. = road tolls and road user charge;

8. = other.

For the purposes of Code 8 in point (g) of the first subparagraph, a full description of the goods and services shall be requested.

Article 6

1. The application shall relate to purchases of goods or services invoiced or imports made during a period of not less than three months and not more than one calendar year. The application may, however, relate to a period of less than three months where the period represents the remainder of a calendar year.

The application may also relate to invoices or import documents not covered by previous applications and concerning transactions completed during the calendar year in question.

The application shall be submitted within six months of the end of the calendar year in which the tax became chargeable.

2. If the application relates to a period of less than one calendar year but not less than three months, the amount of the refund requested may not be less than EUR 200 or the equivalent in national currency.

If the application relates to a period of a calendar year or the remainder of a calendar year, the amount of the refund requested may not be less than EUR 25 or the equivalent in national currency.

Article 7

1. The Member State where the Value added tax was incurred shall make its decision concerning the application for refund known to the applicant within three months of the date on which the application was submitted.

2. Refunds shall be made before the end of the three month period referred to in paragraph 1.

The refund shall be made in the Member State of refund or, at the applicant's request, in the Member State in which the applicant is established. In the latter case, any bank charges for the transfer shall be deducted by the Member State of refund from the amount to be repaid to the applicant.

3. If the application is refused, the grounds for refusal shall be notified to the non-established taxable person by the competent authorities of the Member State where the tax was incurred.

Appeals against such refusals may be made to the competent authorities of the Member State where the tax was incurred, subject to the same conditions as to form and time limits as those governing claims for refunds made by taxable persons established in the same Member State.

4. In specific cases, a Member State where value added tax has been incurred may request additional information within three months of the date on which the application is submitted. After that period has elapsed, no additional information may be requested.

In such cases, the decision concerning the application shall be made known to the applicant within three months of the date on which the additional information was submitted. The refund shall be made within the same period.

5. In the absence of an express refusal within the appropriate time-limit, as laid down in paragraph 2 or 4, the application shall be deemed to have been granted.

Article 8

Where an application for refund has not been expressly refused, but payment of the refund has not been made before the end of the three-month period laid down in the first subparagraph of Article 7(1), or in the second subparagraph of Article 7(4), as appropriate, interest of 1% per month, calculated from the date on which the refund should have been made to the date on which the refund was actually made, shall be due by the Member State on the amount of the refund to be made.

Article 9

Directive 79/1072/EEC is repealed with effect from 1 July 2006.

References to that Directive shall be construed as references to this Directive.

Article 10

1. Member States shall adopt and publish, by 1 July 2006 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   They shall apply those provisions from 1 July 2006.

   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.

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 11

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

Article 12

This Directive is addressed to the Member States.

Done at Brussels, […]

For the Council
The President

2004/0262 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation arrangements in the context of the one-stop scheme and the refund procedure for value added tax

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[15],

Having regard to the opinion of the European Parliament[16],

Having regard to the opinion of the European Economic and Social Committee[17],

Whereas:

(1) Under Council Directive 200Y/XX/EC of DD/MM/200X amending Directive 77/388/EEC with a view to simplifying value added tax obligations[18], a one-stop-scheme may be offered to all taxable persons with value added tax (VAT) obligations in a Member State where they are not established.

(2) Council Directive 200Y/YY/EC of DD/MM/200Y laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State[19] simplifies the procedure for obtaining a VAT refund in a Member State where the taxable person concerned does not have any VAT registration.

(3) However, both these Directives entail the exchange of a considerable volume of additional information between the various Member States concerned. It is therefore necessary to amend Council Regulation (EC) No 1798/2003/ECof 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92[20]. The exchange of information required should not have a disproportionate administrative burden on the Member States concerned.

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15 OJ C […], […], p. […].
16 OJ C […], […], p. […]..
17 OJ C […], […], p. […].
18 OJ C […], […], p. […].
19 OJ C […], […], p. […].
20 OJ L 264, 15.10.2003, p. 1.

(4) The exchange of information should take place by electronic means based on the existing information exchange systems.

(5) It is necessary to clarify the respective obligations of the Member States of identification and consumption, particularly as regards the deadlines for the transmission of information and the control of taxable persons.

(6) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1798/2003 is amended as follows:

(1) In Article 1(1), the following fifth subparagraph is added:

'This Regulation also lays down rules and procedures for the exchange by electronic means of value added tax information on goods and services supplied by taxable persons who have opted for the special scheme provided for in Article 22b of Directive 77/388/EEC, or who are using the VAT refund procedure, provided for in Council Directive 200Y/YY/EC*, for taxable persons not established in the territory of the country but who are established in another Member State.

(*) OJ L […], […], p. […].';

(2) The following Chapters VIa and VIb are inserted:

'CHAPTER VIa

Provisions concerning the exchange and conservation of information in the context of the 'one-stop scheme' provided for in Article 22b of Directive 77/388/EEC

Article 34a

The definitions contained in point A of Article 22b of Directive 77/388/EEC shall apply for the purpose of this Chapter.

Article 34b

1. The Member State of identification shall transmit the following information by electronic means to the competent authorities of the other Member States:

(a) in respect of taxable persons becoming registered under the special scheme provided for in Article 22b of Directive 77/388/EEC, hereinafter "the one-stop scheme", the information referred to in Article 22b(C)(1) of that Directive, within 10 days of the end of the calendar month during which the registration has been effected;

(b) details of any modification of data, as referred to in Article 22b(C)(3) of Directive 77/388/EEC, or of withdrawal or change of activity, as referred to in Article 22b(C)(4) thereof, within 10 days of being so notified;

(c) details of any decision taken pursuant to Article 22b(C)(5) of Directive 77/388/EEC to strike a taxable person from the register of those using the one-stop scheme, within 10 days of the end of the calendar month during which it has taken that decision;

(d) details of all taxable persons in its territory who have not opted for the one-stop scheme, but who carry out supplies of goods which, pursuant to Article 28b(B)(2) of Directive 77/388/EEC, are subject to value added tax in a Member State other than the Member State of establishment.

2. The technical details relating to the provision of information pursuant to paragraph 1, in particular as regards the content and format of common electronic messages, shall be determined in accordance with the procedure referred to in Article 44(2).

Article 34c

1. Each Member State shall establish and keep updated a database which stores the list of taxable persons supplying goods or services in accordance with the one-stop scheme.

2. Article 22 shall apply.

Article 34d

1. The Member State of identification shall, within five days of the day of receipt and by electronic means, transmit to the competent authorities of the Member States concerned the details, received pursuant to Article 22b(E)(1) of Directive 77/388/EEC, relating to the quarterly returns of each taxable person registered under the one-stop scheme as well as any information relating to a modification of such a return.

2. The technical details relating to the provision of information pursuant to paragraph 1, in particular as regards the content and format of common electronic messages, shall be determined in accordance with the procedure referred to in Article 44(2).

Article 34e

The Member State of identification shall, for the minimum period necessary for control purposes, keep the details received pursuant to Article 22b(E)(1) of Directive 77/388/EEC,

relating to the quarterly returns of each person registered under the one-stop scheme. That period shall be determined in accordance with the procedure referred to in Article 44(2).

Article 34f

1. Each Member State shall make available on a web site detailed information relating to the following:

   (a) the functioning of the one-stop scheme;

   (b) the rules of national law applying to transactions made in the other Member States;

   (c) the relevant bank account number and accounting details to be submitted with the payment to be made by the taxable persons using the one-stop scheme.

   The electronic address for each Member State's web site will be notified to taxable persons at the same time as registration is effected in accordance with Article n accordance with Article 22b(C)(2) of Directive 77/388/EEC.

2. Each Member State shall transmit to the Commission its rules of national law applying to the relevant transactions and the Commission shall provide for translation of this information into all the official languages of the European Community.

3. The details and format of the information referred to in paragraph 1 shall be determined in accordance with the procedure referred to in Article 44(2).

Article 34g

1. Control of taxable persons who have opted for the one-stop scheme shall as far as possible be coordinated by the Member States.

2. If the Member State of identification decides to carry out an audit of a taxable person who has registered for the one-stop scheme in its territory, it shall inform in advance the competent authorities of the other Member States concerned.

3. If the Member State of consumption decides to carry out an audit of a taxable person who is registered under the one-stop scheme and has carried out supplies in its territory, it shall inform in advance the competent authorities of the other Member States concerned.

4. Any Member State concerned may participate in an audit carried out by the Member State of identification or consumption. For this audit, the procedures referred to in Articles 11 and 12 may be used.

CHAPTER VIb

Provisions concerning the exchange and conservation of information in the context of the procedure provided for in Directive 200Y/YY/EC for the refund of value added tax to taxable persons not established in the territory of the country but who are established in another Member State

Article 34h

1. Where the competent authority of a Member State receives an application for refund of value added tax under Article 3 of Directive 200Y/YY/EC, it shall, within 10 days of the end of the calendar month during which the application was received and by electronic means, inform accordingly the competent authorities of each Member State of purchase concerned, confirming whether or not the applicant is identified for value added tax purposes in its territory.

2. The technical details relating to the provision of information pursuant to paragraph 1, in particular as regards the content and format of common electronic messages, shall be determined in accordance with the procedure referred to in Article 44(2).

Article 34i

Details about the operation of the refund procedure laid down in Directive 200Y/YY/EC and about the relevant national rules, particularly in respect of the restrictions to the right to deduct applied in accordance with Article 17a of Directive 77/388/EEC, shall be included on the web site referred to in Article 34f.'

Article 2

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

It shall apply from 1 July 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

For the Council
The President