Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

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of 28 November 2006

on the common system of 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,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the European Economic and Social Committee,

Whereas:

(1) 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[(1)] has been significantly amended on several occasions. Now that new amendments are being made to the said Directive, it is desirable, for reasons of clarity and rationalisation that the Directive should be recast.

(2) The recast text should incorporate all those provisions of Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes[(2)] which are still applicable. That Directive should therefore be repealed.

(3) To ensure that the provisions are presented in a clear and rational manner, consistent with the principle of better regulation, it is appropriate to recast the structure and the wording of the Directive although this will not, in principle, bring about material changes in the existing legislation. A small number of substantive amendments are however inherent to the recasting exercise and should nevertheless be made. Where such changes are made, these are listed exhaustively in the provisions governing transposition and entry into force.

(4) The attainment of the objective of establishing an internal market presupposes the application in Member States of legislation on turnover taxes that does not distort conditions of competition or hinder the free movement of goods and services. It is therefore necessary to achieve such harmonisation of legislation on turnover taxes by means of a system of value added tax (VAT), such as will eliminate, as far as possible, factors which may distort conditions of competition, whether at national or Community level.

(5) A VAT system achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages

of production and distribution, as well as the supply of services. It is therefore in the interests of the internal market and of Member States to adopt a common system which also applies to the retail trade.

(6) It is necessary to proceed by stages, since the harmonisation of turnover taxes leads in Member States to alterations in tax structure and appreciable consequences in the budgetary, economic and social fields.

(7) The common system of VAT should, even if rates and exemptions are not fully harmonised, result in neutrality in competition, such that within the territory of each Member State similar goods and services bear the same tax burden, whatever the length of the production and distribution chain.

(8) Pursuant to Council Decision 2000/597/EC, Euratom, of 29 September 2000 on the system of the European Communities' own resources[(3)], the budget of the European Communities is to be financed, without prejudice to other revenue, wholly from the Communities' own resources. Those resources are to include those accruing from VAT and obtained through the application of a uniform rate of tax to bases of assessment determined in a uniform manner and in accordance with Community rules.

(9) It is vital to provide for a transitional period to allow national laws in specified fields to be gradually adapted.

(10) During this transitional period, intra-Community transactions carried out by taxable persons other than exempt taxable persons should be taxed in the Member State of destination, in accordance with the rates and conditions set by that Member State.

(11) It is also appropriate that, during that transitional period, intra-Community acquisitions of a certain value, made by exempt persons or by non-taxable legal persons, certain intra-Community distance selling and the supply of new means of transport to individuals or to exempt or non-taxable bodies should also be taxed in the Member State of destination, in accordance with the rates and conditions set by that Member State, in so far as such transactions would, in the absence of special provisions, be likely to cause significant distortion of competition between Member States.

(12) For reasons connected with their geographic, economic and social situation, certain territories should be excluded from the scope of this Directive.

(13) In order to enhance the non-discriminatory nature of the tax, the term taxable person should be defined in such a way that the Member States may use it to cover persons who occasionally carry out certain transactions.

(14) The term taxable transaction may lead to difficulties, in particular as regards transactions treated as taxable transactions. Those concepts should therefore be clarified.

(15) With a view to facilitating intra-Community trade in work on movable tangible property, it is appropriate to establish the tax arrangements applicable to such transactions when they are carried out for a customer who is identified for VAT purposes in a Member State other than that in which the transaction is physically carried out.

(16) A transport operation within the territory of a Member State should be treated as the intra-Community transport of goods where it is directly linked to a transport operation carried out between Member States, in order to simplify not only the principles and arrangements for taxing those domestic transport services but also the rules applicable to ancillary services and to services supplied by intermediaries who take part in the supply of the various services.

(17) Determination of the place where taxable transactions are carried out may engender conflicts concerning jurisdiction as between Member States, in particular as regards the supply of goods for assembly or the supply of services. Although the place where a supply of services is carried out should in principle be fixed as the place where the supplier has established his place of business, it should be defined as being in the Member State of the customer, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods.

(18) It is necessary to clarify the definition of the place of taxation of certain transactions carried out on board ships, aircraft or trains in the course of passenger transport within the Community.

(19) Electricity and gas are treated as goods for VAT purposes. It is, however, particularly difficult to determine the place of supply. In order to avoid double taxation or non taxation and to attain a genuine internal market free of barriers linked to the VAT regime, the place of supply of gas through the natural gas distribution system, or of electricity, before the goods reach the final stage of consumption, should therefore be the place where the customer has established his business. The supply of electricity and gas at the final stage, that is to say, from traders and distributors to the final consumer, should be taxed at the place where the customer actually uses and consumes the goods.

(20) In the case of the hiring out of movable tangible property, application of the general rule that supplies of services are taxed in the Member State in which the supplier is established may lead to substantial distortion of competition if the lessor and the lessee are established in different Member States and the rates of taxation in those States differ. It is therefore necessary to establish that the place of supply of a service is the place where the customer has established his business or has a fixed establishment for which the service has been supplied or, in the absence thereof, the place where he has his permanent address or usually resides.

(21) However, as regards the hiring out of means of transport, it is appropriate, for reasons of control, to apply strictly the general rule, and thus to regard the place where the supplier has established his business as the place of supply.

(22) All telecommunications services consumed within the Community should be taxed to prevent distortion of competition in that field. To that end, telecommunications services supplied to taxable persons established in the Community or to customers established in third countries should, in principle, be taxed at the place where the customer for the services is established. In order to ensure uniform taxation of telecommunications services which are supplied by taxable persons established in third territories or

third countries to non-taxable persons established in the Community and which are effectively used and enjoyed in the Community, Member States should, however, provide for the place of supply to be within the Community.

(23) Also to prevent distortions of competition, radio and television broadcasting services and electronically supplied services provided from third territories or third countries to persons established in the Community, or from the Community to customers established in third territories or third countries, should be taxed at the place of establishment of the customer.

(24) The concepts of chargeable event and of the chargeability of VAT should be harmonised if the introduction of the common system of VAT and of any subsequent amendments thereto are to take effect at the same time in all Member States.

(25) The taxable amount should be harmonised so that the application of VAT to taxable transactions leads to comparable results in all the Member States.

(26) To prevent loss of tax revenues through the use of connected parties to derive tax benefits, it should, in specific limited circumstances, be possible for Member States to intervene as regards the taxable amount of supplies of goods or services and intra-Community acquisitions of goods.

(27) In order to combat tax evasion or avoidance, it should be possible for Member States to include within the taxable amount of a transaction which involves the working of investment gold provided by a customer, the value of that investment gold where, by virtue of being worked, the gold loses its status of investment gold. When they apply these measures, Member States should be allowed a certain degree of discretion.

(28) If distortions are to be avoided, the abolition of fiscal controls at frontiers entails, not only a uniform basis of assessment, but also sufficient alignment as between Member States of a number of rates and rate levels.

(29) The standard rate of VAT in force in the various Member States, combined with the mechanism of the transitional system, ensures that this system functions to an acceptable degree. To prevent divergences in the standard rates of VAT applied by the Member States from leading to structural imbalances in the Community and distortions of competition in some sectors of activity, a minimum standard rate of 15 % should be fixed, subject to review.

(30) In order to preserve neutrality of VAT, the rates applied by Member States should be such as to enable, as a general rule, deduction of the VAT applied at the preceding stage.

(31) During the transitional period, certain derogations concerning the number and the level of rates should be possible.

(32) To achieve a better understanding of the impact of reduced rates, it is necessary for the Commission to prepare an assessment report on the impact of reduced rates applied to locally supplied services, notably in terms of job creation, economic growth and the proper functioning of the internal market.

(33) In order to tackle the problem of unemployment, those Member States wishing to do so should be allowed to experiment with the operation and impact, in terms of job creation, of a reduction in the VAT rate applied to labour-intensive services. That reduction is also likely to reduce the incentive for the businesses concerned to join or remain in the black economy.

(34) However, such a reduction in the VAT rate is not without risk for the smooth functioning of the internal market and for tax neutrality. Provision should therefore be made for an authorisation procedure to be introduced for a period that is fixed but sufficiently long, so that it is possible to assess the impact of the reduced rates applied to locally supplied services. In order to make sure that such a measure remains verifiable and limited, its scope should be closely defined.

(35) A common list of exemptions should be drawn up so that the Communities' own resources may be collected in a uniform manner in all the Member States.

(36) For the benefit both of the persons liable for payment of VAT and the competent administrative authorities, the methods of applying VAT to certain supplies and intra-Community acquisitions of products subject to excise duty should be aligned with the procedures and obligations concerning the duty to declare in the case of shipment of such products to another Member State laid down in Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products[(4)].

(37) The supply of gas through the natural gas distribution system, and of electricity is taxed at the place of the customer. In order to avoid double taxation, the importation of such products should therefore be exempted from VAT.

(38) In respect of taxable operations in the domestic market linked to intra-Community trade in goods carried out during the transitional period by taxable persons not established within the territory of the Member State in which the intra-Community acquisition of goods takes place, including chain transactions, it is necessary to provide for simplification measures ensuring equal treatment in all the Member States. To that end, the provisions concerning the taxation system and the person liable for payment of the VAT due in respect of such operations should be harmonised. It is however, necessary to exclude in principle from such arrangements goods that are intended to be supplied at the retail stage.

(39) The rules governing deductions should be harmonised to the extent that they affect the actual amounts collected. The deductible proportion should be calculated in a similar manner in all the Member States.

(40) The scheme which allows the adjustment of deductions for capital goods over the lifetime of the asset, according to its actual use, should also be applicable to certain services with the nature of capital goods.

(41) It is appropriate to specify the persons liable for payment of VAT, particularly in the case of services supplied by a person who is not established in the Member State in which the VAT is due.

(42) Member States should be able, in specific cases, to designate the recipient of supplies of goods or services as the person liable for payment of VAT. This should assist Member States in simplifying the rules and countering tax evasion and avoidance in identified sectors and on certain types of transactions.

(43) Member States should be entirely free to designate the person liable for payment of the VAT on importation.

(44) Member States should be able to provide that someone other than the person liable for payment of VAT is to be held jointly and severally liable for its payment.

(45) The obligations of taxable persons should be harmonised as far as possible so as to ensure the necessary safeguards for the collection of VAT in a uniform manner in all the Member States.

(46) The use of electronic invoicing should allow tax authorities to carry out their monitoring activities. It is therefore appropriate, in order to ensure the internal market functions properly, to draw up a list, harmonised at Community level, of the particulars that must appear on invoices and to establish a number of common arrangements governing the use of electronic invoicing and the electronic storage of invoices, as well as for self-billing and the outsourcing of invoicing operations.

(47) Subject to conditions which they lay down, Member States should allow certain statements and returns to be made by electronic means, and may require that electronic means be used.

(48) The necessary pursuit of a reduction in the administrative and statistical formalities to be completed by businesses, particularly small and medium-sized enterprises, should be reconciled with the implementation of effective control measures and the need, on both economic and tax grounds, to maintain the quality of Community statistical instruments.

(49) Member States should be allowed to continue to apply their special schemes for small enterprises, in accordance with common provisions, and with a view to closer harmonisation.

(50) Member States should remain free to apply a special scheme involving flat rate rebates of input VAT to farmers not covered by the normal scheme. The basic principles of that special scheme should be established and a common method adopted, for the purposes of collecting own resources, for calculating the value added by such farmers.

(51) It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors' items, with a view to preventing double taxation and the distortion of competition as between taxable persons.

(52) The application of the normal VAT rules to gold constitutes a major obstacle to its use for financial investment purposes and therefore justifies the application of a special tax scheme, with a view also to enhancing the international competitiveness of the Community gold market.

(53) The supply of gold for investment purposes is inherently similar to other financial investments which are exempt from VAT. Consequently, exemption appears to be the most appropriate tax treatment for supplies of investment gold.

(54) The definition of investment gold should cover gold coins the value of which primarily reflects the price of the gold contained. For reasons of transparency and legal certainty, a yearly list of coins covered by the investment gold scheme should be drawn up, providing security for the operators trading in such coins. That list should be without prejudice to the exemption of coins which are not included in the list but which meet the criteria laid down in this Directive.

(55) In order to prevent tax evasion while at the same time alleviating the financing burden for the supply of gold of a degree of purity above a certain level, it is justifiable to allow Member States to designate the customer as the person liable for payment of VAT.

(56) In order to facilitate compliance with fiscal obligations by operators providing electronically supplied services, who are neither established nor required to be identified for VAT purposes within the Community, a special scheme should be established. Under that scheme it should be possible for any operator supplying such services by electronic means to non-taxable persons within the Community, if he is not otherwise identified for VAT purposes within the Community, to opt for identification in a single Member State.

(57) It is desirable for the provisions concerning radio and television broadcasting and certain electronically supplied services to be put into place on a temporary basis only and to be reviewed in the light of experience within a short period of time.

(58) It is necessary to promote the uniform application of the provisions of this Directive and to that end an advisory committee on value added taxshould be set up to enable the Member States and the Commission to cooperate closely.

(59) Member States should be able, within certain limits and subject to certain conditions, to introduce, or to continue to apply, special measures derogating from this Directive in order to simplify the levying of tax or to prevent certain forms of tax evasion or avoidance.

(60) In order to ensure that a Member State which has submitted a request for derogation is not left in doubt as to what action the Commission plans to take in response, time-limits should be laid down within which the Commission must present to the Council either a proposal for authorisation or a communication setting out its objections.

(61) It is essential to ensure uniform application of the VAT system. Implementing measures are appropriate to realise that aim.

(62) Those measures should, in particular, address the problem of double taxation of cross-border transactions which can occur as the result of divergences between Member States in the application of the rules governing the place where taxable transactions are carried out.

(63) Although the scope of the implementing measures would be limited, those measures would have a budgetary impact which for one or more Member States could be significant. Accordingly, the Council is justified in reserving to itself the right to exercise implementing powers.

(64) In view of their limited scope, the implementing measures should be adopted by the Council acting unanimously on a proposal from the Commission.

(65) Since, for those reasons, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by 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.

(66) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose into national law the provisions which are unchanged arises under the earlier Directives.

(67) This Directive should be without prejudice to the obligations of the Member States in relation to the time-limits for transposition into national law of the Directives listed in Annex XI, Part B,

HAS ADOPTED THIS DIRECTIVE:

(**1**) **[**OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).**]**

(**2**) **[**OJ 71, 14.4.1967, p. 1301. Directive as last amended by Directive 77/388/EEC.**]**

(**3**) OJ L 253, 7.10.2000, p. 42.

(**4**) OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2004/106/EC (OJ L 359, 4.12.2004, p. 30).