

DIRECTIVES

COUNCIL DIRECTIVE 2009/69/EC

of 25 June 2009

amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to imports

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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

- (1) The Council, in the conclusions of its meeting on economic and financial affairs of 28 November 2006, has agreed to establish an Anti-tax fraud strategy implemented at Community level, especially for tax fraud in the field of indirect taxation, in order to complement national efforts.
- (2) Certain measures which have been discussed in that context require an amendment of Directive 2006/112/EC ⁽³⁾.
- (3) The importation of goods is exempt from value added tax (VAT) if followed by a supply or transfer of those goods to a taxable person in another Member State. The conditions under which that exemption is granted are laid down by Member States. Experience, however, shows that divergences in application are exploited by traders to avoid payment of VAT on goods imported under those circumstances.
- (4) In order to prevent that exploitation it is necessary to specify, for particular transactions, at Community level, a set of minimum conditions under which this exemption applies.
- (5) Since, for those reasons, the objective of this Directive, namely to address the problem of VAT evasion, cannot be sufficiently achieved by the Member States themselves and can therefore 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 propor-

tionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (6) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽⁴⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (7) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is hereby amended as follows:

1. Article 22 shall be replaced by the following:

'Article 22

The application by the armed forces of a State party to the North Atlantic Treaty, for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic market of a Member State shall be treated as an intra-Community acquisition of goods for consideration, where the importation of those goods would not be eligible for the exemption provided for in Article 143(1)(h).';

2. in Article 140, point (b) shall be replaced by the following:

'(b) the intra-Community acquisition of goods the importation of which would in all circumstances be exempt under points (a), (b) and (c) and (e) to (l) of Article 143(1).';

3. Article 143 shall be amended as follows:

(a) the introductory words shall be replaced by the following:

'1. Member States shall exempt the following transactions:';

⁽¹⁾ Opinion of 24 April 2009 (not yet published in the OJ).

⁽²⁾ Opinion of 13 May 2009 (not yet published in the OJ).

⁽³⁾ OJ L 347, 11.12.2006, p. 1.

⁽⁴⁾ OJ C 321, 31.12.2003, p. 1.

(b) the following paragraph shall be added:

'2. The exemption provided for in paragraph 1(d) shall apply in cases when the importation of goods is followed by the supply of goods exempted under Article 138(1) and (2)(c) only if at the time of importation the importer has provided to the competent authorities of the Member State of importation at least the following information:

- (a) his VAT identification number issued in the Member State of importation or the VAT identification number of his tax representative, liable for payment of the VAT, issued in the Member State of importation;
- (b) the VAT identification number of the customer, to whom the goods are supplied in accordance with Article 138(1), issued in another Member State, or his own VAT identification number issued in the Member State in which the dispatch or transport of the goods ends when the goods are subject to a transfer in accordance with Article 138(2)(c);
- (c) the evidence that the imported goods are intended to be transported or dispatched from the Member State of importation to another Member State.

However, Member States may provide that the evidence referred to in point (c) be indicated to the competent authorities only upon request.'

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2011. They shall forthwith communicate to the Commission the text of those provisions.

When these provisions are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 20th day following its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 25 June 2009.

For the Council

The President

L. MIKO
