

Proposal for a Council Directive amending Directive 77/388/EEC as regards the determination of the person liable for payment of value added tax

(98/C 409/08)

COM(1998) 660 final — 98/0312(CNS)

(Submitted by the Commission on 27 November 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

- (1) Whereas the present rules laid down by Article 21 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽¹⁾, as last amended by Directive 98/80/EC⁽²⁾, as regards the determination of the person liable for payment of the tax, create serious problems for business and in particular for the smallest businesses;
- (2) Whereas Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties⁽³⁾, and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation⁽⁴⁾, both of which were last amended by the Act of Accession of Austria, Finland and Sweden, organise mutual assistance between the Member States as regards the correct establishment of VAT and its recovery;

(3) Whereas the Member States have not implemented to a sufficient extent the recommendations made by the Commission in its report to the Council and the European Parliament on arrangements for taxing transactions carried out by non-established taxable persons⁽⁵⁾, the aim of which was to reduce the obligations incumbent on traders as regards the determination of the person liable for payment of the tax;

(4) Whereas it emerges from the report's conclusions that replacement of the tax representation system by the reverse charge system (designation of the recipient as the person liable for payment of the tax) cannot be a solution to the problems created since this system would run counter to the principle of fractioned payments which lies at the heart of the common system of value added tax;

(5) Whereas the Commission report on the second phase of the SLIM (Simpler Legislation for the Internal Market) project recommends a study of the possibilities and different ways of reforming the tax representation system laid down by Article 21 of Directive 77/388/EEC;

(6) Whereas the only change which can in fact substantially simplify the common system of VAT in general, and the determination of the person liable for payment of the tax in particular, is to rule out any option in how to determine that person and to state clearly the general principle that the taxable person (whether or not he is established) is the person liable for payment of the value added tax and the only person responsible for its actual payment;

(7) Whereas, when a taxable person (whether or not he is established) appoints an agent to fulfil the obligations set out in Article 22 of Directive 77/388/EEC in his place, he must inform the administration of the agent's name, since he is responsible for the agent's actions;

⁽¹⁾ OJ L 145, 13.6.1977, p. 1.

⁽²⁾ OJ L 281, 17.10.1998, p. 31.

⁽³⁾ OJ L 73, 19.3.1976, p. 18.

⁽⁴⁾ OJ L 336, 27.12.1977, p. 15.

⁽⁵⁾ COM(94) 471 final, 3.11.1994.

- (8) Whereas, lastly, where non-established taxable persons are nationals of countries with which no legal instrument exists which organises mutual assistance similar to that laid down within the Community, it will be possible for the Member States to continue to require such non-established taxable persons to designate a tax representative to be the person liable for payment of the tax in their stead;
- (9) Whereas, however, the latter option cannot exist in cases where the non-established taxable person carries out only the exempt activities referred to in Articles 13 and 15 of Directive 77/388/EEC;
- (10) Whereas Member States will continue to be entirely free to designate the person liable for payment of the tax on importation;
- (11) Whereas Member States may continue to provide that someone other than the person liable for payment of the tax shall be held jointly and severally liable for payment of the tax, provided that this does not give rise to any discrimination against non-established taxable persons;
- (12) Whereas Article 10 of Directive 77/388/EEC should be clarified in order to prevent certain cases of tax avoidance in the case of continuous supplies which do not give rise to pre-established successive statements of account or payments;
- (13) Whereas Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended as follows:

1. In the first subparagraph of Article 10(2), after the second sentence, the following sentence is inserted:

‘In the absence of pre-established successive statements of account and payments, the tax shall in any event become chargeable at intervals of at least one year.’
2. In the fifth indent of Article 28c(E)(3), the words ‘Article 21(1)(a)’ are replaced by ‘Article 21(1)(c)’.

3. In Article 28g, Article 21 is replaced by the following:

‘Article 21

Persons liable to pay tax to the authorities

1. Under the internal system, the following shall be liable to pay value added tax:
 - (a) the taxable person carrying out the taxable supply of goods or of services, except for the cases referred to in (b) and (c);
 - (b) persons to whom services covered by Article 9(2)(e) are supplied, or persons, identified for value added tax purposes within the territory of the country, to whom services referred to in Article 28b(C), (D), (E) or (F) are supplied, when the service is carried out by a taxable person not established within the territory of the country;
 - (c) the person to whom the supply of goods is made when the following conditions are met:
 - the taxable operation is a supply of goods made under the conditions laid down in Article 28c(E)(3),
 - the person to whom the supply of goods is made is another taxable person or a non-taxable legal person identified for the purposes of value added tax within the territory of the country,
 - the invoice issued by the taxable person not established within the territory of the country conforms to Article 22(3);
 - (d) any person who mentions the value added tax on an invoice or other document serving as invoice;
 - (e) any person effecting a taxable intra-Community acquisition of goods.

Where the person liable for payment of the tax has appointed an agent responsible for fulfilling the obligations laid down in Article 22, he shall inform the administration of the agent's name. The person liable to pay tax shall be responsible to the administration for the actions carried out by the agent on his behalf.

Where the supply of goods or of services is effected by a taxable person who is not established within the territory of the country and no legal instrument exists, with the country in which that

taxable person is established, which organises mutual assistance similar to that laid down by Directives 76/308/EEC and 77/799/EEC, Member States may take steps to provide that the person liable for payment of the tax shall be a tax representative designated by the non-established taxable person. However, designation of a tax representative as person liable for payment of the tax may not take place where the non-established taxable person carries out only supplies of goods or of services which are exempt under Articles 13 and 15 of this Directive.

Member States may provide that someone other than the person liable for payment of the tax shall be held jointly and severally liable for payment of the tax, provided this option is applied without discrimination against non-established taxable persons.

2. On importation, value added tax shall be payable by the person or persons designated or accepted as being liable by the Member State into which the goods are imported.
4. In Article 28h, Article 22 is amended as follows:
 - (a) In paragraph 1(c), the first indent is replaced by the following:

‘— every taxable person, with the exception of those referred to in Article 28a(4), who within the territory of the country effects supplies of goods or of services giving him the right of deduction, other than provisions of services for which tax is payable solely by the customer or the recipient in accordance with Article 21(1)(b) and (c). However, Member States need not identify certain taxable persons referred to in Article 4(3).’
 - (b) Paragraph 7 is replaced by the following:

‘7. Member States shall take the measures necessary to ensure that the tax representatives

who, in accordance with Article 21(1), are considered to be liable to pay the tax instead of the taxable person comply with the obligations set out in this Article, relating to declaration and payment; they shall also take the measures necessary to ensure that those persons who, in accordance with Article 21(1), are held to be jointly and severally liable for the payment of the tax comply with the obligations relating to payment, set out in this Article.’

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 2000. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 provisions of national law which they adopt in the field governed by this Directive, and a table correlating the provisions of this Directive with the provisions of national law adopted for its implementation.

Article 3

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

Article 4

This Directive is addressed to the Member States.