

A Guide to the European VAT Directives 2009

Vol. 2

PREAMBLES

COUNCIL DIRECTIVE 2006/112/EC 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 assessment¹ 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 taxes² 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 That Directive should therefore be repealed.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

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

2 OJ 71, 14.4.1967, p. 1301. Directive as last amended by Directive 77/388/EEC.

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.

3 OJ L 253, 7.10.2000, p. 42.

(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.