COUNCIL DIRECTIVE 2000/65/EC

of 17 October 2000

amending Directive 77/388/EEC as regards the determination of the person liable for payment 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 [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas:

(1) The present rules laid down by Article 21 of 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 [4], 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) 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 [5], 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 [6] and Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) [7] organise mutual assistance between the Member States as regards the correct establishment of VAT and its recovery.

(3) 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.

(4) 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 no longer to allow Member States the option of requiring the appointment of a tax representative.

(5) Therefore, the appointment of a tax representative should in future only be an option for non-established taxable persons.

(6) Under Article 22 of Directive 77/388/EEC, Member States may impose directly on non-established taxable persons the same obligations as those which apply to established taxable persons, including those which may be laid down under Article 22(8).

(7) 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 or to designate an agent.

(8) Member States will continue to be entirely free to designate the person liable for payment of the tax on importation.

(9) 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.

(10) Article 10 of Directive 77/388/EEC should also be clarified in order to prevent certain cases of tax avoidance in the case of continuous supplies.

(11) 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 shall be inserted:

   'Member States may in certain cases provide that continuous supplies of goods and services which take place over a period of time shall be regarded as being completed at least at intervals of one year.'

2. In Article 28f (1) (which amends Article 17(2), (3) and (4) of the same Directive), in Article 17(4)(a), the terms 'Article 21 (1)(a)' shall be replaced by 'Article 21 (1)(a) and (c)'.

[1] OJ C 409, 30.12.1998, p. 10.
[2] OJ C 219, 30.7.1999, p. 91.
[3] OJ C 116, 28.4.1999, p. 14.
[4] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2000/17/EC (OJ L 84, 5.4.2000, p. 24).
[5] OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 1994 Act of Accession.
[6] OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.
[7] OJ L 24, 1.2.1992, p. 1.