COUNCIL DIRECTIVE 1999/59/EC

of 17 June 1999

amending Directive 77/388/EEC as regards the value added tax arrangements applicable to telecommunications services

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) Article 14 of the Treaty defines the internal market as comprising an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

(2) the rules currently applicable to VAT on telecommunications services under Article 9 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 [4] are inadequate for taxing all such services consumed within the Community and for preventing distortions of competition in this area;

(3) in the interests of the proper functioning of the internal market, such distortions should be eliminated and new harmonised rules introduced for this type of activity;

(4) action should be taken to ensure, in particular, that telecommunications services used by customers established in the Community are taxed in the Community;

(5) to this end, telecommunications services supplied to taxable persons established in the Community or to recipients established in third countries should, in principle, be taxed at the place of the recipient of the services;

(6) in order to ensure uniform taxation of telecommunications services supplied by taxable persons established in third countries to non-taxable persons established in the Community which are effectively used or enjoyed in the Community, Member States should make use of the provisions of Article 9(3)(b) of Directive 77/388/EEC on changing the place of supply; whereas, however, Article 9(3) of that Directive may remain applicable where corresponding telecommunications services are supplied to other recipients in the Community;

(7) for the purpose of establishing a special rule for determining the place of supply of telecommunications services, such services need to be defined; such definition should draw on definitions already adopted at international level, which include international telephone call routing and termination services and access to global information networks;

(8) taxation at the place of the recipient of the services also means that taxable persons will not have to have recourse to the procedures under Directives 79/1072/EEC [5] and 86/560/EEC [6]; the new rules for determining the place of supply should not mean that foreign taxable persons have to be identified for tax purposes in another State; this will be achieved by making it compulsory for the recipient of the services to be liable for the tax, provided that recipient is a taxable person;

(9) Directive 77/388/EEC should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. At the end of Article 9(2)(e), the full stop shall be replaced by a semicolon and the following new indent shall be added:

[1] OJ C 78, 12.3.1997, p. 22.
[2] Opinion delivered on 6 May 1999 (not yet published in the Official Journal).
[3] OJ C 287, 22.9.1997, p. 28.
[4] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 1999/49/EC (OJ L 139, 2.6.1999, p. 27).
[5] OJ L 331, 27.12.1979, p. 11. Directive as last amended by the 1994 Act of Accession.
[6] OJ L 326, 21.11.1986, p. 40.