Thirteenth Council Directive of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (86/560/EEC)

THIRTEENTH COUNCIL DIRECTIVE

of 17 November 1986

on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory

(86/560/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment[(1)], and in particular Article 17 (4) thereof,

Having regard to the proposal from the Commission[(2)],

Having regard to the opinion of the European Parliament[(3)],

Having regard to the opinion of the Economic and Social Committee[(4)],

Whereas Article 8 of Directive 79/1072/EEC[(5)] on the arrangements for the refund of value added tax to taxable persons not established in the territory of the country provides that in the case of taxable persons not established in the territory of the Community, Member States may refuse refunds or impose special conditions;

Whereas there is a need to ensure the harmonious development of trade relations between the Community and third countries based on the provisions of Directive 79/1072/EEC, while taking account of the varying situations encountered in third countries;

Whereas certain forms of tax evasion or avoidance should be prevented,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. ‘A taxable person not established in the territory of the Community’ shall mean a taxable person as referred to in Article 4 (1) of Directive 77/388/EEC who, during the period referred to in Article 3 (1) of this Directive, has had in that territory neither his business nor a fixed establishment from which business transactions are effected, nor, if no such business or fixed establishment exists, his permanent address or usual

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place of residence, and who, during the same period, has supplied no goods or services deemed to have been supplied in the Member State referred to in Article 2, with the exception of:

(a) transport services and services ancillary thereto, exempted pursuant to Article 14 (1) (i), Article 15 or Article 16 (1), B, C and D of Directive 77/388/EEC;

(b) services provided in cases where tax is payable solely by the person to whom they are supplied, pursuant to Article 21 (1) (b) of Directive 77/388/EEC;

2. 'Territory of the Community' shall mean the territories of the Member States in which Directive 77/388/EEC is applicable.

Article 2

1 Without prejudice to Articles 3 and 4, each Member State shall refund to any taxable person not established in the territory of the Community, subject to the conditions set out below, any value added tax charged in respect of services rendered or moveable property supplied to him in the territory or the country by other taxable persons or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17 (3) (a) and (b) of Directive 77/388/EEC or of the provision of services referred to in point 1 (b) of Article 1 of this Directive.

2 Member States may make the refunds referred to in paragraph 1 conditional upon the granting by third States of comparable advantages regarding turnover taxes.

3 Member States may require the appointment of a tax representative.

Article 3

1 The refunds referred to in Article 2 (1) shall be granted upon application by the taxable person. Member States shall determine the arrangements for submitting applications, including the time limits for doing so, the period which applications should cover, the authority competent to receive them and the minimum amounts in respect of which applications may be submitted. They shall also determine the arrangements for making refunds, including the time limits for doing so. They shall impose on the applicant such obligations as are necessary to determine whether the application is justified and to prevent fraud, in particular the obligation to provide proof that he is engaged in an economic activity in accordance with Article 4 (1) of Directive 77/388/EEC. The applicant must certify, in a written declaration, that, during the period prescribed, he has not carried out any transaction which does not fulfil the conditions laid down in point 1 of Article 1 of this Directive.

2 Refunds may not be granted under conditions more favourable than those applied to Community taxable persons.

Article 4

1 For the purposes of this Directive, eligibility for refunds shall be determined in accordance with Article 17 of Directive 77/388/EEC as applied in the Member State where the refund is paid.

2 Member States may, however, provide for the exclusion of certain expenditure or make refunds subject to additional conditions.

3 This Directive shall not apply to supplies of goods which are or or may be exempted under point 2 of Article 15 of Directive 77/388/EEC.