



COMMISSION OF THE EUROPEAN COMMUNITIES

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2002/0041 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC as regards the special scheme for travel agents

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

In 1977, when the Sixth VAT Directive¹ was adopted, a special scheme for travel agents and tour operators was introduced.

This special scheme was created due to the specific nature of the profession. It must be borne in mind at the outset that the services provided by travel agents and tour operators most frequently consist of a package of services, in particular transport and accommodation, supplied either within or outside the territory of the Member State in which the undertaking has established its business or has a fixed establishment. The application of the normal rules on place of taxation, taxable amount and deduction of input tax would, by reason of the complexity of services and the places in which they are provided, entail practical difficulties for those undertakings of such a nature as to obstruct their operations. In order to adapt the applicable rules to the specific nature of such operations, the Community legislature set up a special VAT scheme in Article 26 of the Sixth Directive.

It applies to operators whose supplies consist of elements, such as hotel accommodation and transport, which they have purchased from third parties and then sell, in their own names, to travellers. All transactions performed by the travel agent in respect of a journey are treated as a single supply. The taxable amount is the profit margin realised by the travel agent on the supply of a travel package. The travel agent that applies this margin scheme has no right to deduct the input VAT on transactions that are charged to him and which are for the direct benefit of the traveller. The place of taxation for travel agents' supplies is the place where he has established his business or has a fixed establishment from which the service is supplied or, in absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

The first objective of this special scheme was to simplify the application of the Community VAT rules for these supplies. When the travel agent purchases services from other suppliers, puts them together in a package and sells them to the traveller, in his own name and for his own account, the provisions of this special scheme ensure that the travel agent avoids multiple registration for VAT purposes in different Member States from where the services are supplied.

A second objective of this special scheme is the distribution of VAT revenues between Member States. The special scheme was installed in order to assure that the VAT revenue is allocated to the Member State where the final consumption of each individual service takes place. Indeed, the functioning of the scheme provided by Article 26 of the Sixth VAT Directive ought to ensure that the VAT revenue on services enjoyed during the journey - e.g. hotel, restaurant, transport - is allocated to the Member State where the services are enjoyed, while the VAT on the travel agents margin is allocated to the Member state where the travel agent is established. As one of the basic principles of VAT is that it is a consumption tax, this whole special scheme was developed to best meet this objective.

¹ OJ L 145 of 13.6.1977, p.1.

However, in practice there is no real uniform application of this special scheme by Member States. Article 28(3)(a) and Annex E (15) of the Sixth VAT Directive allow Member States to continue to tax transactions which take place outside the EU whilst Article 28(3)(g) allows Member States to exempt such transactions without repayment of input VAT. Furthermore, Article 28(3)(b) and Annex F (27) allow Member States to continue to exempt the supply of services within the Community by travel agents or tour operators.

Finally there is also one Member State that has notified² the Commission under the procedure laid down in Article 27(1-4) of the Sixth VAT Directive of a special simplification measure applicable in that Member State, which allows it to apply divergent rules from Articles 26 and 28 of the Sixth VAT Directive. The Commission notified³ all Member States of the proposed measure and as no official reaction was received within the two months delay, this simplification measure was accepted on 19 December 1978.

2. PROBLEMS ENCOUNTERED

It has to be mentioned that this special scheme dates from 1977, when the Sixth VAT Directive was adopted, and in that period the tourism sector was much more concentrated than today. The vast majority of travel packages were sold directly by the tour operator or travel agent to the traveller. Today this situation has changed drastically. The whole sector is much more specialised with more operators involved. One of the consequences thereof is that travel packages are no longer sold only directly to travellers, but also to other travel agents or tour operators.

The travel organisers market is characterised by increasing market concentration and vertical integration. The 6 biggest market participants generate about 18% of employment and about 33% of sales. Vertically integrated groups comprise travel agencies, tour operating, airlines, incoming agencies and accommodation. Market concentration and vertical integration of the big tourist corporations create a fierce cost respectively price competition.

Thus tour operators put pressure on the margins of independent travel agents. Still, in 1998/99, the main sales channels of tour operators were travel agents. Such travel agents are generally small or micro-enterprises employing between 5 and 11 persons. The options for travel agents to cope with increasing cost competition and thus lower margins are entering into co-operations of independent travel agents, entering into franchise agreements with tour operators or to specialise their products in niche markets. Therefore many travel agents have acquired a specialisation in business, congress or incentive travel where the customer is rarely the average traveller or holidaymaker.

The Commission has received a number of complaints from operators active in the tourism sector that travel agents' supplies are receiving different treatment depending on the Member State where they operate. This problem of the different application of Article 26 of the Sixth VAT Directive by Member States was raised in meetings of the VAT Committee. The crucial question was whether the special margin scheme for travel agents and tour operators can also apply if the package of services is supplied to another travel agent and not to the traveller.

² Letter of 13 September 1978.

³ Letter of 19 October 1978.

Based on case law from the European Court of Justice⁴, the Commission took the view that this margin scheme can only be applied when the package is sold to the traveller, i.e. the final consumer. If this package is sold between tour operators/travel agents, the margin scheme can not be applied and each transaction has to be taxed separately in accordance with the relevant provisions determining the place of supply.

It was confirmed during these discussions that Member States apply Article 26 in a very divergent way, a situation that can lead to double taxation. It also creates competitive disadvantages for companies established in Member States that apply the margin scheme only when the package is sold to the traveller in comparison to competitors established in Member States that have a more flexible approach.

In certain situations, moreover, the application of the margin scheme no longer ensures a fair distribution of receipts between Member States, one of the basic objectives for introducing this special scheme. For this reason, some Member States defend another interpretation of Article 26, on the basis of which the margin scheme should also apply when a package is sold between tour operators/travel agents. In addition, this interpretation would ease the burden on business as tour operators/travel agents would no longer be obliged to register for VAT in all Member States where they supply goods or services that are part of the package where it is sold other than directly to the traveller.

Several Member States also raised the issue of business trips and the problem this causes to companies, who are, in effect, final consumers of travel packages, as they will be unable, under the proposed new provisions of Article 26, to deduct the residual input VAT. If they order a travel package from a travel agent, they will be charged a price VAT included, and therefore this company will not be able to deduct this amount of VAT although this travel package is used for business purposes. This will cause residual VAT in the intermediary consumption stage, which is contrary to the basic principle of neutrality of the Community VAT system.

Finally, the Commission has become aware that, with the increased use of the Internet as a means of selling travel services, travel agents or tour operators established in third countries increasingly intervene in the supply of travel packages. This leads to a clear distortion of competition since, under the current rules applicable in this field, a travel package will be taxed under the margin scheme when it is supplied by an EU established tour-operator, but it will not be subject to tax when it is supplied by a tour operator established in a third country since the place of supply is considered to be that third country.

⁴ Case C-163/91, Fiscal group Beheersmaatschappij Van Ginkel Waddinxveen BV, Reis- en Passagebureau Van Ginkel BV and Inspecteur der Omzetbelasting te Utrecht on the interpretation of Article 26 of Directive 77/388/EEC (OJ L 145, 13.06.1977, p. 1).

3. OBJECTIVE

In the light of these problems, which arise partly from changes in business patterns and technology and partly from divergent practices by Member States, and keeping in mind the overall objectives of this special scheme, the Commission decided to include a modification of Article 26 as an element of its New VAT Strategy⁵, while maintaining the logic of the Article. This aims at the simplification, modernisation and more uniform application of the Community VAT legislation.

Modernisation is necessary in this particular area because of the current evolution of electronic commerce, and the growing use of this medium in the tourism sector. Similarly, more uniform application in the EU of the special scheme for travel agents is also necessary to address the main concerns of the sector, whose complaints have highlighted the distortion of competition which arises as a result of the divergent application of Article 26 by Member States.

The object of this proposal, therefore, is to ensure more uniform application by extending the scope of the special scheme to cover the supplies of travel packages to all clients and to abolish the various derogations relating to such supplies. The proposal also aims at eliminating the distortion of competition to the detriment of EU established tour operators, which is increasingly arising as the result of the use of new technology in this sector.

4. PROPOSED CHANGES

4.1. Article 1 (1)

4.1.1. Article 26(1)

The last sentence of the current Article 26(1) of the Sixth VAT Directive clarifies that for the purpose of the application of the special scheme, travel agents include tour operators.

Following certain rulings of the European Court of Justice⁶ concerning the persons liable to fall within the scope of the special margin scheme for travel agents, it seems useful to clarify the scope of application of the special scheme for travel agents. The result should be that a trader does not need to be a licensed travel agent to be able, or to be obliged, to use the provisions of Article 26. Furthermore the Court has confirmed that the taxable person needs to use services supplied to him by third parties in order to fall within the scope of Article 26 of the Sixth VAT Directive. Thus, a travel agent that provides services himself directly to his customer, as opposed to buying in and selling on services, is not covered by the special margin scheme.

⁵ Communication from the Commission to the Council and the European Parliament - A Strategy to improve the operation of the VAT system within the context of the Internal Market (COM(2000)348 final of 7.6.2000).

⁶ Joint Cases C-308/96 and C-94/97, T.P. Madgett and R.M. Baldwin and Commissioners of Customs and Excise on the interpretation of Article 26 of Article 26 of the Sixth VAT Directive 77/388/EEC (OJ L 145, 13.06.1977, p.1) and Case C-163/91, mentioned before.

As the jurisprudence of the European Court of Justice has already clarified these circumstances, the Commission does not consider it useful to engage in the exercise of trying to come up with a definition of a travel agent for the application of Article 26. In fact, every taxable person who sells travel services in his own name and using the supplies and services of other taxable persons in the provision thereof should be considered to fall within the scope of Article 26 of the Sixth VAT Directive.

All other cases, whereby the travel agent acts as a mere intermediary, fall outside the scope of this special scheme. These services should be taxed according to the normal VAT rules for taxing services of intermediaries.

Nevertheless, in order to meet the requests for clarification expressed by several Member States, the Commission has proposed an adaptation of the description of the persons falling within the scope of this special scheme in Article 26(1).

4.1.2. Article 26(2)

4.1.2.1. The customer of the travel agent

As mentioned above, one of the major problems raised by Member States and travel agents alike is the fact that the scheme could strictly only be applied when the travel service was sold to a traveller. Such a rule was tailored to the market situation in 1977, when travel packages were mainly sold by a travel agent directly to the traveller. Nowadays the situation has changed considerably. More persons are operating in the sector and the supply of travel packages is more fractionated than in 1977. Therefore more and more travel services are supplied either to other travel agents or to other taxable persons who use travel services as an incentive for their personnel or in the framework of their business, e.g. seminars.

The current situation, whereby the special scheme is not applicable when the travel service is sold to a person other than the traveller, no longer ensures that VAT revenue is allocated to the Member State where the consumption actually takes place. When a travel agent sells a travel package to another travel agent, the normal rules of taxation should be applied. This means that he should be able to deduct the input VAT he paid to his suppliers and to charge VAT in the Member State where he is established on the whole value of his onward supply of a travel package to the second travel agent. In that case the VAT revenue on the initial supplies (e.g. hotel accommodation) is no longer allocated to the Member States where the different services are consumed, but is redirected to the Member State where the travel agent is established.

To avoid this, several Member States with large tourism industries apply a different interpretation of this Article, and extend the scope of the special scheme to supplies of travel services by travel agents to clients other than travellers. The result is that the original purposes of this scheme, simplification and taxation in the Member State of consumption are better met.

Nevertheless, this leads to differing applications of the special scheme within the Community, a situation which is not compatible with the proper functioning of the internal market and which distorts competition between traders established in different Member States. This is a situation that is unacceptable and therefore the Commission proposes that the first sentence of Article 26(2) be modified by deleting the words "to the traveller".

The consequence thereof is that the scope of the special scheme is substantially broadened. In its amended version, the special scheme must be applied for all supplies by travel agents under the conditions mentioned in Article 26(1), irrespective of the nature of the customer (private person, taxable person, business, other travel agents, etc.).

4.1.2.2. Travel agent established outside the EU

The current market situation has evolved to such an extent that major tour operators set up branches in countries outside the EU and supply travel packages from those third country branches in order to avoid taxation in the EU. This situation creates distortion of competition for smaller travel agents that do not dispose of the necessary resources to set up similar operations. Furthermore it is unacceptable that simply by inserting a third country established branch, taxation of consumption in the EU is avoided or reduced.

It is clear that the supply of a travel package that takes place in the EU to an EU established customer should be taxed in the EU. Therefore the Commission proposes that the place of supply for travel services supplied by third-country established suppliers to EU established customers be changed to the Member State where the customer is established or has his permanent address or usually resides. This would only cover packages that take place in the EU and they would only be taxable in the EU when they are supplied to EU established customers.

Furthermore, it is the intention that this rule should be applied, irrespective of whether the client is a taxable person or a non-taxable person.

In order to achieve this result, the Commission has proposed that a specific provision be introduced in Article 26(2), after the second sentence, in order to modify the place of taxation for these supplies.

4.1.3. Article 26(3)

Under Article 26a of the Sixth VAT Directive another special scheme for taxation of the profit margin was introduced in 1994 for second-hand goods, works of art, collectors' items and antiques⁷. In that Article there is a definition of the taxable amount and of how the profit margin must be calculated.

Several Member States explained that they encountered difficulties in determining the taxable amount mentioned under Article 26. Therefore, the Commission proposes that the definition of the taxable amount in this Article be amended along the lines of the wording used in Article 26a for the second hand goods scheme. This proposed new definition, which is more detailed, is included in a new paragraph 3 of Article 26. This Article first defines the profit margin as the difference between the selling price and the actual cost of the service and then it defines the selling price and actual cost.

⁷ Council Directive 94/5/EC of 14 February 1994 supplementing the common system of value added tax and amending Directive 77/388/EEC - Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques (OJ L 60 of 3.3.1994, p.16).

4.1.4. Article 26(4)

In order to simplify the system, the Commission also proposes the introduction of the possibility for Member States to allow travel agents to calculate one single profit margin for all supplies of travel packages during a certain period. Article 26a (B)(10) of the Sixth VAT Directive foresees a similar possibility for taxable dealers applying the second-hand goods margin scheme. Several Member States suggested it would be useful to allow this possibility for travel agents or tour operators covered by the special scheme of Article 26. This is especially the case because in the tourism sector there is often a gap between the period when the travel agent sells the package and the date on which he gets the invoices from his taxable suppliers, which makes it very difficult for him to determine the profit margin for each individual package he sells.

For this reason, the Commission proposes that a new paragraph 4 be introduced in Article 26 of the Sixth VAT Directive, namely to allow Member States the possibility to permit travel agents to calculate an overall profit margin for a determined period. The proposed new paragraph also lays down the rules as to how this total profit margin should be calculated, namely as the difference, during a certain period, between all supplies by a travel agent and all the purchases of goods and services by the travel agent during that same period.

4.1.5. Article 26(5)

The old Article 26(3) of the Sixth VAT Directive is renumbered as Article 26(5) but remains unchanged.

When a travel agent, established in the Community, supplies a travel package, the constituent elements of which are performed outside the Community, the travel agent is considered to act as a mere intermediary for the account of the traveller. In that case he is considered to make a supply of a service that takes place in the Community, but which is exempted with a right of deduction of the input VAT on the basis of Article 15(14) of the Sixth VAT Directive.

If a travel package covers a journey that takes place partly in the Community and partly outside the Community, only the part of the journey taking place outside the Community may be exempted with a right of deduction of the input VAT, while the part of the journey that takes place inside the Community should be taxed under the margin scheme provided for in Article 26.

Similarly, if the travel agent is established outside the Community and he supplies a travel package that partly takes place in the Community to a customer established in the Community, he will be covered by the special scheme of Article 26 for that part of the journey that takes place inside the Community.

4.1.6. Article 26(6)

The old Article 26(4) of the Sixth VAT Directive is renumbered as Article 26(6). This provision disallows the right to deduct input VAT or obtain refund of VAT in any Member State for services bought by travel agents and supplied to their customers.

The only modification in this Article is the replacement of the word "traveller", by the word "customer", a term used throughout the whole new Article 26 in order to avoid confusion with the former, more narrow application of the scheme, where only services supplied to the traveller were covered.

4.1.7. Article 26(7-9)

Especially when the travel agent intervenes in the organisation of business seminars or in the case whereby a company offers incentive travel packages to its employees, the application of the margin scheme could result in an incentive for the company to contact each supplier directly in order to be able to deduct this input VAT rather than to go to a travel agent who will invoice a VAT inclusive price and where the company is not allowed to deduct this input VAT.

Under the provisions of Article 26a, the special margin scheme for second hand goods, this problem was solved, by allowing the supplier the possibility to choose for the application of the normal VAT arrangements.

A similar solution for the special scheme for travel agents should be envisaged, although this will entail certain consequences and difficulties for the travel agent concerned. The travel agent supplying a travel package to a company and who would be allowed to opt for the normal VAT arrangements, would have to be registered in every Member State where he supplies services, as he would be considered to supply each of these services separately. By doing so, the travel agent would be able to recover most of his input VAT through his VAT return to be filed in these Member States. When he is not registered for VAT purposes in a Member State where he incurred VAT, he would have to claim a refund under the provisions of the 8th VAT Directive⁸. This implies that the Member State in some cases will be obliged to reimburse the VAT to the travel agent and in other cases, it would be prohibited to do so, when this same travel agent is operating under the special margin scheme. This could give rise to administrative complications since it will be necessary for the Member State that has to refund the input VAT to determine whether this travel agent has supplied under the margin scheme of Article 26, without a right to deduct his input VAT or whether he has opted for taxation of his supply, in which case he should be allowed a refund of his input VAT.

Nevertheless, if a travel agent were not given the possibility to opt for the taxation under the normal VAT provisions, he would be obliged to sell under the special margin scheme and the taxable client, who uses this service for his business purposes, would not be able to deduct the VAT comprised in the taxable amount of the service supplied to him by the travel agent. This results in remaining VAT in the stage of intermediary consumption. Therefore, the Commission proposes to modify Article 26 of the Sixth VAT Directive by inserting the possibility for travel agents to opt for the application of the normal VAT arrangements.

4.2. Article 1(2)

When travel agents act as intermediaries, i.e. in the name and for the account of the traveller, the provisions of Article 26 of the Sixth VAT Directive do not apply. This implies that the normal rules applicable to services rendered by intermediaries apply. One of these is set out in Article 15(14) of the Sixth VAT Directive. Since the introduction of the transitional VAT arrangement for trade between Member States in 1993, the second paragraph of this provision (which excludes the exemption for intermediary services being applied in the case when a traveller enjoys services supplied in other Member States) seems to have lost its meaning. Therefore, the Commission proposed the deletion of this paragraph.

⁸ Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the Laws of Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ L 331 of 27.12.1979, p.11).

4.3. Article 1(3)

In order to ensure a more uniform application within the Community of the VAT rules applicable to services carried out by travel agents, the Commission proposes the abolition of the possibility offered to Member States by Article 28(3)(g) of the Sixth VAT Directive, which allows Member States to continue to exempt services mentioned under the old Article 26(3) of the Sixth VAT Directive without refund of input VAT, rather than to exempt them with a right to deduct the input VAT.

4.4. Article 1(4-5)

In the context of the proposed modifications to Article 26 and in the light of a more uniform application, the Commission also proposes the abolition of the derogations foreseen under Article 28(3)(a) and point 15 of Annexe E (which allows Member States to subject to tax journeys outside the Community) and Article 28(3)(b) and point 27 of Annexe F (which allows Member States to exempt journeys within the Community) so as to achieve equal treatment of tour-operators/travel agents in all Member States of the EU.

4.5. Article 2

In the same context of a more uniform application, the Commission also proposes the abolition of the derogation granted by a Council Decision under the procedure foreseen under the provisions of Article 27(1-4) of the Sixth VAT Directive.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC as regards the special scheme for travel agents

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 Commission⁹,

Having regard to the opinion of the European Parliament¹⁰,

Having regard to the opinion of the Economic and Social Committee¹¹,

Whereas:

- (1) According to the Commission's Communication to the Council and the European Parliament "A Strategy to improve the functioning of the Internal Market"¹², a more uniform application of the community provisions by Member States is one of the four objectives for improving the functioning of the Internal Market in the short term.
- (2) Member States currently apply different interpretations of the special scheme for travel agents, as set out in Article 26 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 assessment¹³, as last amended by Directive 2001/41/EC¹⁴, resulting in different application of that scheme in the different Member States and leading to distortion of competition for certain operators.
- (3) Extending its scope to include all supplies of travel packages under the conditions of Article 26 of Directive 77/388/EEC would eliminate the different interpretations given by Member States to the supplies covered by this special scheme and ensure that the original objective of taxation in the Member State of consumption is better met.

⁹ OJ C ..., ..., p. ...

¹⁰ OJ C ..., ..., p. ...

¹¹ OJ C ..., ..., p. ...

¹² Communication from the Commission to the Council and the European Parliament - A Strategy to improve the operation of the VAT system within the context of the Internal Market (COM(2000)348 final of 7.6.2000).

¹³ OJ L 145, 13.6.1977, p.1.

¹⁴ OJ L 22, 24.1.2001, p.17 and corrigendum OJ L 26, 27.1.2001, p.40.

- (4) A similar scheme whereby the profit margin is taxed is set out in Article 26a of Directive 77/388/EEC for second-hand goods, works of art, collectors' items and antiques. That Article contains detailed definitions, which could be used to clarify the definitions in Article 26 and simplify the application of the special scheme for travel agents.
- (5) Due to the special nature of the services supplied by travel agents, which purchase different services from third parties, combine them into a travel package and then sell these packages, it is often very difficult for travel agents to determine their profit margin for each separate supply. A system allowing them to calculate a global profit margin over a certain period of time would simplify the system and could solve many of their problems in this field.
- (6) For similar reasons travel agents should be allowed to opt for the normal VAT arrangements in order to ensure the principle of neutrality of the VAT.
- (7) Existing derogations under Article 28(3) and Annexes E and F should be abolished in order to ensure a more uniform application of the special scheme for travel agents. Similarly Article 28(3)(g) and Article 15(14) should be deleted as they also allow Member States to apply divergent rules for taxing the services of travel agents.
- (8) Council Decision upon request of the Kingdom of Belgium of 13 September 1978, granting to the Kingdom of Belgium a derogation under Article 27(1) should be repealed in order to ensure a more harmonised application of the special scheme of travel agents.
- (9) Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is amended as follows:

- (1) Article 26 is replaced by the following:

"Article 26

Special scheme for travel agents

1. Member States shall apply a special value added tax scheme to the operations of travel agents in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies of goods and services of other taxable persons in the provision of travel facilities.

That scheme shall not apply to travel agents, who are acting only as intermediaries and accounting for tax in accordance with Article 11 A (3) (c).

For the purposes of this Article, tour operators and any other taxable person who supplies travel services in the same way shall be considered as travel agents.

2. All transactions performed by the travel agent in respect of a journey under the conditions set out in paragraph 1 shall be treated as a single service supplied by the travel agent. That single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has provided the services.

When the travel agent is not established in the Community or has a fixed establishment outside the Community from where the service is supplied and he supplies a travel service the effective use and enjoyment of which takes place within the Community, the single service shall be taxable at the place where the customer has established his business or has a fixed establishment to which the service is supplied or in the absence of such a place, the place where he has his permanent address or usually resides.

3. The taxable amount of the single service supplied by the travel agent shall be the profit margin made by the travel agent, less the amount of value added tax included in the profit margin. That profit margin shall be equal to the difference between the selling price charged by the travel agent for a travel package and the actual cost to the travel agent of this travel package. For the purposes of this paragraph, the following definitions shall apply:

- a) selling price means everything which constitutes the consideration, which has been, or is to be, obtained by the travel agent from his customer or a third party, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission and insurance costs charged by the travel agent to the customer but excluding the amounts referred to in Article 11 (A) (3),
- b) actual cost of the travel package means everything which constitutes the consideration, defined in the first indent, including VAT, obtained or to be obtained from the travel agent by his taxable suppliers, for the supplies and services provided to him, where these transactions are for the direct benefit of the customer excluding overhead costs used to compose the travel package.

4. In order to simplify the procedure for charging the tax and subject to the consultation of the VAT Committee, Member States may provide that the taxable amount of supplies of all travel services subject to the special arrangements for taxing the margin shall be determined globally for each tax period during which the travel agent must submit the return referred to in Article 22(4), as replaced by Article 28 (h).

In that event, the taxable amount for the supplies of travel services shall be the total margin made by the travel agent less the amount of value added tax included in that margin.

The total margin shall be equal to the difference between:

- a) the total amount of supplies of travel services subject to the special arrangements for taxing the margin effected by the travel agent during the period; that amount shall be equal to the total selling prices determined in accordance with paragraph 3, and

- b) the total amount of purchases of goods and services as referred to in paragraph 1, effected during that period, by the travel agent; that amount shall be equal to the total actual costs determined in accordance with paragraph 3.
5. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as an exempted intermediary activity under Article 15 (14).

Where those transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

6. Tax charged to the travel agent by another taxable person on the transactions described in paragraph 2, which are for the direct benefit of the travel agent's customer, shall not be eligible for deduction or refund in any Member State.
7. The travel agent may apply the normal value added tax arrangements to any supply covered by the special arrangements for taxing the margin.
8. Where the travel agent applies the normal value added tax arrangements to the supply of a travel service, he shall be entitled to deduct from his tax liability the value added tax due or paid for the services supplied to him by his suppliers, where these transactions are for the direct benefit of his customer.

The right to deduct shall arise at the time when the tax due for the supply in respect of which the travel agent opts for application of the normal value added tax arrangements become chargeable.

9. Where the travel agent is led to apply both the normal arrangements for value added tax and the special arrangements for taxing the margin, the travel agent must follow separately in his accounts the transactions falling under each of these arrangements, according to rules laid down by the Member States."

(2) In Article 15(14) the second subparagraph is deleted;

(3) In Article 28(3) point (g) is deleted;

(4) In Annex E point 15 is deleted;

(5) In Annex F point 27 is deleted.

Article 2

Council decision upon request of the Kingdom of Belgium of 13 September 1978, granting to the Kingdom of Belgium a derogation under Article 27(1) of Directive 77/388/EEC is repealed.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSAL

Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplify, modernise and harmonise the application of the special scheme for travel agents

DOCUMENT REFERENCE NUMBER

2001/075 (CNS)

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

It is necessary to further harmonise the special scheme applicable to supplies of travel services by travel agents as currently the Community VAT provisions in this field are interpreted and applied differently by the Member States.

Broadening the scope of application of Article 26 is necessary in order to adapt the scheme to the modified situation in the travel sector, whereby more operators are involved and modern technology such as e-commerce has made considerable progress. The current rules are no longer adapted to this changed situation and in many cases they no longer ensure taxation in the Member State of consumption

Furthermore, traders set up systems whereby a third country established branch avoids or minimises taxation in the EU, thus leading to distortion of competition. This situation can not be tolerated and this possibility should be eliminated.

Further simplifications are necessary to allow the special scheme to work more flexible and to ensure better compliance. Action at Community level is therefore essential.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

– which sectors of business?

Travel agents, tour operators and all taxable persons supplying travel services in their own name and using therefore the supplies of services of other taxable persons.

- which sizes of business (what is the concentration of small and medium-sized firms)?

All sizes of company. The 6 biggest tour operators generate about 18% of employment and about 33% of the sales. Next to these tour operators you also have the travel agents which are generally small or micro-enterprises employing between 5 and 11 persons.

- are there particular geographical areas of the Community where these businesses are found?

Mediterranean countries, Germany and the UK.

3. What will business have to do to comply with the proposal?

Business will have to assess the positive impact arising from the simplification and should create a level playing field for competition within the Internal Market.

4. What economic effects is the proposal likely to have?

- on employment?

The Commission has always taken the position that VAT has a low impact on employment and that the appropriate incentive for the labour market would rather be low non-labour costs, which remain under the national competence of Member States. Nevertheless this proposal will avoid further problems to certain operators working in that sector, who currently encounter major difficulties due to unfair competition from traders established in other, more flexible Member States or in their own Member State, but who have more resources to set up tax avoidance systems by creating third country established branches.

- on investment and the creation of new businesses?

Investment can only increase as the application of the same rules in all Member States of the EU can only reduce the business costs and encourage traders to operate in other Member States.

- on the competitiveness of businesses?

It should ensure more uniform application and avoid distortion of competition, thus creating a fairer competitive environment. Tour operators will no longer have the possibility to avoid or reduce taxation in the EU by simply creating a third country established branch, which intervenes in the sale of the travel package.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The possibility to apply a global margin system will make the application of the margin scheme easier for SMEs, as they will no longer be required to calculate the profit margin for each separate supply. This will also ease the cash flow constraints for small and medium-sized travel agents.

CONSULTATION

6. List the organisations, which have been consulted about the proposal and outline their main views.

The ECTAA (Group of national travel agents and Tour Operator Associations within the EU) as well as DRV (German Travel Association).

These organisations expressed the need for a more uniform application of the special scheme in the EU. At the same time they mentioned that all their members agreed that the special scheme of taxation of the profit margin was functioning rather well and should be maintained. They also referred to the problems encountered by tax avoidance schemes, which were set up by competitors using third country-established branches.