

**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.

3. In the fifth indent of Article 28c(E) 'Other Exemptions' (3), the terms 'the third subparagraph of Article 21(1)(a)' shall be replaced by 'Article 21(1)(c)'.
4. In Article 28g (which replaces Article 21 of the same Directive), Article 21 shall be replaced by the following:

'Article 21

Persons liable for payment for tax

1. Under the internal system, the following shall be liable to pay value added tax:

- (a) the taxable person carrying out the taxable supply of goods or of services, except for the cases referred to in (b) and (c).

Where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may, under conditions determined by them, lay down that the person liable to pay tax is the person for whom the taxable supply of goods or of services is carried out;

- (b) taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person not established within the territory of the country;

- (c) the person to whom the supply of goods is made when the following conditions are met:

- the taxable operation is a supply of goods made under the conditions laid down in Article 28c(E)(3),
- the person to whom the supply of goods is made is another taxable person or a non-taxable legal person identified for the purposes of value added tax within the territory of the country,
- the invoice issued by the taxable person not established within the territory of the country conforms to Article 22(3).

However, Member States may provide a derogation from this obligation, where the taxable person who is not established within the territory of the country has appointed a tax representative in that country;

- (d) any person who mentions the value added tax on an invoice or other document serving as invoice;
- (e) any person effecting a taxable intra-Community acquisition of goods.

2. By way of derogation from the provisions of paragraph 1:

- (a) where the person liable to pay tax in accordance with the provisions of paragraph 1 is a taxable person who is not established within the territory of the country, Member States may allow him to appoint a tax representative as the person liable to pay tax. This option shall

be subject to conditions and procedures laid down by each Member State;

- (b) where the taxable transaction is effected by a taxable person who is not established within the territory of the country and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC (*) and 77/799/EEC (**) and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (***), Member States may take steps to provide that the person liable for payment of the tax shall be a tax representative appointed by the non-established taxable person.

3. In the situations referred to in paragraphs 1 and 2, Member States may 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.

4. On importation, value added tax shall be payable by the person or persons designated or accepted as being liable by the Member State into which the goods are imported.

(*) OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 1994 Act of Accession.

(**) OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.

(***) OJ L 24, 1.2.1992, p. 1.'

5. In Article 28h (which replaces Article 22 of the same Directive), Article 22 shall be amended as follows:

- (a) In paragraph 1(c), the first indent shall be replaced by the following:

— every taxable person, with the exception of those referred to in Article 28a(4), who within the territory of the country effects supplies of goods or of services giving him the right of deduction, other than supplies of goods or of services for which tax is payable solely by the customer or the recipient in accordance with Article 21(1)(a), (b) or (c). However, Member States need not identify certain taxable persons referred to in Article 4(3);'

- (b) Paragraph 7 shall be replaced by the following:

'7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21(1) and (2), are considered to be liable to pay the tax instead of a taxable person not established within the territory of the country comply with the obligations relating to declaration and payment set out in this Article; they shall also take the measures necessary to ensure that those persons who, in accordance with Article 21(3), are held to be jointly and severally liable for payment of the tax comply with the obligations relating to payment set out in this Article.'

6. Throughout the Directive, notwithstanding points 2, 3 and 5 of this Article, the terms 'Article 21(2)' shall be replaced by 'Article 21(4)'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 2001. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and a table correlating

the provisions of this Directive with the provisions of national law.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 17 October 2000.

For the Council

The President

L. FABIOUS
