

Value added tax (VAT): combating tax evasion linked to imports

2008/0228(CNS) - 01/12/2008 - Legislative proposal

PURPOSE: to amend the VAT Directive (Council Directive 2006/112/EC) concerning measures linked to a certain exemption from VAT upon importation and joint and several liability.

PROPOSED ACT: Council Directive.

CONTENT: this proposal is part of a set of conventional measures in the context of a coordinated approach at EU level in the fight against VAT fraud. The objectives of the proposal are, on the one hand to clarify the conditions for an already existing specific exemption at importation which is currently the subject of abuse through fraud schemes, and on the other hand to provide tax administrations with a tool for recovering VAT from non-established traders in cases where the non compliance of these traders with regard to their reporting obligations has facilitated the fraud.

Exemption from VAT upon importation: Article 143(d) of the VAT Directive provides for an exemption from VAT on importation when this importation is followed by an intra-Community supply or transfer of the imported goods to a taxable person in another Member State . The practical implementation of this provision, including the conditions for this exemption to apply, is left to the Member States and certain divergences have resulted. Fraud investigators in the Member States have drawn the attention of the Commission to the increasing use of this particular exemption at importation in the missing trader in intra-Community (MTIC) fraud schemes they have detected. Further analysis of this issue has demonstrated that the fraudulent use of this provision is largely facilitated by the inadequate implementation of this exemption in national law, leading to a situation whereby the follow-up of the physical movement of the imported goods by the customs and tax authorities within the Community is not guaranteed.

The modification to Article 143(d) of the VAT Directive envisages the introduction of the following three conditions for the exemption to apply, namely:

- the obligation for the importer to be identified for VAT purposes or to appoint a fiscal representative in the Member State of importation; the obligation for the person invoking this exemption to indicate that the goods will leave the Member State of importation in order to be transported or dispatched to another Member State;
- the obligation for the importer to provide at the time of importation, the VAT identification number of the taxable person identified for VAT purposes to whom the goods will be sent in that other Member State.

Therefore, the person importing the goods and wanting to make use of a VAT exemption because the goods are destined to go to another Member State, will have to show that he is identified for VAT purposes in the Member State of importation and he has to indicate at the time of importation that the goods will be subject to an exempt intra-Community supply in or transfer from the Member State of importation. For this second condition to be fulfilled he will have to prove that the above mentioned conditions are fulfilled.

On the other hand, the correct application of this exemption depends on a smooth flow of information between the national customs and tax authorities and between the tax administrations of the different Member States concerned. This latter obligation to collect and transmit this information is a competence

for Member States' tax and customs administrations. Only a combined and joined approach from the Commission, to provide for a stricter legal framework for applying this exemption and from Member States to collect and transmit this information to the different parties involved can guarantee that this becomes an effective tool to fight the above mentioned abuse.

Joint and several liability: Article 205 of the VAT Directive allows Member States to provide that a person other than the person liable for the payment of VAT is to be held jointly and severally liable for the payment of VAT. In order to ensure a uniform application of this provision in cases where the person carrying out an exempt intra-Community supply of goods did not fulfil his reporting obligations, it is necessary to introduce the compulsory application

of the joint and several liability in such a case and to define in detail the conditions for this liability to apply.

The modification of Article 205 concerns the obligation for Member States to make the supplier of the goods, who is not established on their territory, jointly and severally liable for the VAT due on the intra-Community acquisition of these goods by his customer when certain obligations are not fulfilled thus implicitly contributing to a VAT loss in the Member State where the intra-Community acquisition takes place.

These conditions are that the supplier did not fulfil his obligation to submit the recapitulative statement for the supply and that the VAT was not declared in the VAT return by the person making the intra-Community acquisition of these goods. This way, the Member State where the intra-Community acquisition is located is not informed that goods arrive on its territory. Furthermore, in order to respect the general principles of proportionality and legal certainty, this supplier can refute the presumption created in this Article by duly justifying his shortcoming to the competent tax authorities.

Member States receive an additional legal base allowing them to collect the VAT due upon the intra-community acquisition from a taxable person involved in a fraudulent transaction or chain of transactions, thus increasing the risks and costs for those fraudsters and complicating the setting up of such fraud schemes. At the same time this will create an incentive for the supplier to submit timely a correct and complete recapitulative statement thus improving the quality of the data to be transmitted through the VIES (value added tax information exchange) system.