Value added tax (VAT): common system

2007/0238(CNS) - 22/12/2009 - Final act

PURPOSE: to amend various technical provisions of directive 2006/112/EC on the common system of VAT.

LEGISLATIVE ACT: Council Directive 2009/162/EU amending various provisions of Directive 2006/112/EC on the common system of value added tax.

CONTENT: the Council adopted a directive which modifies Directive 2006/112/EC on the common system of value added tax in order to incorporate various amendments of a primarily technical nature.

The amendments introduced concern: the VAT scheme applicable to the supply of natural gas, electricity, heat and/or refrigeration; the consequences of the enlargement of the European Union, the right of deduction for goods and services and the conditions under which the right to deduct input VAT may be exercised.

VAT scheme applicable to the supply of natural gas, electricity, heat and/or refrigeration: the current VAT scheme for gas and electricity is derived primarily from Directive 2003/92/EC. However, it has become apparent that the technical terms used in that Directive have unduly limited the scope of the new tax scheme, which does not correspond to economic realities, particularly regarding the place where VAT is levied on the supply of natural gas and the VAT exemption for natural gas imports.

The new directive extends the scope of the 2003 directive to the supply and import of natural gas by all types of pipeline and by vessels transporting natural gas. Furthermore, it aims to apply the same rules to the supply and import of heat or refrigeration via heat and/or refrigeration networks.

In addition, with regard to the place where the VAT is to be levied, the proposal provides for taxation in the Member State of the customer of all services – and not only those services relating to access to the distribution systems. Lastly, the directive simplifies the procedure whereby Member States may apply a reduced VAT rate to supply natural gas, electricity and district heating.

Nevertheless, it is still important that the Commission and the other Member States be properly informed whenever a Member State introduces a reduced rate in this very sensitive sector. Consequently, a prior consultation procedure involving the VAT Committee is needed.

Enlargement: in the context of their accession, Bulgaria and Romania were authorised to grant an exemption to small enterprises and to continue applying an exemption to the international transport of passengers. For purposes of clarity and consistency, these exemptions should be incorporated into Directive 2006/112/EC.

Right of deduction for goods and services: the basic rule is that this right arises only in so far as the goods and services are used by a taxable person for the purposes of his business activity. This rule should be clarified and strengthened with respect to the supply of immovable property and expenditure relating thereto in order to ensure that taxable persons are dealt with in an identical manner whenever immovable goods that they use for their business activity are not used exclusively for purposes related to that activity. The directive gives Member States the means to take the same measures with respect to such movable goods that form part of the business assets where appropriate.

With a view to ensuring an equitable deduction system for taxable persons in the context of the new rules, an adjustment system in accordance with the other rules on adjustment of deductions should be provided for which takes into account changes in the business and non-business use of the property concerned.

ENTRY INTO FORCE: 15/01/2010.

TRANSPOSITION: with effect from 01/01/2011.