Gas and electricity: VAT rules on the place of supply (amend. Directive 77/388/EEC)

2002/0286(CNS) - 05/12/2002 - Legislative proposal

PURPOSE : to present a proposal for a Council Directive amending Directive 77/388/EEC as regards the rules on the place of supply of electricity and gas. CONTENT : the aim of this proposal is to amend the rules on the place of taxation of natural gas and electricity for the purposes of Value Added Tax (VAT) so as to facilitate the functioning of the Single Market for energy. This proposal would eliminate current problems of double taxation and non-taxation and distortions of competition between traders by changing the place of taxation of natural gas in pipelines and of electricity from the place of supply to the place of consumption. Under the proposed rules, where the buyer was a trader reselling the supplies, the place of taxation would be the place where the buyer was established. Where the sale was to a final consumer, the place of taxation would be the place of consumption. For transmission services closely linked to the supply of gas and electricity, the proposal contains a corresponding clause providing that taxation would take place in the country where the customer was established. The current rules have worked adequately in a national context but are not appropriate now with market liberalisation and increasing cross-border supplies of gas and electricity. It is difficult to determine where the place of supply of gas and electricity is located and this leads to differences of interpretation of the rules by Member States and difficulties for traders supplying gas and electricity across borders. The proposal would, in the case of supplies of gas and electricity, provide for a departure from the basic principle governing the VAT treatment of goods which is that the place of taxation is the place where the goods are physically located. Under the proposal, the effective place of taxation would be the place of consumption. The proposal provides that: - supplies of gas and electricity made with a view to resale would be taxable in the country where the buyer was located. Where the supplier and the buyer were not established in the same territory, the buyer would be the person subjected to VAT under self-assessment arrangements. - supplies of gas and electricity to final consumers, whether or not they are traders, would be taxed at the place where the actual consumption took place. Taxation would thus accrue to the Member State of final consumption. In view of this change of the place of taxation to that of consumption, an EU trader selling gas or electricity to another trader or to a consumer in another Member State would now be exempted from VAT in his country on the sale. Similarly, in the case of imports from third country generators and traders, there would be an exemption of such supplies at the importation stage in order to prevent double taxation. Lastky, this proposal applies to the supply of electricity by cable and natural gas, including liquefied natural gas (LNG), in pipelines. Gas traded in bottles would continue to be subject to the existing rules for taxation because in this case the problem of establishing where the place of supply is does not occur so there is no justification for departing from normal VAT rules.