

Value added tax (VAT): place of supply of services

2003/0329(CNS) - 23/12/2003 - Legislative proposal

PURPOSE : to amend directive 77/388/EEC with regard to the rules on the place of supply of services. **PROPOSED ACT :** Council Directive. **CONTENT :** the aim of this proposal is to bring about the first part of the reform of the rules on the place of supply of services. It deals with supplies between taxable persons. Supplies whereby the customer is a non-taxable person will be addressed in a subsequent exercise. Under the present place of supply rules, services are taxed on the basis of where the supplier is established unless they are specifically defined as being taxed somewhere else. In this regard, a number of exceptions to the general rule exist. However, as a result of globalisation and advances in technology as well as the nature of these supplies (e.g., intangible, composite, etc.) the addition of new appropriately defined exceptions is difficult. It is often the case that the issue of the place of supply of services is one determined by the Courts. Ultimately, this model is proving difficult to apply for taxpayers and difficult to administer for tax authorities. In response, a shift from taxation where the supplier is established to taxation where the client is established would better reflect the current state of the services sector and provide greater certainty for all stakeholders. For supplies of services to taxable persons, the general rule with respect to the place of supply of services should be based on where the customer (i.e., the taxable person) is established, rather than where the supplier is established. The advantages of this approach are many. First, there would be no need to amend the Sixth Directive with respect to taxable persons every time a new service or service delivery model appears. Second, this approach is more in line with the one used in many other VAT jurisdictions. This would diminish the possibilities of double or unintentional non-taxation in international supplies of services. Finally, it resolves a number of bundling issues, such as those that might exist between tangible and intangible services. Furthermore, any new proposal on the place of supply of services should seek a balance between the control needs for tax administrations and the administrative obligations for traders. The effect of such a change will be twofold: - it will limit the instances whereby a supplier would be required to register for VAT purposes when performing services in a Member State other than where he is established; - it will increase the reliance on the reverse charge mechanism (i.e., self-assessment) where a taxable person receives services from a person not established in the same country. Both of these effects can be regarded as major simplifications. The exceptions are as follows: - in respect of services connected with immovable property. This would be essentially the same as existing Article 9(2)(a) of the Sixth VAT Directive; - the second exception would need to be with respect to passenger transportation services; - the third exception would need to be with respect to cultural, artistic, sporting, entertainment or similar services. The existing rule, which is based on where these services are performed, generally results in taxation where consumption occurs. It is proposed that scientific and educational services, when provided to taxable persons, be eliminated from this exception, largely for simplification purposes. For businesses that acquire such services in Member States other than where they are established, they would no longer be required to rely on the 8th Directive refund mechanism; - the final exception would need to relate to certain services that are tangible in nature, such as restaurant services. This ensures that services that are supplied for immediate consumption at a readily identifiable location are subject to VAT where the supplier is established. This exception would reflect the reality of where such services are consumed and would be easier for suppliers of such services to administer (e.g., they would not have to be concerned with whether their customer is a taxable or non-taxable person).