Basic information

2005/0019(CNS) CNS - Consultation procedure Decision	Procedure completed
Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC) **Subject** 2.70.02 Indirect taxation, VAT, excise duties	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	KONRAD Christoph (PPE-DE)	11/04/2005

Committee for opinion	Rapporteur for opinion	Appointed
CONT Budgetary Control	BÖSCH Herbert (PSE)	20/04/2005

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2746	2006-07-24

European Commission

Commission DG	Commissioner
Taxation and Customs Union	

Key events

Date	Event	Reference	Summary
16/03/2005	Legislative proposal published	COM(2005)0089	Summary
27/04/2005	Committee referral announced in Parliament		
30/05/2006	Vote in committee		Summary
09/06/2006	Committee report tabled for plenary, 1st reading/single reading	A6-0209/2006	
06/07/2006	Decision by Parliament	T6-0303/2006	Summary
06/07/2006	Results of vote in Parliament		

24/07/2006	Act adopted by Council after consultation of Parliament		
24/07/2006	End of procedure in Parliament		
12/08/2006	Final act published in Official Journal		

Technical information

Procedure reference	2005/0019(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	EC Treaty (after Amsterdam) EC 093
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/27258

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE370.299	08/03/2006	
Amendments tabled in committee		PE371.926	03/04/2006	
Committee opinion	CONT	PE371.852	04/05/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0209/2006	09/06/2006	
Text adopted by Parliament, 1st reading/single reading		T6-0303/2006	06/07/2006	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0089	16/03/2005	Summary
Commission response to text adopted in plenary	SP(2006)3801	28/08/2006	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1501/2005 OJ C 065 17.03.2006, p. 0103-0105	15/12/2005	

Additional information

Source	Document	Date

European Commission	EUR-Lex	

Final act	
Directive 2006/0069 OJ L 221 12.08.2006, p. 0009-0014	Summary

Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

2005/0019(CNS) - 16/03/2005 - Legislative proposal

PURPOSE : proposal to amend the 6th VAT Directive (Directive 77/388/EEC) to provide Member States with the option of quickly adopting measures in order to counter avoidance and evasion in certain specific and targeted areas and rationalisation proposal aimed at simplifying the application of the tax in certain circumstances where those liable to pay the tax are in financial difficulties.

PROPOSED ACT : Council Directive.

CONTENT : under Article 27 of the Sixth VAT Directive, the Council may authorise any Member State to introduce special measures for derogation from the provisions of the Sixth VAT Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Currently, Member States have been allowed to apply over 140 derogations. This number will grow in the near future, since Member States which joined the EU on the 1st of May 2004 are now introducing requests for derogations.

The Commission has undertaken in previous communications to rationalise some of the large number of derogations currently in force. It was envisaged that such a rationalisation would involve making certain individual derogations available to all Member States through an amendment to the Sixth VAT Directive. These derogations would be those which had already proved themselves effective and which tackled problems which were shared by more than one Member State.

The number of derogations and the similar problems they tackle is indicative of the fact that in recent years VAT avoidance and fraud has become a very real issue. Both the national authorities of the Member States as well as business federations have pointed out that evading VAT has become so widespread in certain sectors that it puts honest traders under a competitive disadvantage. Charging VAT but not paying it over to the State results in not only a loss of revenue for the State but also enables dishonest traders to offer goods or services at lower prices than their compliant competitors. In addition, Member States are more frequently confronted with artificial constructions – often involving a series of transactions - set up with the sole purpose of obtaining a VAT advantage either by lowering the final VAT charge or by increasing the recovery of VAT. While the artificial character of the chain of transactions is usually obvious, counter measures or court action inevitably take a long time. In the meantime, experience in Member States demonstrates that VAT avoidance schemes are worked out by specialists and successful ones subsequently marketed as a product to businesses. It is therefore questionable whether a piecemeal approach to tackling this problem where there is evidence of common problems is still appropriate.

The Commission is therefore of the opinion that specific known schemes could be more effectively tackled through an amendment to the Directive to provide a permanent viable alternative to the standard treatment where it can be justified through evidence of avoidance or evasion activity. The proposal, therefore, introduces changes in some areas where there are proven difficulties with the operation of the sixth Directive and a demonstrable need to allow some limited flexibility more generally. In common with the derogations from which they spring, these measures represent an alternative to the normal rules and are only being made available to all Member States to help counter avoidance and evasion or to simplify the operation of the tax.

The measures provide Member States with the option of using the alternative rule, rather than making their application mandatory. In addition, given the variety of mutations through which avoidance schemes pass in response to counter-measures, the proposal allows Member States some room to adapt the measures to their specific national situations. Thus, once having opted to apply the rule, Member States are authorised to limit their application of the new rules in order to target their specific avoidance or evasion problem.

The following specific points are to be noted:

- the Commission is taking the opportunity to propose changes to strengthen areas which Member States find can be exploited to avoid VAT. In both the area of "grouping" in Article 4(4) of the Sixth Directive and in "transfers of going concerns" (Article 5(8)) the proposal allows for Member States to take steps to ensure that the operation of the rules does not allow an unfair result which would unjustifiably benefit or prejudice those concerned. Member States already have the discretion to set the circumstances in which the both of these rules can apply. The new rule, already applied to capital goods through Article 20(6), would help Member States prevent unfair results arising from the operation of the rules;

- there is the deletion of the current definition of “open market value”;

- several Member States already apply a special measure on the basis of Article 27 to counter an arrangement which avoids the payment of VAT on untaxed investment gold used as a raw material for making consumer goods. It is now proposed to provide within the Sixth VAT Directive the means for all Member States to apply this measure;

- one of the vulnerable areas for avoidance relates to the valuation of supplies since that directly affects the amount of tax which is charged. The new paragraph (6) to Article 11(A) of the 6th Directive, to be found in Article 1(3)(b), introduces an optional rule which enables Member States to revalue certain supplies.

- the proposed amendment in Article 1(6) is intended to clarify that adjustment of deductions relating to capital items under Article 20 of the Sixth Directive may apply equally to services - provided that they are of a capital nature and are treated as such;

- Article 1(7) extends the use of an optional reverse charge mechanism for specified supplies made to taxable persons. These are in sectors of the economy which have proved particularly difficult for Member States to police, for example because of the nature of the industry or its structure. The areas covered are services relating to buildings (including any, or all, of the services of construction, repair, cleaning and demolition); supplies of staff relating to building services; land and buildings on which the option to tax has been exercised; and supplies of waste, scrap and recyclable material together with some products resulting from their treatment and some treatment services.

- the proposal covers details of the repeal of certain legislation as well as implementation and notification by Member States.

Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

2005/0019(CNS) - 06/07/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Christoph **KONRAD** (EPP-ED, DE) and made a few amendments. (Please see the summary of 30/05/2006.)

Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

2005/0019(CNS) - 24/07/2006 - Final act

PURPOSE: to modify the EU's VAT regime in order to combat tax evasion.

LEGISLATIVE ACT: Council Directive 2006/69/EC amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decision granting derogations.

CONTENT: to combat tax evasion, and in a bid to simplify the procedures for charging VAT, EU legislation has, until now, allowed Member States to apply for derogations. These derogations have been granted, under varying terms, to individual Member States. The purpose of this Directive is to make those derogations available to all Member States – but to offer them in such a way that Member States may adopt them only as and when the need arises.

The 6th VAT Directive has accordingly been amended and includes the following provisions:

- It allows the Member States to take action relating to a taxable person as well as a business transfer so that they can not be exploited for the purpose of avoiding tax. Further, the Directive makes it possible for the Member States to intervene regarding the value of supplies and acquisitions in specific limited circumstances in order to ensure that there is no loss of tax.

- It allows the Member States to include the value of "exempt investment gold", in cases where this gold has been worked. It will be valued according to the "open market value" of the investment gold at the time of it being supplied.

- The term "open market value" has been redefined.

- It allows the inclusion of certain services with the nature of capital items in the scheme. This allows for the adjustment of deductions for capital items over the lifetime of the asset, according to its actual use.

- It allows the Member States, in certain specific cases, to designate the recipient of supplies as the person responsible for paying and accounting for value added tax. This allows for greater simplification and the countering of tax evasion as well as the identification of sectors depending on the types of transactions.

- Given that Member States will not longer be able to apply for individual derogations, this Directive has repealed 10 derogation Decisions, effective as from 1 January 2008. (A full list of the repealed Decisions can be found in Annex to the Directive). The Directive does not affect measures applied by the Member States pursuant to Article 27(5) of Directive 77/388/EEC, nor does it affect derogations granted according to Article 27 (1) of the Directive and which are not repealed by this Directive.

- The application of certain provisions is optional and allows the Member States a degree of discretion. Member States have the option of sharing information with other Member States through the Advisory Committee on VAT.

ENTRY INTO FORCE: 13/08/2006.

TRANSPOSITION: 01/01/2008.