

Basic information	
2007/0238(CNS)	Procedure completed
CNS - Consultation procedure	
Directive	
Value added tax (VAT): common system	
Amending Directive 2006/112/EC, VAT Directive 2004/0079(CNS)	
<b>Subject</b>	
2.70.02 Indirect taxation, VAT, excise duties	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs	BULLMANN Udo (S&D)	21/07/2009
	Former committee responsible	Former rapporteur	Appointed
	ECON Economic and Monetary Affairs		
	ECON Economic and Monetary Affairs	ROSATI Dariusz (PSE)	11/12/2007
	Former committee for opinion	Former rapporteur for opinion	Appointed
	ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
	Council configuration	Meetings	Date
	Environment	2988	2009-12-22
	Commission DG	Commissioner	
European Commission	Taxation and Customs Union	KOVÁCS László	

Key events			
Date	Event	Reference	Summary
		COM(2007)0677	Summary

07/11/2007	Legislative proposal published		
29/11/2007	Committee referral announced in Parliament		
03/06/2008	Vote in committee		Summary
06/06/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0232/2008	
08/07/2008	Decision by Parliament	T6-0319/2008	Summary
08/07/2008	Results of vote in Parliament		
10/06/2009	Amended legislative proposal for reconsultation published	10893/2009	Summary
24/06/2009	Formal reconsultation of Parliament		
10/11/2009	Vote in committee		Summary
12/11/2009	Committee report tabled for plenary, reconsultation	A7-0055/2009	
24/11/2009	Decision by Parliament	T7-0075/2009	Summary
22/12/2009	Act adopted by Council after consultation of Parliament		
22/12/2009	End of procedure in Parliament		
15/01/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2007/0238(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2006/112/EC, VAT Directive 2004/0079(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/00090 ECON/6/55855

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE402.762	05/03/2008	
Amendments tabled in committee		PE404.691	10/04/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0232/2008	06/06/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0319/2008	08/07/2008	Summary
Committee draft report		PE428.223	18/09/2009	
Amendments tabled in committee		PE430.330	15/10/2009	

Committee final report tabled for plenary, reconsultation	A7-0055/2009	12/11/2009	
Text adopted by Parliament after reconsultation	T7-0075/2009	24/11/2009	<a href="#">Summary</a>

#### Council of the EU

Document type	Reference	Date	Summary
Amended legislative proposal for reconsultation	<a href="#">10893/2009</a>	10/06/2009	<a href="#">Summary</a>

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2007)0677 	07/11/2007	<a href="#">Summary</a>
Commission response to text adopted in plenary	<a href="#">SP(2008)4891</a>	27/08/2008	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	<a href="#">CES0504/2008</a>	12/03/2008	

#### Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	<a href="#">EUR-Lex</a>	

#### Final act

Directive 2009/0162  
OJ L 010 15.01.2010, p. 0014

[Summary](#)

## 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.

## Value added tax (VAT): common system

2007/0238(CNS) - 10/06/2009 - Amended legislative proposal for reconsultation

The Council agreed a general approach on the draft Directive and the draft statements for the Council Minutes set out respectively in Annex I and Annex II.

The Permanent Representatives Committee decided to reconsult the European Parliament on this proposal.

The original proposal for a Council Directive amending various provisions of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax has been significantly amended by the Council, notably as regards the introduction of more general and more far-reaching rules concerning the right of deduction, and is consequently of the opinion that the European **Parliament needs to be re-consulted** in order to respect the relevant institutional rules of decision-making.

As regards Article 168a (VAT on immovable property forming part of the business assets of a taxable person and used both for purposes of the taxable person's business and for his private use or that of his staff, or, more generally, for purposes other than those of his business): the Council agrees to continue works, on the basis of the pending Commission separate proposal already submitted by the Commission pursuant to Article 176 and still pending before Council, to establish common rules on the exclusion from the right to deduct VAT in order to adopt the proposal rapidly. To this end, the Council stands ready to take stock of the progress as soon as possible.

## Value added tax (VAT): common system

2007/0238(CNS) - 07/11/2007 - Legislative proposal

PURPOSE: to amend the 2006/112/EC VAT Directive.

PROPOSED ACT: Council Directive.

BACKGROUND: both business and the Member States have drawn the Commission's attention to a number of elements of Directive 2006/112/EC, which require amending. None of the amendments call into question the guiding principles set out in the VAT Directive nor, however, are they of sufficient importance to justify a separate proposal.

CONTENT: the purpose of this proposal, therefore, is to amend the 2006 Directive. The amendments concern:

- the VAT scheme applicable to the supply of natural gas, electricity, heat and/or refrigeration;

- the tax treatment of joint undertakings set up pursuant to Article 171 of the EC Treaty;
- EU enlargement; and
- the conditions under which the right to deduct input VAT may be exercised.

In summary the amendments being proposed are:

**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. It has also become clear that it would be expedient to apply the same rules to the supply of heat and refrigeration via heat and/or refrigeration networks since this sector functions in a manner similar to the natural gas and electricity sector.

The Commission is therefore proposing to extend the scope to the supply and import of natural gas by all types of pipeline and by vessels transporting natural gas. It is also proposing to apply the same rules to the supply and import of heat or refrigeration via heat and/or refrigeration networks. 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. The procedure whereby Member States may apply a reduced VAT rate to supply natural gas, electricity and district heating has been simplified.

**Article 171 Joint Undertakings:** Article 171 on Joint Undertakings specifies that the Community may set up Joint Undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programme. These Joint Undertakings require a suitable tax framework.

The Commission is therefore proposing to clarify the tax status of JU in relation to VAT. Under proposed provisions these undertakings may be treated like international bodies in so far as they are set up by the European Communities, have legal personality and receive contributions that are charged to their general budget. The Commission proposal specifies that the exemption would not apply to the supply of goods and provision of services intended for the private use of the members of these Undertakings.

**Enlargement:** Both Bulgaria and Romania, upon accession to the EU, have been authorised to apply derogations regarding the tax exemption granted to SME's and the VAT scheme applicable to the international transport of passengers. The Commission is proposing to include these exemptions into the 2006 VAT Directive.

**The right to deduct input VAT:** One existing principle stipulates that a taxable person may deduct VAT on input transactions only in so far as the goods and services are used for his/her transactions that give rise to the right of deduction. The European Court of Justice has ruled that taxable persons have the right to choose whether to include mixed-use good, in part or in their entirety, in the assets relating to their economic activity. When taxable persons choose to include all of the goods in question in the economic activity they may immediately deduct all input VAT, irrespective of whether the good is used simultaneously for business and non-business purposes. The non-business use of the good will then be subject to VAT in the same way as a supply of services for consideration on the basis of the amount of expenditure incurred. The result of this could be that non-business use lowers the tax burden by an amount that could increase, in direct proportion, to the degree of use for non-business purposes. This is particularly true for immovable property. It therefore seems expedient to adapt the deduction of VAT relating to immovable property in such a way as to ensure that the initial exercise of the right to deduct input VAT will reflect the basic principle and to prevent certain constructions designed to create an unjustified cash-flow advantage.

Based on this, the Commission is proposing to apply a more effective principle, whereby deduction arises only in so far as the goods and services concerned are used for the transactions giving rise to the right of deduction. It proposes restricting the initial exercise of the deduction to the proportion of effective business use when mixed-use immovable property is included in the company's assets and liabilities. At the same time, an adjustment system is being proposed in order to reflect the variations between the business and private (or non-business) use of such immovable property.

## Value added tax (VAT): common system

2007/0238(CNS) - 24/11/2009 - Text adopted by Parliament after reconsultation

The European Parliament adopted by 576 votes to 61 with 24 abstentions, a legislative resolution amending, under the consultation procedure, the draft Council directive amending various provisions of the VAT Directive 2006/112/EC on the common system of value added tax (renewed consultation).

To recall, the present procedure is a re-consultation on a revised proposal from the Council, after the European Parliament adopted its opinion on the Commission's original proposal on 8 July 2008 ("Rosati Report") on the basis of a unanimous vote.

At its meeting of 9 June 2009, the ECOFIN reached political agreement on the basis of a text that significantly amends the original proposal notably as regards the introduction of more general and more far-reaching rules concerning the right of deduction. On 13 July 2009, the Council of Ministers, following a request from the Commission, informed the Parliament of its decision to obtain a new opinion on the revised proposal.

The main amendments are as follows:

**Clarification of the right of deduction with respect to the supply of immovable property:** Parliament clarified that since immovable property and related expenditure account for the most significant cases where clarification and strengthening of the rule is appropriate, given the value and economic lifetime of such property and the fact that mixed use of this type of property is a common practice, the initial right of deduction should be applied to

immovable property supplied to the taxable person and important services relating thereto, which, by virtue of their economic value, can be assimilated to the acquisition of immovable property. Conversely, minor repairs or improvements of limited economic significance should be excluded from the scope of the rule.

Accordingly, the text now states that the initial exercise of the right of deduction arising when the tax becomes chargeable shall be limited to the proportion of the property's effective business use for transactions giving rise to a right of deduction. By way of derogation, the changes in the proportion of use of immovable property will be taken into account in accordance with the conditions provided for in Articles 187, 188, 190 and 192 for adjusting the initial exercise of the right of deduction.

Parliament deleted the clause permitting Member States to apply this provision in relation to VAT on expenditure related to other goods forming part of the business assets as they specify.

**Evaluation:** a new clause states that the Commission shall evaluate to which extent it would be appropriate to authorise Member States to apply Article 168a(1) of Directive 2006/112/EC, and the general adjustment rules under Articles 184 to 192 thereof, to movable goods that have a durable nature and that form part of the business assets. Any legislative proposal in that respect shall aim to harmonise the applicable rules in order to eliminate, to the greatest extent possible, factors that could distort competition, with a view to ensuring the proper functioning of the internal market. Such a legislative proposal shall be accompanied by an independent impact assessment, taking negative and positive aspects into account.

## Value added tax (VAT): common system

2007/0238(CNS) - 08/07/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 625 votes in favour to 22 against with 15 abstentions, under the consultation procedure, a legislative resolution amending the proposal for a Council Directive amending VAT Directive 2006/112/EC on the common system of value added tax. The report had been tabled for consideration in plenary by Dariusz **ROSATI** (PES, PL) on behalf of the Committee on Economic and Monetary Affairs.

The main amendments aim to:

- clarify the scope of the special VAT scheme for the supply of natural gas, heat and refrigeration: MEPs propose: (a) including a cross-reference to the Directive 2003/55/EC concerning common rules for the internal market in natural gas, which includes common definitions of transmissions of gas through pipelines and distribution of gas; (b) amending the title of Section IV of Chapter 1 of Title V of the VAT Directive in order to make sure that it covers the supply of natural gas through transmission or distribution networks; (c) specifying that "transport by vessel" is understood to take place from pipeline to pipeline;
- clarify the rule concerning the right of VAT deduction in the event of acquisition, construction, renovation or substantial transformation of immovable property: according to MEPs, minor repairs or improvements that are of limited economic significance should be excluded from the scope of this provision.