Basic information

2008/0228(CNS) CNS - Consultation procedure Directive	Procedure completed
Value added tax (VAT): combating tax evasion linked to imports Amending Directive 2006/112/EC 2004/0079(CNS) **Subject** 2.70.02 Indirect taxation, VAT, excise duties 7.30.30.06 Action to combat economic fraud and corruption	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	VISSER Cornelis (PPE-DE)	17/12/2008

Council of the European Union

Council configuration	Meetings	Date
Environment	2953	2009-06-25

European Commission

Commission DG	Commissioner
Taxation and Customs Union	KOVÁCS László

Key events

Date	Event	Reference	Summary
01/12/2008	Legislative proposal published	COM(2008)0805	Summary
05/02/2009	Committee referral announced in Parliament		
31/03/2009	Vote in committee		Summary
01/04/2009	Committee report tabled for plenary, 1st reading/single reading	A6-0189/2009	
23/04/2009	Debate in Parliament		
24/04/2009	Decision by Parliament	T6-0326/2009	Summary
24/04/2009	Results of vote in Parliament		
25/06/2009	Act adopted by Council after consultation of Parliament		
25/06/2009	End of procedure in Parliament		

04/07/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0228(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2006/112/EC 2004/0079(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 093
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/70475

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE418.280	23/01/2009	
Committee report tabled for plenary, 1st reading/single reading		A6-0189/2009	01/04/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0326/2009	24/04/2009	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0805	01/12/2008	Summary
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0886/2009	13/05/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2009/0069
OJ L 175 04.07.2009, p. 0012 Summary

Value added tax (VAT): combating tax evasion linked to imports

2008/0228(CNS) - 01/12/2008 - Legislative proposal

PURPOSE: to amend the VAT Directive (Council Directive 2006/112/EC) concerning measures linked to a certain exemption from VAT upon importation and joint and several liability.

PROPOSED ACT: Council Directive.

CONTENT:this proposal is part of a set of conventional measures in the context of a coordinated approach at EU level in the fight against VAT fraud. The objectives of the proposal are, on the one hand to clarify the conditions for an already existing specific exemption at importation which is currently the subject of abuse through fraud schemes, and on the other hand to provide tax administrations with a tool for recovering VAT from non-established traders in cases where the non compliance of these traders with regard to their reporting obligations has facilitated the fraud.

Exemption from VAT upon importation: Article 143(d) of the VAT Directive provides for an exemption from VAT on importation when this importation is followed by an intra-Community supply or transfer of the imported goods to a taxable person in another Member State . The practical implementation of this provision, including the conditions for this exemption to apply, is left to the Member States and certain divergences have resulted. Fraud investigators in the Member States have drawn the attention of the Commission to the increasing use of this particular exemption at importation in the missing trader in intra-Community (MTIC) fraud schemes they have detected. Further analysis of this issue has demonstrated that the fraudulent use of this provision is largely facilitated by the inadequate implementation of this exemption in national law, leading to a situation whereby the follow-up of the physical movement of the imported goods by the customs and tax authorities within the Community is not guaranteed.

The modification to Article 143(d) of the VAT Directive envisages the introduction of the following three conditions for the exemption to apply, namely:

- the obligation for the importer to be identified for VAT purposes or to appoint a fiscal representative in the Member State of importation; the obligation for the person invoking this exemption to indicate that the goods will leave the Member State of importation in order to be transported or dispatched to another Member State;

- the obligation for the importer to provide at the time of importation, the VAT identification number of the taxable person identified for VAT purposes to whom the goods will be sent in that other Member State.

Therefore, the person importing the goods and wanting to make use of a VAT exemption because the goods are destined to go to another Member State, will have to show that he is identified for VAT purposes in the Member State of importation and he has to indicate at the time of importation that the goods will be subject to an exempt intra-Community supply in or transfer from the Member State of importation. For this second condition to be fulfilled he will have to prove that the above mentioned conditions are fulfilled.

On the other hand, the correct application of this exemption depends on a smooth flow of information between the national customs and tax authorities and between the tax administrations of the different Member States concerned. This latter obligation to collect and transmit this information is a competence for Member States' tax and customs administrations. Only a combined and joined approach from the Commission, to provide for a stricter legal framework for applying this exemption and from Member States to collect and transmit this information to the different parties involved can guarantee that this becomes an effective tool to fight the above mentioned abuse.

Joint and several liability:Article 205 of the VAT Directive allows Member States to provide that a person other than the person liable for the payment of VAT is to be held jointly and severally liable for the payment of VAT. In order to ensure a uniform application of this provision in cases where the person carrying out an exempt intra-Community supply of goods did not fulfil his reporting obligations, it is necessary to introduce the compulsory application

of the joint and several liability in such a case and to define in detail the conditions for this liability to apply.

The modification of Article 205 concerns the obligation for Member States to make the supplier of the goods, who is not established on their territory, jointly and severally liable for the VAT due on the intra-Community acquisition of these goods by his customer when certain obligations are not fulfilled thus implicitly contributing to a VAT loss in the Member State where the intra-Community acquisition takes place.

These conditions are that the supplier did not fulfil his obligation to submit the recapitulative statement for the supply and that the VAT was not declared in the VAT return by the person making the intra-Community acquisition of these goods. This way, the Member State where the intra-Community acquisition is located is not informed that goods arrive on its territory. Furthermore, in order to respect the general principles of proportionality and legal certainty, this supplier can refute the presumption created in this Article by duly justifying his shortcoming to the competent tax authorities.

Member States receive an additional legal base allowing them to collect the VAT due upon the intra-community acquisition from a taxable person involved in a fraudulent transaction or chain of transactions, thus increasing the risks and costs for those fraudsters and complicating the setting up of

such fraud schemes. At the same time this will create an incentive for the supplier to submit timely a correct and complete recapitulative statement thus improving the quality of the data to be transmitted through the VIES (value added tax information exchange) system.

Value added tax (VAT): combating tax evasion linked to imports

2008/0228(CNS) - 25/06/2009 - Final act

PURPOSE: to amend the VAT Directive (Council Directive 2006/112/EC) concerning measures linked to a certain exemption from VAT upon importation and joint and several liability.

LEGISLATIVE ACT: Council Directive 2009/69/EC amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to imports.

CONTENT: the Council, in the conclusions of its meeting on economic and financial affairs of 28 November 2006, agreed to establish an anti-tax fraud strategy implemented at Community level, especially for tax fraud in the field of indirect taxation, in order to complement national efforts. Certain measures which have been discussed in that context require an amendment of Directive 2006/112/EC.

The importation of goods is exempt from value added tax (VAT) if followed by a supply or transfer of those goods to a taxable person in another Member State . The conditions under which that exemption is granted are laid down by Member States. Experience, however, shows that divergences in application are exploited by traders to avoid payment of VAT on goods imported under those circumstances. In order to prevent that exploitation it is necessary to specify, for particular transactions, at Community level, a set of minimum conditions under which this exemption applies.

Since, for those reasons, the objective of this Directive, namely to address the problem of VAT evasion, cannot be sufficiently achieved by the Member States themselves and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Directive does not go beyond what is necessary in order to achieve that objective.

The exemption shall only apply if at the time of importation the importer has provided to the competent authorities of the Member State of importation at least the following information:

- his VAT identification number issued in the Member State of importation or the VAT identification number of his tax representative, liable for payment of the VAT, issued in the Member State of importation;
- the VAT identification number of the customer, to whom the goods are supplied, issued in another Member State, or his own VAT identification number issued in the Member State in which the dispatch or transport of the goods ends when the goods are subject to a transfer;
- the evidence that the imported goods are intended to be transported or dispatched from the Member State of importation to another Member State.

ENTRY INTO FORCE: 24/07/2009.

TRANSPOSITION: 01/01/2011.

Value added tax (VAT): combating tax evasion linked to imports

2008/0228(CNS) - 24/04/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 349 votes to 32, with 2 abstentions, a legislative resolution modifying, under the consultation procedure, the proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions.

The main amendments are as follows:

- according to the Parliament, the proposal should ensure that any measures to counter fraud are proportional and targeted at persons that have committed fraud;
- prior to holding a person supplying jointly and severally liable, the authorities to which that person is required to submit his recapitulative statement shall notify him of his non-compliance and shall give him the opportunity to justify his shortcoming within a period not shorter than two months;
- by five years after the date of entry into force of the Directive, the Commission should evaluate the functioning of joint and several liability, including its impact on administrative costs for suppliers and on tax revenue gained by Member States.

If appropriate, and provided that the Commission is able to demonstrate that the Value-added Tax Information Exchange System (VIES) database and the exchange of information between Member States function correctly, the Commission shall submit a proposal to amend Article 205 of Directive 2006 /112/EC.