






| 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 |
| |  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 | | |

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|------------|---|--|--|
| 04/07/2009 | Final act published in Official Journal | | |
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| 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 | |

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.