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(Acts whose publication is obligatory)

COUNCIL DIRECTIVE 2006/112/EC
of 28 November 2006
on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the European Economic and Social Committee,

Whereas:

- (1) Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽¹⁾ has been significantly amended on several occasions. Now that new amendments are being made to the said Directive, it is desirable, for reasons of clarity and rationalisation that the Directive should be recast.
- (2) The recast text should incorporate all those provisions of Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes⁽²⁾ which are still applicable. That Directive should therefore be repealed.
- (3) To ensure that the provisions are presented in a clear and rational manner, consistent with the principle of better regulation, it is appropriate to recast the structure and the wording of the Directive although this will not, in principle, bring about material changes in the existing legislation. A small number of substantive amendments are however inherent to the recasting exercise and should nevertheless be made. Where such changes are made, these are listed exhaustively in the provisions governing transposition and entry into force.
- (4) The attainment of the objective of establishing an internal market presupposes the application in Member States of legislation on turnover taxes that does not distort

conditions of competition or hinder the free movement of goods and services. It is therefore necessary to achieve such harmonisation of legislation on turnover taxes by means of a system of value added tax (VAT), such as will eliminate, as far as possible, factors which may distort conditions of competition, whether at national or Community level.

- (5) A VAT system achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution, as well as the supply of services. It is therefore in the interests of the internal market and of Member States to adopt a common system which also applies to the retail trade.
- (6) It is necessary to proceed by stages, since the harmonisation of turnover taxes leads in Member States to alterations in tax structure and appreciable consequences in the budgetary, economic and social fields.
- (7) The common system of VAT should, even if rates and exemptions are not fully harmonised, result in neutrality in competition, such that within the territory of each Member State similar goods and services bear the same tax burden, whatever the length of the production and distribution chain.
- (8) Pursuant to Council Decision 2000/597/EC, Euratom, of 29 September 2000 on the system of the European Communities' own resources⁽³⁾, the budget of the European Communities is to be financed, without prejudice to other revenue, wholly from the Communities' own resources. Those resources are to include those accruing from VAT and obtained through the application of a uniform rate of tax to bases of assessment determined in a uniform manner and in accordance with Community rules.
- (9) It is vital to provide for a transitional period to allow national laws in specified fields to be gradually adapted.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 221, 12.8.2006, p. 9).

⁽²⁾ OJ 71, 14.4.1967, p. 1301. Directive as last amended by Directive 69/463/EEC (OJ L 320 of 20.12.1969, p. 34).

⁽³⁾ OJ L 253, 7.10.2000, p. 42.

- (c) they must be mainly local and not likely to cause distortion of competition.

There must also be a close link between the decrease in prices resulting from the rate reduction and the foreseeable increase in demand and employment. Application of a reduced rate must not prejudice the smooth functioning of the internal market.

Article 108

Any Member State wishing to apply for the first time after 31 December 2005 a reduced rate to one or more of the services referred to in Article 106 pursuant to this Article shall inform the Commission accordingly no later than 31 March 2006. It shall communicate to it before that date all relevant information concerning the new measures it wishes to introduce, in particular the following:

- (a) scope of the measure and detailed description of the services concerned;
- (b) particulars showing that the conditions laid down in Article 107 have been met;
- (c) particulars showing the budgetary cost of the measure envisaged.

CHAPTER 4

Special provisions applying until the adoption of definitive arrangements

Article 109

Pending introduction of the definitive arrangements referred to in Article 402, the provisions laid down in this Chapter shall apply.

Article 110

Member States which, at 1 January 1991, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the minimum laid down in Article 99 may continue to grant those exemptions or apply those reduced rates.

The exemptions and reduced rates referred to in the first paragraph must be in accordance with Community law and must have been adopted for clearly defined social reasons and for the benefit of the final consumer.

Article 111

Subject to the conditions laid down in the second paragraph of Article 110, exemptions with deductibility of the VAT paid at the preceding stage may continue to be granted in the following cases:

- (a) by Finland in respect of the supply of newspapers and periodicals sold by subscription and the printing of publications distributed to the members of corporations for the public good;
- (b) by Sweden in respect of the supply of newspapers, including radio and cassette newspapers for the visually impaired, pharmaceutical products supplied to hospitals or

on prescription, and the production of, or other related services concerning, periodicals of non-profit-making organisations.

Article 112

If the provisions of Article 110 cause for Ireland distortion of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorised by the Commission to apply a reduced rate to such supplies, in accordance with Articles 98 and 99.

In the case referred to in the first paragraph, Ireland shall submit a request to the Commission, together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorised to apply the reduced rates proposed.

Article 113

Member States which, at 1 January 1991, in accordance with Community law, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the minimum laid down in Article 99, in respect of goods and services other than those specified in Annex III, may apply the reduced rate, or one of the two reduced rates, provided for in Article 98 to the supply of such goods or services.

Article 114

1. Member States which, on 1 January 1993, were obliged to increase their standard rate in force at 1 January 1991 by more than 2 % may apply a reduced rate lower than the minimum laid down in Article 99 to the supply of goods and services in the categories set out in Annex III.

The Member States referred to in the first subparagraph may also apply such a rate to restaurant services, children's clothing, children's footwear and housing.

2. Member States may not rely on paragraph 1 to introduce exemptions with deductibility of the VAT paid at the preceding stage.

Article 115

Member States which, at 1 January 1991, were applying a reduced rate to restaurant services, children's clothing, children's footwear or housing may continue to apply such a rate to the supply of those goods or services.

Article 116

Portugal may apply one of the two reduced rates provided for in Article 98 to restaurant services, provided that the rate is not lower than 12 %.

Article 117

1. For the purposes of applying Article 115, Austria may continue to apply a reduced rate to restaurant services.

2. Austria may apply one of the two reduced rates provided for in Article 98 to the letting of immovable property for residential use, provided that the rate is not lower than 10 %.

Article 118

Member States which, at 1 January 1991, were applying a reduced rate to the supply of goods or services other than those specified in Annex III may apply the reduced rate, or one of the two reduced rates, provided for in Article 98 to the supply of those goods or services, provided that the rate is not lower than 12 %.

The first paragraph shall not apply to the supply of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), subject to VAT in accordance with the margin scheme provided for in Articles 312 to 325 or the arrangements for sales by public auction.

Article 119

For the purposes of applying Article 118, Austria may apply a reduced rate to wines produced on an agricultural holding by the producer-farmer, provided that the rate is not lower than 12 %.

Article 120

Greece may apply rates up to 30 % lower than the corresponding rates applied in mainland Greece in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the islands of Thassos, the Northern Sporades, Samothrace and Skiros.

Article 121

Member States which, at 1 January 1993, regarded work under contract as the supply of goods may apply to the delivery of work under contract the rate applicable to the goods obtained after execution of the work under contract.

For the purposes of applying the first paragraph, 'delivery of work under contract' shall mean the handing over by a contractor to his customer of movable property made or assembled by the contractor from materials or objects entrusted to him by the customer for that purpose, whether or not the contractor has provided any part of the materials used.

Article 122

Member States may apply a reduced rate to the supply of live plants and other floricultural products, including bulbs, roots and the like, cut flowers and ornamental foliage, and of wood for use as firewood.

CHAPTER 5**Temporary provisions****Article 123**

The Czech Republic may, until 31 December 2007, continue to apply a reduced rate of not less than 5 % to the following transactions:

- (a) the supply of heat energy used by households and small entrepreneurs who are not subject to VAT for heating and

the production of hot water, excluding raw materials used to generate heat energy;

- (b) the supply of construction work for residential housing not provided as part of a social policy, excluding building materials.

Article 124

Estonia may, until 30 June 2007, continue to apply a reduced rate of not less than 5 % to the supply of heating sold to natural persons, housing associations, apartment associations, churches, congregations, and institutions or bodies financed from the State, rural municipality or city budget, as well as to the supply of peat, fuel briquettes, coal and firewood to natural persons.

Article 125

1. Cyprus may, until 31 December 2007, continue to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of pharmaceuticals and foodstuffs for human consumption, with the exception of ice cream, ice lollies, frozen yoghurt, water ice and similar products and savoury food products (potato crisps/sticks, puffs and similar products packaged for human consumption without further preparation).

2. Cyprus may continue to apply a reduced rate of not less than 5 % to the supply of restaurant services, until 31 December 2007 or until the introduction of definitive arrangements, as referred to in Article 402, whichever is the earlier.

Article 126

Hungary may continue to apply a reduced rate of not less than 12 % to the following transactions:

- (a) the supply of coal, coal-brick and coke, firewood and charcoal, and the supply of district heating services, until 31 December 2007;
- (b) the supply of restaurant services and of foodstuffs sold on similar premises, until 31 December 2007 or until the introduction of definitive arrangements, as referred to in Article 402, whichever is the earlier.

Article 127

Malta may, until 1 January 2010, continue to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of foodstuffs for human consumption and pharmaceuticals.

Article 128

1. Poland may, until 31 December 2007 grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of certain books and specialist periodicals.

2. Poland may, until 31 December 2007 or until the introduction of definitive arrangements, as referred to in Article 402, whichever is the earlier, continue to apply a reduced rate of not less than 7 % to the supply of restaurant services.