EUROPEAN PARLIAMENT

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A5-0362/2000

REPORT

on

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1. the proposal for a European Parliament and Council regulation amending regulation (EEC) N° 218/92 on administrative co-operation in the field of indirect taxation (VAT)
(COM(2000) 349 – C5-0298/2000 – 2000/0147(COD))

and

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2. the proposal for a Council directive amending directive 77/388 EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means
(COM(2000) 349 – C5-0467/2000 – 2000/0148(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: José Manuel García-Margallo y Marfil

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 9 June 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council regulation amending regulation (EEC N° 218/92 on administrative co-operation in the field of indirect taxation (VAT) (COM(2000) 349 - 2000/0147 (COD)).

At the sitting of 3 July 2000 the President of Parliament announced that she had referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0298/2000).

By letter of 9 June 2000 the Council consulted Parliament, pursuant to Article 93 of the EC Treaty , on the proposal for a Council directive amending directive 77/388 EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means (COM(2000) 349 - 2000/0148 (CNS)).

At the sitting of 2 October 2000 the President of Parliament announced that she had referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Industry, External Trade, Research and Energy and the Committee on Committee on Legal Affairs and the Internal Market for their opinions (C5-0467/2000).

The Committee on Economic and Monetary Affairs had appointed José Manuel García-Margallo y Marfil rapporteur at its meeting of 19 June 2000.

The committee considered the Commission proposals and draft report at its meetings of 28 August, 6 November, 21 November and 28 November 2000.

At the last meeting it adopted 1. the draft legislative resolution and 2. the draft legislative resolution by 25 votes to 9, with 1 abstention.

The following were present for the vote: Christa Randzio-Plath, chairwoman; José Manuel García-Margallo y Marfil, vice chairman and rapporteur; Ioannis Theonas, vice chairman, Alejandro Agag Longo, Luis Berenguer Fuster, Hans Blokland, Hans Udo Bullmann, Martin Callanan (for Jonathan Evans), Harald Ettl (for Pervenche Berès), Monica Frassoni (for Alain Lipietz pursuant to Rule 153(2)), Robert Goebbels, Lisbeth Grönfeldt Bergman, Christopher Huhne, Liam Hyland, Juan de Dios Izquierdo Collado (for Simon Francis Murphy), Pierre Jonckheer, Giorgos Katiforis, Werner Langen (for Christoph Werner Konrad), Astrid Lulling, Jules Maaten (for Carles-Alfred Gasòliba i Böhm), Thomas Mann (for Othmar Karas), Ioannis Marinos, Peter Michael Mombaur (for Alain Madelin), Karla M.H. Peijs (for Amalia Sartori), Fernando Pérez Royo, Mikko Pesälä (for Karin Riis-Jørgensen), José Javier Pomés Ruiz, John Purvis (for Piia-Noora Kauppi), Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Charles Tannock, Marianne L.P. Thyssen, Helena Torres Marques, Bruno Trentin, Ieke van den Burg (for Richard A. Balfe), Theresa Villiers, Karl von Wogau.

The opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market on the 2. Proposal (COM(2000) 349 – 2000/0148(CNS)) are attached.

The report was tabled on 28 November 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

1. LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation amending regulation (EEC) N° 218/92 on administrative co-operation in the field of indirect taxation (TVA) (COM(2000) 349 – C5-0298/2000 – 2000/0147(COD))

The proposal is amended as follows:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) Article 1(3) Article 6(4)	
(4) The competent authority of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services are allowed to obtain confirmation of the validity of the value added tax identification number of any specified person. Subject to conditions which they lay down, the Commission in accordance with the procedure referred to in Article 10 (2) shall allow for such confirmation to be furnished by electronic means.;	(4) The competent authority of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services are allowed to obtain confirmation of the validity of the value added tax identification number of any specified person. Subject to conditions which they lay down, the Commission in accordance with the procedure referred to in Article 10 (2) shall allow for such confirmation ***also*** to be furnished by electronic means.;

Justification:

The introduction of an electronic procedure to confirm the VAT number makes the administration of value added tax for businesses easier and reflects the needs of e-commerce.

Some countries still have a two-stage procedure for confirming the VAT number and this cancels out the advantages of using the internet. The advantages of e-commerce lie mainly in its speed. Checking the VAT number by conventional written means, such as by post or fax, would undoubtedly deter any potential business partner from rapidly concluding a transaction.

This amendment seeks to emphasise the need for an electronic procedure and encourage each Member State to make such an electronic alternative available.

[1] OJ C not yet published

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation amending regulation (EEC) N° 218/92 on administrative co-operation in the field of indirect taxation (VAT) (COM(2000) 349 – C5-0298/2000 – 2000/0147(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 349[1]),

– having regard to Article 251(2) of the EC Treaty and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0298/2000)[2],

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A5-0362/2000),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[1] OJ C not yet published
[2] OJ C not yet published

2. LEGISLATIVE PROPOSAL

Proposal for a Council directive amending directive 77/388 EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means (COM(2000) 349 – C5-0467/2000 – 2000/0148(CNS))

The proposal is amended as follows:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 2) Recital 4	
(4) To facilitate the compliance with their fiscal obligations, economic operators established outside the Community should be given the possibility to choose for a single VAT ***identification*** in the Community.	(4) To facilitate the compliance with their fiscal obligations, economic operators established outside the Community should be given the possibility to choose for a single VAT ***registration*** in the Community.
	This amendment applies throughout
Justification:	
This amendment is necessary in order to make the Commission's text clearer by using a more precise term.	
(Amendment 3) Recital 5	
(5) Such VAT ***identification*** by a non-EU supplier in an EU Member State should be for the purposes of this directive only and does not constitute establishment within the meaning of the Articles 43 or 48 of the EC Treaty or of other Community directives and a non-EU supplier should not benefit from the Internal Market freedoms enshrined in the EC Treaty or in Community directives merely by becoming ***identified*** for VAT.	(5) Such VAT ***registration*** by a non-EU supplier in an EU Member State should be for the purposes of this directive only and does not constitute establishment within the meaning of the Articles 43 or 48 of the EC Treaty or of other Community directives and a non-EU supplier should not benefit from the Internal Market freedoms enshrined in the EC Treaty or in Community directives merely by becoming ***registered*** for VAT.

[1] OJ C not yet published

This amendment applies throughout

Justification:

See justification Amendment 1.

(Amendment 4)
recital 5a(new)

in order to ensure a fair sharing of VAT revenues resulting from transactions between non-EU suppliers registered in one Member State and non-taxable persons in another Member State a system of refund between Member States is introduced;

Justification:

Revenue sharing between Member States is required concerning these transactions because - due to differences in VAT rates between Member States - non-EU suppliers will tend to register in the Member State with the lowest rate, which would - in the case of services rendered to non-taxable persons in another Member State -receive the VAT due for these services.

(Amendment 5)
Recital 9a (new)

(9a) Permanent monitoring by the Commission should be made on the state of play on the implementation of the legislation in the Member States in order to ensure there is no distortion of the market and the European Parliament and the Council should be informed.

Justification:

It is necessary to monitor if the implementation of the Directive is really complying with the objective to eliminate distortions in competition.It is possible that distortions of the market will persist due to differencies in VAT rates between Member states.

(Amendment 6)

RECITAL 10a (new)

	(10a) Further analysis is needed of the VAT treatment of electronic services. For that reason, by summer 2001 the Commission will submit additional studies on the following topics:
	- How can the equal treatment of service providers from the EU and from third countries be guaranteed;
	- What implications do the various proposals concerning VAT treatment have for decisions by providers of electronic services concerning the location of their businesses;
	- How can regulation at EU level be coordinated more effectively with international efforts;
	- The scope for the establishment of a clearing system between the Member States;
	- How can the other problematical aspects of the Commission proposal, as outlined in the report of the European Parliament's Committee on Economic and Monetary Affairs, be resolved

Justification:

The Commission should analyse the VAT treatment of electronic services before the entry into force of the directive

(Amendment 7)
ARTICLE 1 (1) (f), first paragraph
Article 9 (2) (ea), first paragraph (new) (Directive 77/388/EEC)

(f) the place of supply by electronic means of services mentioned in point(c) first indent as well as of software, of data processing, of computer services including web-hosting, web-design or	(f) the place of supply by electronic means of services mentioned in point(c) first indent as well as of software, of data processing, of computer services including web-hosting, web-design or

similar services and of information, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides, when these services are supplied by a taxable person	similar services***, of educational services*** and of information, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides, when these services are supplied by a taxable person

Justification:

Educational services supplied by Member states-based institutions and companies destined to third countries, including developing countries, should be exempted from VAT obligations. It is therefore necessary to mention this sector within this article.

(Amendment 8)
Article 1(3)
Article 24(2a)

2a Member States shall exempt from tax persons supplying services under Article 9(2) (f) third indent where these are their only supplies made in the Community and their annual turnover does not exceed ***EUR 100 000***.	2a Member States shall exempt from tax persons supplying services under Article 9(2) (f) third indent where these are their only supplies made in the Community and their annual turnover does not exceed ***EUR 40 000***.
This threshold shall be calculated in accordance with paragraph 4.	This threshold shall be calculated in accordance with paragraph 4.

Justification:

Although the rules governing the turnover threshold for exemption from VAT vary greatly from one Member State to another, they are all far below the level of EUR 100 000 proposed by the Commission. It would therefore be more sensible to set the threshold at half this figure, or better still EUR 40 000.

(Amendment 9)
ARTICLE 1 (5) (B) (F), first paragraph
Article 22 (1) (Directive 77/388/EEC)

(b) In paragraph 1, the following is added: (f) A taxable person established outside the Community supplying services by electronic means as defined in Article 9 (2)	(b) In paragraph 1, the following is added: (f) A taxable person established outside the Community supplying services by electronic means as defined in Article 9 (2)

(f) third indent to non-taxable persons established in the Community in excess of the threshold provided for in Article 24 (2a) shall be required to ***identify*** for VAT purposes in a Member State into which he supplies services.	(f) third indent to non-taxable persons established in the Community in excess of the threshold provided for in Article 24 (2a) shall be required to ***register*** for VAT purposes in a Member State into which he supplies services.

Justification:

See justification amendment 1.

(Amendment 10)
Article 1a(new)

	1a(new) The Council, acting in accordance with the procedure provided for in Article 93 of the Treaty, shall adopt measures to ensure that Value Added Tax collected from taxable persons established under the provisions of Article 28h, Article 22(1)(f) is transferred to the Member State in which the VAT was due or paid.

Justification:

This amendment provides the basis for the Commission to present a proposal for a Council regulation to establish the system of revenue sharing for revenue sharing between Member States is required concerning these transactions because - due to differences in VAT rates between Member States - non-EU suppliers will tend to register in the Member State with the lowest rate, which would - in the case of services rendered to non-taxable persons in another Member State -receive the VAT due for these services.

(Amendment 11)
ARTICLE 2(1), FIRST SUBPARAGRAPH

(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***by 1 January 2001***. They shall inform the Commission thereof.	(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***within one year of its entry into force***. They shall inform the Commission thereof.

Justification:

The Commission should analyse the VAT treatment of electronic services before the entry into force of the directive

(Amendment 12)
Article (2a) (new)

(2a) The Commission shall monitor the pattern of registration and report back to the Parliament by 1 January 2002 as to whether or not there is any distortion of the market.

Justification:

See justification amendment 3.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council directive amending directive 77/388 EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means (COM(2000) 349 – C5-0467/2000 – 2000/0148(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2000) 349[1]),

– having been consulted by the Council pursuant to Article93 of the EC Treaty(C5-0467/2000),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market (A5-0362/2000),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

4. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;

5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;

6. Instructs its President to forward its position to the Council and Commission.

[1] OJ C not yet published

EXPLANATORY STATEMENT

I. Introduction

The main objective of the two proposals by the Commission is to remedy a situation of competitive disadvantage European e-commerce enterprises are currently suffering in relation to third country-suppliers. This competitive disadvantage is the consequence of certain inadequacies of EU VAT provisions, which were basically put into place almost thirty years ago, long before the emergence of the Internet as a medium for international commerce. The proposals concern mainly services downloaded from the Internet as well as radio and television broadcasting services supplied on subscription or pay-per-view basis.

Under the current provisions electronic deliveries from an EU operator are always subject to VAT irrespective of the place of consumption. On the other hand, those services originating outside the EU are not subject to VAT even when consumed or used inside the EU. In consequence EU business is at a disadvantage on the internal market as well as on world markets. In simple terms the Commission's proposals aim at establishing a level playing field in this sector ensuring that all electronically delivered services for consumption within the EU will be subject to VAT, whilst those for consumption outside the EU will not be subject to VAT. Thus non-EU operators face the same tax obligations as domestic operators when they sell to consumers within the EU.

The proposals are the first to be adopted under the Commission's new VAT strategy adopted last June and which concentrates on the four major objectives simplification, modernisation, more uniform application of existing rules and closer administrative co-operation. The Commission points out that its proposals, while being at the centre of a highly controversial debate, are in line with the international principles for taxing e-commerce agreed at the 1998 OECD Ministerial Conference on Ottawa and your rapporteur agrees with this view. It is worth recalling first the broad taxation principles and the conclusions that have been reached and which incorporate these principles in the area of consumption taxes. The broad principles are

Neutrality

(i) Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

Efficiency

(ii) Compliance costs for taxpayers and administrative costs for the tax authorities should be minimised as far as possible.

Certainty and simplicity

(iii) The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.

Effectiveness and Fairness

(iv) Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimised while keeping counter-acting measures proportionate to the risks involved.

Flexibility

(v) The systems for the taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

As regards c***onsumption taxes*** the following conclusions have been reached:
(1) Rules for the consumption taxation of cross-border trade should result in taxation in the jurisdiction where consumption takes place and an international consensus should be sought on the circumstances under which supplies are held to be consumed in a jurisdiction.
(2) For the purpose of consumption taxes, the supply of digitised products should not be treated as a supply of goods.
(3) Where business and other organisations within a country acquire services and intangible property from suppliers outside the country, countries should examine the use of reverse charge, self-assessment or other equivalent mechanisms where this would give immediate protection of their revenue base and of the competitiveness of domestic suppliers.
(4) Countries should ensure that appropriate systems are developed in co-operation with the WCO and in consultation with carriers and other interested parties to collect tax on the importation of physical goods, and that such systems do not unduly impede revenue collection and the efficient delivery of products to consumers.

II. Legal framework:
1. The 6th VAT Directive (77/388/CEE)
That supplies by electronic means should be regarded as services - as agreed by the ECOFIN Council of 6th July 1998 as well as in Ottawa (see point 2 above) - is already apparent from the wording of Article 6 of the 6th VAT Directive, where services are defined. The relevant Article nevertheless is Article 9, which defines the place of taxable transactions for the supply of services. Services are treated as follows: Article 9 of the 6th VAT directive states that "the place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied.." and should in consequence be charged at the rate prevailing in that country of establishment and accrue to that country's Treasury (see also 'options for a definitive VAT system, EP Working Paper Economic affairs series E - 5, 09 - 1995).

There is nevertheless a complex list of derogations and exceptions. In the case of work on buildings, the place of supply is where the building is located (Article 9.2.a). In the case of transport, it is where the journey takes place (Article 9.2.b). In other cases the place of supply is where the service is carried out (Article 9.2.c), except if the customer is VAT-registered in another Member State, when the place of supply is where that *customer* is established (Article 9.2.e).

2. The proposals
The current provisions of Article 9 lead to the distortions of competition mentioned above when it comes to the supply of electronic services. Therefore the Commission proposes to add a new paragraph f to Article 9.2, in which the following services supplied by electronic means are addressed:
- Cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities, and, where appropriate, the supply of ancillary services (Art. 9,2,c, first indent) including all forms of broadcasting as well as other sound and images released and delivered by electronic means,
- Software; including computer games;
- Data processing (Art. 9, 2, e, third indent), including computer services such as web-hosting, web-design or similar services;
- The supplying of information.

To overcome the distortions it is proposed that the **place of supply** of these services is the **place where the customer has established his business** or has a fixed establishment to which the service is supplied...when these services are supplied by a taxable person (i.e. a business)
- Established in the Community to customers established outside the Community (this implies exemption of VAT);
- Established in the Community to taxable persons established in another country in the Community;
- Established outside the Community to persons established inside the Community.

Furthermore as regards services supplied by a taxable person to non-taxable persons established in the Community the place of supply shall be the place where the supplier has his business. Suppliers established outside the Community "shall be required to identify for VAT purposes in a Member State into which he supplies services (Art.1.5 (b)).

(To keep) administrative obligations at a necessary limit, third-country operators will only need a single registration to do business throughout the single market. Furthermore an annual threshold of 100 000 Euro is proposed, below which a third country operator is exempt from VAT.

Transactions between businesses will consequently be taxed under the reverse charge procedures (if the customer is registered for VAT in another Member State); i.e. the customer is liable for VAT in his home state. As regards business to final-consumers transactions the suppliers will continue to charge and account for VAT. It is therefore essential for suppliers to be able to distinguish between taxable (business) customers and non-taxable (private) customers. Furthermore the supplier must - in the case of services rendered to the final consumer - identify the country of residence of the consumer, since - when the recipient is established outside the Community - no tax is charged. The Commission takes the view that with the modernisation of the VAT Information Exchange System (VIES) to distinguish between private and business customers should not be a problem. A regards the second issue the Commission is of the opinion that "the standard commercial practice of requesting a verifiable credit card billing address ...may offer the best solution at the moment"(p.8).

As regards the VAT rate to be applied to these services the Commission proposes "in principle the normal VAT rate"(recital (9) p.23).

III Comments
The Community's VAT provisions certainly need updating to take account of technological change. The Commission's proposals only concern a (currently) fairly limited area, although with great growth potential, and the competitive disadvantage for European businesses in this field not only justifies but calls for action. In your rapporteur's views the proposals have several uncertainties, but most of them could be tolerated at least for a short time span in order to achieve the objective of establishing a level playing field in electronic services as fast as possible. But there is one major issue, which is not sufficiently considered in the proposal.
The single registration requirement for third-country operators is to be welcomed as the least bureaucratic option for these businesses. But the consequence of this option will be most certainly that third-country operators will register in the Member States with the lowest VAT rate. With VAT rates in the EU ranging between 15%-25% the cost advantage can be quite

important. Several Member States will have to face a loss of expected tax receipts. While this problem could be solved by obliging businesses to register in every Member State in which they do business, as proposed by the French Presidency in a compromise paper in September, this is not an adequate solution in your rapporteur's view. The main argument against such a procedure is that it would constitute a major discrimination of third country operators in relation to EU businesses, which, with one registration only, can do business throughout the internal market. The purpose of the proposals is to establish a level playing field, not to replace one discrimination with another. It is not even certain whether the French Presidency's compromise is in line with WTO rules. Furthermore large non-EU businesses would probably chose to become established traders in the EU, thus benefiting from the Internal Market freedoms and avoiding multiple registration, leaving the real burden of multiple registration with smaller operators.

Distribution of revenues between Member States - a clearing system

The best solution is therefore to preserve the single place of registration and to create a revenue sharing system, i.e. a clearing system, through which a fair distribution of tax revenues between the Member States can be ensured. The European Parliament has been calling for such a clearing system for a long time in connection with the transition to the final VAT system based on the country of origin principle. The Commission has proposed such a clearing system already ten years ago when presenting its proposals for such a final VAT system.

Since the sector concerned is rather small and the numbers of transactions limited, the establishment of a clearing system should be feasible. Furthermore use can be made of earlier work in this field and the experiences gained, once the system is in place, will be valuable in the future when (and if) the quantum leap to the final VAT system is to be taken. The system would affect only those services provided by non-EU operators registered in a Member State to non-taxable persons in another Member State, since for b-to-b transactions the reverse charge procedure applies. As regards services rendered by an EU operator to a final customer in another Member State it seems that current arrangements - application of VAT in the country were the supplier is located - are satisfying for the Member States.

As regards the design of the clearing system, there are several options. First of all there is the question whether a central clearing system shall be established and which would be operated by a newly created agency under the control of the Commission. The other option would be to establish a clearing system via bilateral agreements between Member States. The second issue to be resolved is whether the data source for the clearing system would be figures collected by the taxable persons e.g. via VAT returns or macro-economic data. As regards the sharing of revenues, this could be based on indicators such as population, GDP or degree of connectivity.

An interesting example is the refund system introduced in the Commission proposal concerning the rules governing the right to deduct VAT (COM(98)377). To create the principle of cross border deduction required an amendment to the Sixth VAT Directive, but for the clearing system, which only affects the relations between national administrations but not the relations to the taxpayer, a separate regulation was presented. From an operational perspective, the clearing system for the cross border deduction proposal functions on the basis of figures collected from the taxable persons, either via their VAT returns or a separate listing, and is not based on macro-economic data. A different example on the bilateral agreements option is that

introduced - at least as a principle - at the Feira Council on 19/20 June regarding the withholding tax compromise. In the report on the tax package it is stated that 'Member States which operate a withholding tax agree to transfer an appropriate share of their revenue to the investors' state of residence. It will be interesting to see how this solution is implemented in practice' (par. 2.b). While a central clearing system clearly has its advantages, in particular if a large number of Member States are involved, there are also some negative aspects. First of all Member States will be very reluctant to transfer the control powers of running the system to the Commission. Secondly, problems will arise if 'the figures do not add up', that is if Member States claim too much back, and put too little in.

In the area in question there will certainly not be to many Member States involved as non-EU operators will most certainly register in the countries with the lowest VAT rate, which would then have to make arrangements with the other Member States concerned as regards refunding. Therefore a clearing system based on bi- or rather multilateral agreements might be workable and preferable to a central clearing system. The Feira compromise might therefore be a useful precedent. Your rapporteur favours such a solution and his amendments aim at establishing such a system via a proposal from the Commission for a Council regulation.

Other problematic issues

Your rapporteur would now like to point out other problematic areas of the proposals, which the Commission recognises but expects to overcome in time:
(1) Problem of enforcement: why should non-EU operators register in a Member State? Customers will have access to their services, whether these operators are registered or not.
The Commission is of the opinion that "for an operator, even one located outside the EU, to risk exposure to significant and unresolved tax debts in the world's largest market place cannot be considered prudent business practice"(P.9) and therefore especially the major e-businesses will not expose themselves to such a reputation damaging risk. Furthermore strengthened co-operation of tax administrations with the major trading partners should further reduce the problem.
(2) Discrimination of some digital products (i.e. services) in relation to their physical counterparts. If a proposed, the normal rate shall be applied to digital products this will in some cases, such as books or newspapers, which are both sold on- and off-line, result in discrimination as reduced rates apply to books and newspapers in several Member States. The Commission regards as a minor problem, since online-products are widely considered to be different products from their physical counterparts (at least as far as books and newspapers are concerned). Broadcasting and television services, to which reduced rates apply in most Member States are another matter though, and should be looked into. The Commission states that she "intends to address the matter in a future review of Annex H of the 6th VAT Directive"(p.8). In its communication "A strategy to improve the operation of the VAT system within the context of the internal Market (COM(00)0348)" a report on the application of the reduced rate is listed as a priority for the year 2000. A review of the reduced rate and resulting measures to avoid the discrimination mentioned above is desirable and should be achieved in time before the implementation of the proposals.
(3) Determination by the supplier of whether the recipient is registered for VAT purposes: it is doubtful whether the modernisation of the VIES is carried out in time and whether all operators will have access to it in order to be able to fulfil the obligations resulting from the proposal. In some Member States the VAT registration number is not obligatory.
(4) Identification of the place of residence (inside or outside the EU) of the final consumer:

obtaining the address of the private customer through his credit card details may prove to be not as unproblematic as the Commission claims. Furthermore the development of new and more anonymous forms of electronic cash may render this task even more difficult.
(5) Thresholds: The threshold of 100 000 Euro below which non-EU suppliers are exempt from VAT seems problematic. National thresholds, under which EU businesses do not have to register for VAT purposes are much lower, some Member States don't even have a threshold. It would be advisable for Member States to have similar thresholds which would apply to national, EU- and non-EU operators.
(6) How can a line be drawn between electronic services falling under this directive and electronic services rendered through mobile telephones, where telecommunication regulations apply?
This is however not so much of a problem, because there is a fundamental distinction illustrated by the following example: where a customer is able to download information through a mobile telephone, the charge for connection and airtime would fall under the heading of telecommunications whilst the charge for the information would fall under the heading of e-commerce.
As mentioned in section I intensive work is being undertaken at OECD level in this field. The proposals, which are subject to this report, are nevertheless not pre-empting these works, as the OECD itself has stated. The main opposition to the proposals comes from across the Atlantic with the intention of preserving the competitive advantage of American companies. As regards the tax provisions for electronic services in the US it is worth mentioning that they are currently exempt from the sales tax; a moratorium on taxing electronic services has just been prolonged until 2006.

In conclusion your rapporteur would like to point out that in spite of some shortcomings the proposals should be supported. The shortcomings result mainly from uncertainties on future developments and should be overcome in time before the entry into force of the Directive/Regulation. The creation of a level playing field in electronic services is a matter of urgency, but it is essential that a system of distribution of tax revenues be put into place to compensate the advantage of those Member States with the lowest VAT rates. As regards the proposal for a regulation, which concern only the procedures for confirming the validity of the value added tax identification number your rapporteur proposes no amendments.

24 November 2000

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Economic and Monetary Affairs

on the proposal for a Council directive on amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic mean
(COM(2000) 349 – C5-0467/2000 – 2000/0148(CNS))

Draftsman: Glyn Ford

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Glyn Ford draftsman at its meeting of 12 July 2000.

It considered the draft opinion at it meeting of 22 November 2000.

At the latter it adopted the amendments below by 39 votes to 3 against with no abstention.

The following were present for the vote:Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur, vice-chairman; Glyn Ford, draftsman; and Yves Butel, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Willy C.E.H. De Clercq, Jonathan Evans (for John Purvis), Concepció Ferrer, Francesco Fiori (for Guido Bodrato), Colette Flesch, Jacqueline Foster (for Malcolm Harbour), Pat the Cope Gallagher, Norbert Glante, Lisbeth Grönfeldt Bergman (for Anders Wijkman), Michel Hansenne, Philippe A.R. Herzog, Hans Karlsson, Helmut Kuhne (for Mechtild Rothe), Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Nelly Maes, Erika Mann, Marjo Tuulevi Matikainen-Kallström, Elizabeth Montfort, Angelika Niebler, Elly Plooij-van Gorsel, Imelda Mary Read, Paul Rübig, Ilka Schröder, Konrad K. Schwaiger, Esko Olavi Seppänen, Helle Thorning-Schmidt (for Reino Kalervo Paasilinna), Astrid Thors, Jaime Valdivielso de Cué, W.G. van Velzen, Alejo Vidal-Quadras Roca, Dominique Vlasto, Myrsini Zorba.

SHORT JUSTIFICATION

Background

The proposal of the Commission has been presented following the Lisbon European Summit. The Lisbon Summit of 22/23 March 2000 came to the following conclusions: "The Council and the European Parliament should adopt all pending legislation on electronic commerce by

the end of 2000; Member States should accelerate their implementation into national law, which should be finalised by 2001".

This objective has been addressed in the *e*Europe action plan presented by the Commission and adopted by the Summit of Feira of 19/20 June 2000. The adoption of a Directive on VAT on certain services supplied by electronic means is included in the Feira eEurope Action Plan in order to ensure compatibility of EU VAT systems with regard to e-commerce and to provide, in particular, a level playing field for European content providers

Present legislation

In the view of the Commission, Article 9 of the current directive should be modified in order to eliminate distortion of competition which currently discriminates against EU e-commerce businesses.
Under the current directive only EU based suppliers are charged VAT on services, because the place where these services are supplied is usually the place where the suppliers are established; on the other hand, services supplied by third countries-based operators to non-taxable persons in the EU are exempt from VAT. Moreover, EU suppliers or services to consumers in third countries or to taxable persons established in the Community, but in a different country than the supplier, are still liable to pay VAT as the place where the service is supplied is the place where the services are physically carried out.

New directive proposal

The proposal addresses the issue of the on-line supply of digital deliveries, in particular those destined to final consumers, which was identified as a potential tax problem in the view of the increasing development of e-commerce (Article 9 of Directive 77/388/EEC). In order to prevent distortions of competition in this area, the proposal foresees the harmonisation of rules concerning the taxation of services supplied by electronic means to persons established in the Community or to recipients established in third countries. The services should be taxed at the recipient's place.

The main measures foreseen in the proposal concerning the place of taxation are the following ones:

- Services supplied by non-EU operator to EU customer: place of taxation is EU, i.e. the services will be subject to VAT;

- Services supplied by EU operator to non-EU customer: place of taxation outside the EU, i.e. services not subject to VAT;

- Services supplied by EU operator to another business in another member State: place of taxation is the State where the customer is established;

- Services supplied by EU operator to a private individual in the EU or taxable person in the same member State: place of supply is where the supplier is located

Some other new measures are also proposed in order to facilitate the administration of the tax in an e-business environment for both business and tax administration.

The measures foreseen as far as registration is concerned are the following ones:

- Registration for tax purposes will only be necessary if supplies are made to private customers, as tax on supplies to business will be accounted for by the customer;

- Registration will not be necessary for non-EU established traders whose annual level of sales within the EU is below 100.000 Euro;

- It is possible to register in a single place, i.e. in the Member State to where a first taxable supply is made;

- Procedures on registration and the making of tax returns can be completed electronically.

As far as tax administration tasks to simplify the procedure are concerned, it is foreseen that the competent administration will provide operators with the means to distinguish easily the status of their customers (VAT registered business or not) in order that suppliers will be able to determine whether or not a transaction should be charged with tax or not.

Draftsman's position

The supply of services through the medium of electronic mail, while not growing as rapidly as some forecast, is becoming increasingly important.

EU suppliers face two major disadvantages. First EU based suppliers when they supply digital deliveries of entertainment services such as online CDs and videos, or web site design, web site hosting etc. are liable to VAT in the country of establishment, while suppliers from outside the EU pay no VAT. Secondly, EU suppliers of services outside the EU are still liable to VAT no matter what the situation in the country they supply. These two anomalies need to be corrected and therefore the principles of the Commission's proposal are to be welcomed.

The simplest way to avoid discriminating against indigenous EU companies inside the EU is to make it mandatory for non-EU suppliers of e-commerce services to register for VAT within the EU. This could be either in a single member state or in all member states. The latter suggestion will be very burdensome and discriminate against non-EU suppliers and may well therefore be incompatible with WTO rules and could lead to a trade dispute with the United States. It would seem therefore that registration in a single member state would be appropriate, providing differences in VAT rates between member states are not so large as to distort significantly registration.

The draftsman agrees with the Commission's proposal foresees that non-EU suppliers of e-commerce should have to register in a Member State of the EU for VAT purposes.

For a matter of precision and clarification, it is necessary to replace the term 'identification' by the term 'registration', and therefore some amendments have been tabled.

The draftsman also stresses the need to monitor the pattern of registration. An amendment has been tabled in order that the Commission can analyse the situation in the Member States and report back to the Parliament within 3 years on the introduction of the legislation. The aim of

this amendment is to see whether or not there is any distortion of the market due to different rates of VAT still existing within the EU.

The draftsman agrees on the provision which foresees EU suppliers of services to customers outside the EU being exempt from VAT for transactions concerning the services listed under Article 1(1)(f) and tables an amendment by which educational services should be included. In his view it is important that educational services supplied outside the Community and mainly to developing countries should be exempted from VAT.

Finally, the issue of the sale of illegal services having pornographic and/or racist inciting content should be addressed. The draftsman tables an amendment on this in order to oblige companies supplying such services to comply with the existing and future European legislation in this field.

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
(Amendment 1) Recital 4	
(5) To facilitate the compliance with their fiscal obligations, economic operators established outside the Community should be given the possibility to choose for a single VAT ***identification*** in the Community.	(6) To facilitate the compliance with their fiscal obligations, economic operators established outside the Community should be given the possibility to choose for a single VAT ***registration*** in the Community.
	This amendment applies throughout
Justification:	
This amendment is necessary in order to make the Commission's text clearer by using a more precise term.	
(Amendment 2) Recital 5	
(7) Such VAT ***identification*** by a non-EU supplier in an EU Member State should be for the purposes of this directive	(6) Such VAT ***registration*** by a non-EU supplier in an EU Member State should be for the purposes of this directive

[1] OJ C not yet published

only and does not constitute establishment within the meaning of the Articles 43 or 48 of the EC Treaty or of other Community directives and a non-EU supplier should not benefit from the Internal Market freedoms enshrined in the EC Treaty or in Community directives merely by becoming ***identified*** for VAT.	only and does not constitute establishment within the meaning of the Articles 43 or 48 of the EC Treaty or of other Community directives and a non-EU supplier should not benefit from the Internal Market freedoms enshrined in the EC Treaty or in Community directives merely by becoming ***registered*** for VAT.

This amendment applies throughout

Justification:

See justification Amendment 1.

(Amendment 3)
Recital 9a (new)

(9a) Permanent monitoring by the Commission should be made on the state of play on the implementation of the legislation in the Member States in order to ensure there is no distortion of the market and the European Parliament and the Council should be informed.

Justification:

It is necessary to monitor if the implementation of the Directive is really complying with the objective to eliminate distortions in competition.It is possible that distortions of the market will persist due to differencies in VAT rates between Member states.

(Amendment 4)
Recital 9b (new)

(9b) The Commission and Member states must seriously take into consideration the spiralling pornographic and race inciting content of services supplied by electronic means; companies supplying those services must be subject to EU laws;

Justification:

Every company, whether they are EU-based or not, should comply with European legislation covering pornography, racism and other illegal content services

(Amendment 5)
RECITAL 10a (new)

(10a) Further analysis is needed of the VAT treatment of electronic services. For that reason, by summer 2001 the Commission will submit additional studies on the following topics:

- ***How can the equal treatment of service providers from the EU and from third countries be guaranteed;***
- ***What implications do the various proposals concerning VAT treatment have for decisions by providers of electronic services concerning the location of their businesses;***
- ***How can regulation at EU level be coordinated more effectively with international efforts;***
- ***The scope for the establishment of a clearing system between the Member States;***
- ***How can the other problematical aspects of the Commission proposal, as outlined in the report of the European Parliament's Committee on Economic and Monetary Affairs, be resolved***

Justification:

The Commission should analyse the VAT treatment of electronic services before the entry into force of the directive

(Amendment 6)
ARTICLE 1 (1) (f), first paragraph

Article 9 (2) (ea), first paragraph (new) (Directive 77/388/EEC)

(f) the place of supply by electronic means	(f) the place of supply by electronic means

of services mentioned in point(c) first indent as well as of software, of data processing, of computer services including web-hosting, web-design or similar services and of information, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides, when these services are supplied by a taxable person	of services mentioned in point(c) first indent as well as of software, of data processing, of computer services including web-hosting, web-design or similar services***, of educational services*** and of information, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides, when these services are supplied by a taxable person

Justification:

Educational services supplied by Member states-based institutions and companies destined to third countries, including developing countries, should be exempted from VAT obligations. It is therefore necessary to mention this sector within this article.

(Amendment7)
ARTICLE 1 (5) (B) (F), first paragraph

Article 22 (1) (Directive 77/388/EEC)

(b) In paragraph 1, the following is added: (f) A taxable person established outside the Community supplying services by electronic means as defined in Article 9 (2) (f) third indent to non-taxable persons established in the Community in excess of the threshold provided for in Article 24 (2a) shall be required to ***identify*** for VAT purposes in a Member State into which he supplies services.	(b) In paragraph 1, the following is added: (f) A taxable person established outside the Community supplying services by electronic means as defined in Article 9 (2) (f) third indent to non-taxable persons established in the Community in excess of the threshold provided for in Article 24 (2a) shall be required to ***register*** for VAT purposes in a Member State into which he supplies services.

Justification:

See justification amendment 1.

(Amendment 8)
ARTICLE 2(1), FIRST SUBPARAGRAPH

(1) Member States shall bring into force the laws, regulations and	(1) Member States shall bring into force the laws, regulations and

administrative provisions necessary to comply with this Directive ***by 1 January 2001***. They shall inform the Commission thereof.	administrative provisions necessary to comply with this Directive ***within one year of its entry into force***. They shall inform the Commission thereof.

Justification:

The Commission should analyse the VAT treatment of electronic services before the entry into force of the directive

(Amendment 9)
Article (2a) (new)

(2a) The Commission shall monitor the pattern of registration and report back to the Parliament by 1 January 2002 as to whether or not there is any distortion of the market.

Justification:

See justification amendment 3.

20 November 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic means
(COM(2000) 349 – C5-0467/2000 – 2000/0148 (CNS))

Draftsman: Diana Paulette Wallis

PROCEDURE

At its meeting of 12 July 2000 the Committee on Legal Affairs and the Internal Market appointed Diana Paulette Wallis draftsman.

It considered the draft opinion at its meetings of 9 October 2000, 23 October 2000 and 20 November 2000.

At the last meeting it adopted the following conclusions by 12 votes to 0, with 5 abstentions.

The following took part in the vote: Ana Palacio Vallelersundi, chairman; Ward Beysen, vice-chairman; Diana Paulette Wallis, draftsman; Luis Berenguer Fuster, Maria Berger, Philip Charles Bradbourn, Charlotte Cederschiöld, Janelly Fourtou, Marie-Françoise Garaud, Kurt Lechner, Klaus-Heiner Lehne, Luis Marinho, Véronique Mathieu, Arlene McCarthy, Manuel Medina Ortega, Bill Miller and Stefano Zappalà.

BACKGROUND/GENERAL COMMENTS

Aim and substance of the proposed legislation

The proposal before the committee deals with services supplied to or purchased from the

Internet and is intended to amend the Sixth VAT Directive[1] by changing the way VAT is dealt with in respect of electronic deliveries, which are to be treated as supplies of services for this purpose[2]. Only services provided for consideration are to be covered[3].

The *rationale* underlying the proposal for a directive is that it would close a competitive gap between EU suppliers of electronic services, who at present have to pay VAT on services supplied in the Community, and non-EU suppliers who are not so taxed. So, in order to eliminate distortions of competition in the interests of the proper functioning of the internal market and to introduce new harmonised rules, services provided by electronic means for consideration and consumed by customers within the Community are to be taxed in the Community and services consumed outside the Community are not to be taxed in the Community. Where such services are consumed in a Member State, the following situation will obtain:

- Intra-EU electronic services provided, on a business to business basis, will be supplied without VAT, as the purchasing EU business will self-impose VAT in its territory (the so-called reverse charge or self-assessment of VAT).

- Intra-EU electronic services provided to a non-business person/consumer will be subject to VAT at the rate applicable in the territory of the provider.

- Supplies of electronic services by an EU provider outside the EU will not be subjected to EU VAT.

- Non-EU providers supplying electronic services to non-business persons/consumers in the EU will be required to be EU VAT registered where annual sales exceed EUR 100 000. To ease the administrative burden, such providers will have to register only in one Member State, i.e. the one in which the first annual transaction taking the supplier over a threshold of EUR 100 000 takes place. That Member State's local VAT rate for services will be applied to all EU transactions with non-business consumers.

The objective of the proposed legislation is commendable. The question is whether the way in which it is formulated does not create more problems than it resolves.

Is the proposed legislation mature enough to warrant Parliament's support?

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[1] Sixth 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, OJ 1977 L 145, p. 1, as amended. The proposal for a directive should be considered in conjunction with the proposal for a regulation of the European Parliament and of the Council amending Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT), on which the Legal Affairs Committee has decided not to give an opinion.

[2] The proposal would cover the supply of the rights to use:
- cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities and, where appropriate, the supply of ancillary services; this would include broadcasting (e.g. subscription-based pay-per-view television and radio services) and other sound and images delivered electronically for consideration;
- software (including computer games);
- data processing (including computer services such as web-hosting and web design);
- the supply of information.

[3] Free Internet access or free downloads would not be affected (or at least not on the face of it).

Regretfully, the answer to this question must be in the negative for the following reasons.

The competitive gap and the international situation

The present competitive gap is small and the amount of lost revenue fairly trivial – although it will probably rise considerably. It is therefore considered that at this stage it is just not worth making a serious conceptual decision about the place of taxation which could, sooner or later, cause problems with our trading partners.

Admittedly, it seems that "Taxation Framework Conditions" were agreed at the Ottawa ministerial conference held in 1998 under the auspices of the OECD. In particular, it was agreed that consumption taxes should result in taxation in the jurisdiction where consumption takes place and that, for these purposes, the supply of digitised products should not be treated as the supply of goods. But, the Commission itself admits that the OECD is still working on measures to define the place of consumption, internationally compatible definitions of services and intangible property and on developing effective tax administration and collection mechanisms. The Commission considers that its work on specific tax administration measures for e-commerce may serve as a model for international use and that other OECD members accept that work as a constructive contribution[1], but this does not warrant hasty adoption of legislation.

Moreover, the proposals seem to run counter to the spirit of the Lisbon Declaration and all its sound statements about Europe's e-economy. Does the Community really want to be sending out a signal that protection is the order of the day, rather than giving a spur to e-business in the EU? There are also the dangers to e-commerce adverted to in the section below on the VAT registration of non-EU suppliers.

The place of taxation

Subject to the above, it must be conceded that the proposal that intra-Union supplies of services from businesses to consumers are to be assessed to VAT at the rate applicable in the country of supply would appear to be a good means of achieving *de facto* harmonisation of the VAT rates charged on electronic services. But this is not the purpose of the proposed legislation.

VAT registration of non-EU suppliers

The proposal that non-EU suppliers can elect to register for VAT in only one Member State is more problematic. That country would be the one in which the first annual transaction taking the supplier over the EUR 100 000 threshold took place. As matters stand, registration would be voluntary in practice and it would be largely the good corporate citizens who would register. Presumably, such companies would be able to recover input VAT paid anywhere in the Union, but this is not explicitly stated in the proposal. However, the "single registration principle" would be open to manipulation so as to allow non-EU providers to register in the Member State with the lowest VAT rate. In the absence of convergence or harmonisation of

[1] See Proposed amendments to the VAT treatment of electronically delivered services – frequently asked questions, European Commission, 28 August 2000.

tax rates, it can be argued that this would amount to discrimination between EU and non-EU providers. It would also discriminate between non-EU on-line providers and EU suppliers of equivalent goods (music CDs, software, films on tape and disk, etc), resulting in a distortion of competition.

What is worse is that, since the VAT revenue would be liable to accrue largely to the State which applied the lowest rate on services, the idea of redistributing it on the basis perhaps of per capita GDP has already been mooted; this could be a bureaucratic nightmare for businesses.

Furthermore, there is a danger that, in response to the Commission's action, other countries may adopt registration regimes for turnover tax and possibly other purposes. This could result in registration being required in more than 100 countries, making e-commerce impractical for many, including European, firms. Companies complying with the directive by registering could suffer on account of the difficulties of enforcement and there could be an unintended shift on the part of consumers to seek out those sites which have not yet registered and do not collect taxes.

Existing anomalies emphasised by the new proposal

The proposal to treat digital "services" in this way would underscore an existing anomaly in the taxation of cultural goods: sound recordings (music, the spoken word for the hard of hearing, etc) are taxed differently from newspapers, books, cinema tickets and broadcasting services (which are taxed at a low rate or even zero-rated)[1].

There is a further anomaly in that sound recordings, software, etc delivered on-line would be liable to attract VAT but turnover tax is not collected on small packages worth less than about EUR 30 coming from outside the EU. So CDs supplied from outside Europe by an e-trader could escape tax, whereas the same recording supplied as a digital download would be liable for VAT.

The aforementioned discrimination which the proposal would create against electronic books and newspapers is contrary to the OECD principles that "taxation should seek to be neutral between ... conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than by tax considerations".

Is it worth raising all this controversy without fully worked-out proposals for charging VAT on cultural goods and the tax treatment of small packages? The answer to this question, too, must be in the negative.

The EUR 100 000 threshold

The EUR 100 000 threshold is hardly ideal, as it would tend to result in the taxation of good corporate citizens, leaving others untaxed. Competition from untaxed on-line service providers operating from outside the Union could damage on- and off-line small and medium-

[1] In Forexia (UK) Ltd v. Commissioners of Customs and Excise, It may be noted in this connection that a London VAT Tribunal held in April 1999 that, whereas if a news digest was delivered by post, courier or by hand, it qualified for zero-rating, if it was delivered by fax, website or e-mail, it attracted VAT at the standard rate.

sized undertakings in the Community. It could also encourage on-line operators to move their operations outside the Union.

Input VAT

Finally, there is the question of input VAT. If a firm of US lawyers did over EUR 100 000 of business in one year with clients in London, it would have to register for VAT there. This seems fair, except that the firm would presumably incur all its overheads in the US and, unlike its UK competitors, would have little or no VAT on inputs to set off against its tax bill. In this respect, the imposition of VAT on e-services cannot be said to be neutral and might give rise to problems with our trading partners.

Enforcement

Lastly and most seriously, there is the question of enforcement. A person subject to VAT would not be liable for VAT on a transaction with another taxable person, provided that he "has acted with all possible diligence normally used in commercial practice of a given sector and has verified by a consistent set of data from an independent source, notably by means of the individual [VAT registration] number …, that his customer is a taxable person established in the Community". It may be argued that businesses should be provided with the means of fulfilling this obligation of checking their customers' taxable status, through an on-line data base. At present, the Commission seems to be leaving this whole area to national tax administrations[1] and placing a large burden on businesses. The upshot could well be increased bureaucratic burdens on e-traders. The Commission's handling of this whole area seems inadequate especially in so far as its proposal provides no guidance on how vendors are to determine the VAT status - whether business or consumer - or the residence of the purchaser. It may not be technologically feasible at present to collect such information in a reliable, non-burdensome manner that does not raise serious privacy issues.

As regards enforcement generally, the Commission has explained that it is in larger operators' own interests to be seen to be in compliance with their VAT operations arising from Internet trading because they themselves want to ensure that others respect their copyrights and other intellectual property rights. This may be a fair point, but the proposal is short on indications as to how tax dodgers will be identified and what action will be taken to deal with them. Moreover, the proposition "you pay tax and I will pursue persons infringing your rights" seems suspect.

Assessment

The proposal would seem premature and it is surprising that no account seems to have been taken of the issues raised in the European Commission working paper of Working Party No 1, Harmonisation of turnover taxes, "Interim report on the implications of electronic commerce for VAT and Customs". Furthermore, the Commission's avowed aim of creating a new business model would seem more appropriately achieved through a procedure involving more openness and consultation than by means of the less transparent method of making technical amendments to the Sixth VAT Directive.

[1] See Proposed amendments to the VAT treatment of electronically delivered services – frequently asked questions, European Commission, 28 August 2000.

The Commission should withdraw its proposals and start a thorough consultation process combining consideration of the taxation of e-services with a review of the VAT charged on competing goods and services not supplied via the Internet. This exercise should be conducted in tandem with the ongoing negotiations and discussions in the OECD and other international fora. Furthermore, too many questions have been left open and there are too many anomalies. Moreover, the matter is not urgent. If we legislate in haste, we may repent at leisure. By seeking to eliminate what is at present a small competitive gap with heavy-handed legislation, the Community may frighten away e-business. There is also the danger that the proposal may be attended by unintended consequences in so far as the classification of digitally-delivered products as services could influence determinations for income tax, customs and other purposes. It could also set precedents in areas outside that of tax, such as jurisdiction and privacy, which could be extremely damaging to the development of a truly global marketplace.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to take account of the following conclusions in its report:

The Commission is requested to withdraw its proposal for a directive until such time as (a) a thorough review has been carried out of the value added tax charged on goods and services supplied by non-electronic means, (b) the ongoing discussions in the OECD and other international fora have been brought to a conclusion and (c) a complete package of measures can be proposed.