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REPORT

on the proposal for a Council directive laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State

(COM(2004)0728 – C6-0251/2005 – 2005/0807(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Zsolt László Becsey

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.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State (COM(2004)0728 – C6-0251/2005 – 2005/0807(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2004)0728)¹,
 - having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0251/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0324/2005),
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 if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Article 7, paragraph 1

1. The Member State where the value added tax was incurred shall make its decision concerning the application for refund known to the applicant within three months of the date on which the application was submitted.

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¹ Not yet published in OJ.

State of establishment shall notify the Member State of refund when the taxable person submits his application for a VAT refund to the competent tax authority.

Justification

The amendment provides for legal clarification and gives time to Tax Authority of refund to prepare for possible request for transfer of VAT charged to taxable person.

Amendment 2

Article 7, paragraph 1, subparagraph 1 a (new)

The three-month period shall start from the date on which the tax authority in a Member State of refund receives the electronic refund data from the tax authority in the Member State of establishment concerning the taxable person in question, who shall be automatically informed thereof.

Justification

Amendment serves for further legal clarification for the Tax Authority in the Member State of refund to avoid any misunderstanding of legal obligation related to time spell of the VAT claim.

Amendment 3

Article 7, paragraph 3, subparagraph 2 a (new)

The refund transfer deadline shall be one week after expiry of the three-month decision-making period.

Justification

Amendment serves for further legal clarification to avoid any misunderstanding of time spell of VAT claim. Otherwise the deadline of making refund is not determined without ambiguity because in public administration deadline for decision making has to be distinguished from the one of refund-transfer.

Amendment 4

Article 7, paragraph 4, subparagraph 1

4. In specific cases, a Member State where

4. Where the tax authority of a Member

value added tax has been incurred may request additional information within three months of the date on which application is submitted. After that period has elapsed, no additional information may be requested.

State of refund requests that a further investigation be conducted, the period for determining whether a taxable person is entitled to a refund may be extended. However, the period between the date on which the refund application is submitted and the date of the refund transfer may not exceed four months.

Justification

Amendment serves for interests of SMEs. Requesting more information is not allowed for extending the refund procedure without any constraint of time. SMEs and tax authorities benefit from this concrete determination of length of VAT recovery proceeding, as well.

EXPLANATORY STATEMENT

Legal framework

In October 2004, the European Commission tabled a new initiative¹ aiming at simplification of the completion of VAT liabilities related to cross-border VAT-transactions. The Commission's package was made up of three separate proposals including establishment of the one-stop scheme, necessary changes in the Eight VAT Directive (79/1072/EEC) and modification of the 1798/2003 Regulation on VIES² co-operation. The European Parliament was consulted on the 1st and 3rd part of the package and in September 2005 it adopted a Report supporting the two proposals with an overwhelming majority. The Working Party on Tax Questions of 7 July 2005 agreed that Article 93 of the Treaty (instead of Article 29a of the Sixth VAT Directive) should be the legal basis for the 2nd proposal and thus in accordance with the above mentioned article, the European Parliament is now entitled to give its opinion on the above mentioned second part of Commission's proposal as well.

Sixth Directive

The legal and political origins of the current general turnover tax regime date back to 1967 when the First VAT Directive³ was adopted, showing the Member States commitment to elaboration of a common VAT scheme. It was then followed by a number of legislations among which the Sixth Council Directive⁴ that entered into force on 1 January 1978 is a corner stone of VAT legislation and constitutes a general framework including main important features of a multi-phased net general turnover taxation.

Eighth Directive

There are many SMEs throughout the EU that do not have their establishments in each of the Member States where their charges, costs and fees (including VAT amount of a Member State of destination) are incurred. These undertakings do not have any connection with the Tax Authority of a Member State where their costs and fees emerge in the course of their economics operations.

In accordance with the general principle of turnover taxation, the amount of a VAT receivable paid in the price of a product or a service that is subjected to VAT charged in a Member State of destination, could constitute a base to a claim for reduction of the VAT payable. This led to formulation of the Eighth VAT Directive⁵ which regulates precisely the regime of the refund of VAT taxes that emerged in a Member State where an undertaking is not established and supply of goods or services is not carried in that Member State. The Directive

¹ COM(2004)0728 of 29.10.2004.

² VAT Information Exchange System.

³ Council Directive 67/227/EEC of 11 April 67 on the harmonisation of legislation of Member States concerning turnover taxes - generally know as the First VAT Directive.

⁴ Council Directive of 17 May 1977 (77/388/EEC) - generally known as the Sixth VAT Directive.

⁵ Council Directive of 6 December 1979 (79/1072/EEC) on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in the territory of the country- generally known as the Eighth VAT Directive.

entered into force 1 January 1981.

The primary goal of the Directive in question is to eliminate discrepancies between the VAT arrangements in force in the Member States, which can give rise to trade deflection and distortion of competition resulting from tax evasion and avoidance. The refund system provided for in this Directive ensures that a taxable person established in the territory of one Member State should be able to claim for tax which has been invoiced to it on expenditure in a Member State where it must not have either a branch or a fixed establishment and makes no supplies, directly from that Member State, i.e. the Member State of refund (or purchase)¹. The only exception to the main rule (e.g. exclusion of selling goods or services in other Member State) is supplying transport and those ancillary services falling under scope of the Reverse Charged Mechanism (RCM, for example immaterial services listed in VI. Directive 9, article 2, indent e). Reverse Charge Mechanism is compulsory to apply to certain provision of services which means the customer charge VAT and deduct thereafter in his tax return, so in that case service supplier need not be registered in the Member State of consumption.

Although the One-stop scheme provides that taxable person pursues taxable transactions (including purchase and sale of products or services), the Eighth VAT Directive is to be applied only in case of buying of products or services from a Member State of purchase.

The application for tax refund shall in principle relate to invoiced purchases made during a period not less than 3 months but not exceeding 1 calendar year. As regards the refundable amount, the Eighth Directive provides for a low limit on pay-back. If the time period between a chargeable transaction and tabling of the refund application exceeds 3 months but is less than 1 year, the amount for which the application is tabled must constitute at least the equivalent of 200 EUR. If time period encompasses 1 calendar year or remaining part of a calendar year, the amount applied for must not be less than equivalent of 25 EUR.

The Refunding Tax Authority must announce its decision on the amount of VAT refund, and effect it, within 3 months following submission of the application.

Functioning of Eighth VAT Directive in practise

Inefficient functioning of the Eighth VAT Directive hits major economic sectors (such as road transport) in the EU. Undertakings request to claim VAT paid on fuel, tolls for using motorways and various repair services - amongst other things - that are purchased in different Member States. According to the current economic practice, the length of the time due to receive refunds and burdensome, complicated process, contribute to bureaucratic overload by the national administration and loss of financial liquidity faced by the SMEs who are forced by this way to pre-finance considerable amount of VAT for a time spell varying from 6 months up to 2 years.

Such businesses employ services of specialised fiscal agencies to recover VAT refunds due because they are unable to cope with the lot of bureaucratic procedures and encountering problems such as language difficulties, complicated technical application forms, registration and currency matters, etc.). As such specialised agencies charge between 10% and 20% of the claimed VAT refunds to cover their administrative expenditures, the SMEs are thus not only

¹ With the exception of transport services and services ancillary thereto, exempted pursuant to Article 14 (1) (i), Article 15 or Article 16 (1), B, C and D of Directive 77/388/EEC AND services provided in cases where tax is payable solely by the person to whom they are supplied, pursuant to Article 21 (1) (b) of Directive 77/388/EEC.

forced to cope with the lengthy procedural time but face further expenses of 10-20% of their originally claimed VAT refund. All these procedure causes heavy cash-flow problems to businesses in EU.

Restructuring the 8th VAT Directive to solve associated problems

The lengthy and burdensome refund procedure laid down in the Eighth VAT Directive deters a great number of economic operators from claiming the VAT incurred in course of their economic operations in a Member States where they have no fixed establishment. According to the European Tax Survey a great number of 53% of traders do not reclaim the VAT charged to them in the country where expenses have occurred. The reasons for that are, as mentioned above, the lengthy time and burdensome administrative procedure to receive the refunds due. It would be essential to enable traders to reclaim the charged VAT from the Tax Authority of the Member State of establishment according to the rules of the principle of origin, as suggested in the proposal put forward by the Commission in 1998. Despite large support from the traders and backing from the European Parliament, the proposal was however not agreed by the Council yet. The provision raising the biggest controversy is the above mentioned scheme under which the VAT would be claimed in accordance with the rule of country of establishment while the current procedure foresees the VAT recovery based on the principle of the country of purchase (i.e. where the expenses have been incurred). This would create discriminatory conditions for the detriment of the Member States with more restrictive deduction regimes. After fruitless years of search of compromise, the Commission tabled an alternative and since the current discriminative and harmful situation contradicts the common goals set in the Lisbon Strategy, the issue is of a crucial importance and should therefore be addressed also by the European Parliament.

New proposal does not alter the destination principle of the repayment of VAT-refund. The requests for refunds would be completed according to the deduction rules of the Member State where the taxable transaction took place and the repayments will be made by the same Member State directly to the taxable person.

The proposal introduces possibility for a taxable person to file the requests for a refund by electronic means via web site portal managed by the Tax Authority of the country of establishment. The electronic filing will simplify the refund-process by making submission of the originals of invoices or import documents to the relevant Tax Authority. This measure however calls for a more efficient cooperation between tax authorities of the Member States via the VIES regime.

The Tax Authority of establishment would have to carry out an initial verification of its database of taxable persons, whereby the processing time needs to be shortened from the current 6 months to 3 months. In order to improve legal position of a tax payer, when this deadline expires, the tax authority of the Member State where expenses have occurred has no right to refuse the application and is legally bound to pay a 1% penalty interest a month on the unpaid refunds.

Rapporteur's position on Commission proposal

The Rapporteur believes there are several shortcomings in the Commission's proposal which could put the eventual positive effect of the simplification at risk. First of all, Member State of

refund - according to the Commission proposal - is not notified, when the taxable person tables his request for VAT refund. Therefore, the Rapporteur suggests that relevant notification should be forwarded to the Member State of refund at the very beginning of the 3-month refund procedure.

Furthermore, the Commission's proposal does not define explicitly the time interval within which the Member State of establishment has to confirm the status of a taxable person and to verify its credibility followed by investigation on the amount of taxable and non-taxable transactions effected at the same time for the sake of establishing a proper ratio. The Rapporteur recommends to set up the time spell for this necessary verification up to 2 weeks within which the Tax Authority of a Member State of establishment should forward all relevant documents to the Tax Authority in a Member State of refund.

In order to eliminate eventual legal deficiencies, the 3-month deadline should be counted from a moment the Tax Authority in a Member State of refund receives the verification documents on the taxable person in question who should be automatically notified of the fact.

Yet another legal deficiency in the Commission's proposal is lack of clear distinction between deadlines of 3-month decision making process and the time by which the transfer of refund should be completed. The Rapporteur suggests to fix the refund transfer deadline at one week following expiration of the 3-month decision making time slot.

If any request for further investigation comes up from the Tax Authority of a Member State of refund, the decision making process (i.e. determining whether a taxable person is entitled for a refund or not) could be extended, but only under condition that the time elapsing between the refund application and the date of the refund transfer must not exceed 4 months.

As far as the VAT refund ratio is concerned, the problem that a Tax Authority might encounter is absolute lack of information on the amount of taxable and non-taxable transactions the given taxable person has effected and thus, it is impossible to verify the ratio calculation that it presents in its application for refund. According to the Commission's proposal this ratio could be applied to recovering the VAT charged in the Member State of purchase where an undertaking is not registered as subjected to tax.

With regards to the above mentioned legal deficiencies, the Rapporteur calls for establishing a unified electronic database system prompting more effective circulation of relevant data related to cross border VAT transactions. This would constitute an efficient tool for reduction of the present 3-month verification period on previous quarterly cross-border commercial transactions which length gives possibility for VAT abuses. Nevertheless, the Rapporteur is of an opinion that the suggested computerized data-exchange system could foster a higher level of controllability and transparency of business transactions within the VIES framework and thus help to combat the VAT frauds.

PROCEDURE

Title	Proposal for a Council directive laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State		
References	COM(2004)0728 – C6 0251/2005 – 2005/0807(CNS)		
Date of consulting Parliament	20.7.2005		
Committee responsible Date announced in plenary	ECON 6.9.2005		
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 6.9.2005		
Not delivering opinions Date of decision	IMCO 4.10.2005		
Enhanced cooperation Date announced in plenary			
Rapporteur(s) Date appointed	Zsolt László Becsey 10.5.2005		
Previous rapporteur(s)			
Simplified procedure – date of decision			
Legal basis disputed Date of JURI opinion	/		
Financial endowment amended Date of BUDG opinion	/		
Parliament to consult European Economic and Social Committee – date decided in plenary			
Parliament to consult Committee of the Regions – date decided in plenary			
Discussed in committee	5.10.2005	11.10.2005	14.11.2005
Date adopted	14.11.2005		
Result of final vote	+: 32 -: 4 0: 1		
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Sharon Margaret Bowles, Ieke van den Burg, David Casa, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Robert Goebbels, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Kurt Joachim Lauk, Astrid Lulling, Hans-Peter Martin, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Karin Riis-Jørgensen, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Peter Skinner, Ivo Strejček, Sahra Wagenknecht		
Substitute(s) present for the final vote	Katerina Batzeli, Jorgo Chatzimarkakis, Ján Hudacký, Alain Lipietz, Jules Maaten, Thomas Mann, Charles Tannock		
Substitute(s) under Rule 178(2) present for the final vote			
Date tabled	16.11.2005		

Comments (available in one language only)	
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