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REPORT

on the proposal for a Council directive amending Council Directive 2002/38/EC as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services
(COM(2006)0739 – C6-0437/2006 – 2006/0245(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 amending Council Directive 2002/38/EC as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (COM(2006)0739 – C6-0437/2006 – 2006/0245(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2006)0739),
 - having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0437/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0440/2006),
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 the Commission.

Amendment 1

ARTICLE 1

Article 4 (Directive 2002/38/EC)

"Article 1 shall apply until 31 December
2008."

"Article 1 shall apply until 31 December
2009."

Justification

The amendment strives for giving more time to the ECOFIN to ensure the consistent application and harmonisation of different provisions of E-Commerce VAT Directive(2002/38/EC), the proposal for establishing "One Stop Shop (OSS)" package (COM(2004)0728) and the proposal place of supply of services (COM(2005)0334 which politically relates to the whole VAT package.

The European Parliament sees the importance of legal and economic consistency - specially, as regards the different deadlines (for length of tax period, record keeping obligation and filing tax return) - between the concerning VAT regulations.

Till 31 December 2009 Council should finish the unification of the above-mentioned VAT schemes and transpose them in a uniform structure into the basic Council Directive 77/388/EC.

EXPLANATORY STATEMENT

Creating a common Value Added Tax (VAT) system was a milestone for reaching a higher level of economic integration, by means of which internal market was coming true.

One small element of the VAT system deals with taxation principles of certain types of electronically supplied services and broadcasting services.(the so called e-services).

At the heart of the Council Directive 2002/38/EC lied the elimination of the competitive disadvantage of EU businesses supplying electronic services versus businesses located in third countries. Before the Directive in question entered into force business providers located in third countries could supply their electronic services with zero VAT rate thanks to tax-exemption. However EU-businesses delivering electronic services outside the EU had to charge their country of origin VAT rates.

I. Commission Proposals

Grounds

1. The main message of the new Commission Proposal is to extend the approaching deadline for special electronically-supplied services (e-services). According to the Council Directive 2002/38/EC, the provisions of this special VAT scheme could be applied until 30th of June 2006.

The Council Directive 2002/38/EC (e-commerce VAT Directive) was amending temporarily Directive 77/388/EC aiming for overhauling value added tax arrangement applicable to certain electronically supplied services in e-commerce, and radio- and television broadcasting services.

2. The enacted provisions in the Council Directive 2002/38/EC expired on 30th of June 2006. One Stop Shop scheme (OSS) is closely related in principles and application to the e-commerce VAT Directive, the latter is the predecessor of the OSS for EU-established undertakings in terms of electronic single point of contact in VAT matters. The Commission - foreseeing that the One Stop Shop package (COM(2004)0728) would not be accepted by the Council till the maturity date of e-commerce VAT Directive - excluded the e-services from the whole VAT package and on 15th of May adopted a Report (COM(2006)0210) proposing to extend the period of application of the e-services Directive 31st of December 2008.

Even though the Commission recommended applying the standard consultation procedure based on the Art. 93 of the Treaty involving the European Parliament, the ECOFIN Council, due to extremely tight timetable, decided in June 2006 in its Council Directive 2006/58/EC on the temporary extension of the scheme until the end of 2006, without involving the European Parliament. The Council was acting on the legal basis of Art. 5 of the original Directive 2002/38/EC allowing it, if considered necessary, to adopt extension unanimously with no regard to Art. 93 of the Treaty.

3. In order to avoid further deterioration of the legal status and uncertainty in business climate and bearing in mind the fact that the Council did not make any progress with regards to the

VAT package, the Commission proposes now to prolong special VAT arrangements for electronic services till the end of 2008, as proposed originally in May. In the current judicial process the European Parliament is consulted to express its opinion on the legal basis of Art. 93 of the Treaty.

Objectives

Before the e-commerce VAT Directive (2002/38/EC), taxation of electronically supplied services fell under the main rule (country of origin principle) of the Source Directive 77/388/EC saying that the businesses conducting electronic services had to charge and file the VAT-rates set by the country of origin. Businesses domiciled in third countries did not have to charge any VAT, which put the EU-businesses at a competitive disadvantage.

The Council Directive 2002/38/EC took the electronic services provided by third country suppliers out of the scope of the "country of origin" principle and put them under the "country of consumption" principle. This special VAT arrangement made it compulsory for the non-established businesses (mainly businesses located in third countries, neither established nor having a fix establishment within EU) to register themselves in one of the EU Member States (Member State of identification) of their choices.

The aim of the prolongation of e-commerce VAT Directive is to ensure proper functioning of the internal market and to avoid any possible unfair competition and distortion between EU-located and third country businesses.

The very novelty of this special regime stands at creating "single point of contact" for the non-established businesses.

Third country suppliers did not need any more to make registration in every Member State where they conducted taxable electronic supplies to customers, but they were made possible to file tax returns to the consumption countries electronically via Tax Authority of Member State of identification.

According to Commission VAT survey (Working Paper 2004/3) released 2004 approximately 5000 non-EU businesses benefited from this special VAT scheme since the Council Directive had entered into force on the 1st of July 2003.

II. Significance of the proposal

1. The Council Directive 2002/38/EC was the most important element to improve the functioning of the common VAT system on two counts.

Firstly, the Commission proposal (COM(2004)0728) applied the principle of a single point of contact. The above-mentioned proposal consisted of three pillars: single point of contact, facilitation of tax refund procedure, and cooperation of tax authorities with regard to One Stop Shop. This so-called "One Stop Shop Scheme" (OSS) package - would apply to EU-established businesses conducting cross border taxable supplies.

The OSS gave a trader the option of using the special VAT number by which he is identified in the Member State of establishment for all supplies made to another Member State and of making VAT declarations to one single electronic portal. OSS would allow the traders to file, pay and receive funds automatically via electronic portal directly to Member State where the VAT is due.

Following the European Parliament's adoption of its supportive opinion, the OSS package is currently under way of Council's authorisation to enter into force.

2. Secondly, the Commission came up with the proposal COM(2005)0334 amending Directive 77/388/EEC as regards the place of supply of services provided by suppliers established in the EU. This proposal reshaped the first proposal COM(2003)0822 with the objective to exchange the main rule of country of origin for a principle of country of consumption when supplying taxable services for taxable and non-taxable persons.

The consequence of this revolutionary step is that all services have to be VAT-taxed in compliance with the principle of consumption country. In the sense of the proposal COM(2005)0334 all broadcasting and electronically supplied services will be taxed at the place of consumption regardless of customer's tax subjectivity if the Council accepts this new position.

III. Main messages of the Rapporteur

1. The Rapporteur calls for the attention of the need to extend the maturity date of the application of the Council Directive 2002/38/EC by one year till 31st of December 2009. The Rapporteur's amendment to the Commission's proposal strives for giving more time to the ECOFIN to ensure the consistent application, harmonisation and potentially consolidation of different provisions of e-commerce VAT Directive(2002/38/EC), the proposal for establishing "One Stop Shop (OSS)" package (COM(2004)0728) and the proposal on place of supply of services (COM(2005)0334) into the Sixth VAT Directive against VAT tax evasion and avoidance which is related to the whole VAT package.

Creating legal and economic consistency between VAT regulations in question - especially, as regards the different deadlines (for length of the tax period, record keeping obligation and filing tax return) - is of a paramount importance to forge legal certainty in business climate.

2. The Rapporteur calls for the attention of the Commission to examine carefully the possible economic impacts (covering employment, local and corporate income tax payment etc.) of being obliged whether to create only identification or establishment. Clarification of that issue would serve to eliminate possible advantageous status of businesses supplying electronic and broadcasting services in the area of the EU without being obliged to make a permanent establishment.
3. The Rapporteur raises the issue of legal safety, as businesses located in third countries should keep their electronic records and tax returns outside their establishments in the Member State of identification as well, whenever requests from Tax Authorities arise.
4. The Rapporteur brings attention to the need of continuous updating of the content of broadcasting and electronic services cited in Art. 9(2) and Annex L of the Council Directive 77/388/EC. As regards types of broadcasting services cited in the e-commerce VAT Directive (2002/38/EC), it must be acknowledged that this type of services evolve very quickly in the digital age, therefore their developments should be carefully monitored

in order to create level playing field from the VAT point of view between different types of broadcasting services (linear and non linear services).

5. The Rapporteur calls for the attention to the fact that the Council Directive 2002/38/EC and Council Directive 77/388/EC handle value added taxation of paper-based newspapers and electronic ones differently. The latter falls exclusively under the scope of e-commerce Directive while the paper-based newspaper is covered by Annex H meaning that the Member State has the right to employ reduced VAT rate.

PROCEDURE

Title	Proposal for a Council directive amending Council Directive 2002/38/EC as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services
References	COM(2006)0739 – C6-0437/2006 – 2006/0245(CNS)
Date of consulting Parliament	30.11.2006
Committee responsible Date announced in plenary	ECON 12.12.2006
Committee(s) asked for opinion(s) Date announced in plenary	
Not delivering opinion(s) Date of decision	
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Zsolt László Becsey 5.9.2006
Discussed in committee	6.11.2006 21.11.2006 28.11.2006
Date adopted	28.11.2006
Result of final vote	+: 30 -: 0 0: 0
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Ieke van den Burg, David Casa, Jan Christian Ehler, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Wolf Klinz, Guntars Krasts, Kurt Joachim Lauk, Gay Mitchell, Cristobal Montoro Romero, John Purvis, Alexander Radwan, Bernhard Rapkay, Antolín Sánchez Presedo, Margarita Starkevičiūtė, Sahra Wagenknecht, Lars Wohlin
Substitute(s) present for the final vote	Harald Ettl, Satu Hassi, Giovanni Pittella, Andreas Schwab, Corien Wortmann-Kool
Substitute(s) under Rule 178(2) present for the final vote	
Date tabled	1.12.2006
Comments (available in one language only)	...