



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL

on the Review of Article 9 of the Sixth VAT Directive – Place of Supply of Services

1. INTRODUCTION

At its meeting of 4 June 2002, the ECOFIN Council noted the Presidency's intention to reopen discussion on the cross-border deduction of VAT and harmonisation of the right to deduct VAT in the case of passenger vehicles, as well as the Commission's intention to prioritise work on the revision of Article 9 of the Sixth VAT Directive¹, which deals with the place of supply of services.

The Council invited the Presidency and the Commission to report on progress achieved in those areas to enable it to evaluate the situation, particularly in respect of cross-border leasing of motor vehicles, at the end of 2002.

Accordingly, this report provides an update of recent developments on the work carried out by the Commission in relation to the revision of Article 9.

2. BACKGROUND

In July 2000, the Commission stated its intention to put forward a number of new proposals and to review existing proposals in the VAT area. The rules on the place of supply of services were identified as one of the potential future priorities.

On 7 May 2002, the E-Commerce VAT Directive² amending the rules on the taxation of electronically supplied services and radio and television broadcasting was adopted. In Council minutes with respect to the meeting that adopted that Directive, several delegations called upon the Commission to accelerate the review and revision of Article 9 of the Sixth VAT Directive.

At the ECOFIN Council meeting on 4 June 2002, Austria raised the issue of VAT on cross-border leasing of motor vehicles. It wanted the Commission to present, at short notice, a proposal for a Directive with a view to changing the place of supply for leasing and letting of means of transport. Austria invoked distortions of competition to justify its request.

The Commission saw no reason to present a specific proposal at short notice, since an earlier proposal, presented in June 1998 dealing with cross-border deduction of VAT would, once adopted, go a long way to solving Austria's problem. Essentially, the proposal would see the rules for deducting input VAT apply based on the Member State where the customer is established rather than where the lessor is established, as is presently the case. Given the differences in the national rules on deduction of VAT on company cars, such a change would eliminate any bias in favour of lessors in a Member States with more favourable rules of deduction. This view was strengthened by the fact that the Danish Presidency had indicated its willingness to re-launch discussion on this basis.

However, in view of Austria's request, the Commission did agree to accelerate its work on the general review of the provisions governing the place of supply of services, which would

¹ Directive 77/388/EEC OJ L 145 13.06.1977

² Directive 2002/38/EC OJL 128 15.05.2002

include a reflection on the place of supply rules governing letting and leasing of means of transport.

As indicated above, the ECOFIN Council at its meeting of 4 June 2002, asked the Commission to report on progress achieved on the review of Article 9 to enable it to evaluate the situation, particularly in respect of cross-border leasing of motor vehicles.

3. STATE OF PLAY ON WORKING PARTY N°1

In launching the review of Article 9, the Commission Services prepared an inventory of the various problems which have been raised and outlined the framework for possible solution. These issues were discussed at a meeting of Working Party N°1 on 24 September 2002. The purpose of the meeting was to confirm with Member States the range of outstanding problems in this area and to consider the way in which they might be resolved. The issues were considered under two broad headings – those involving business to business (B2B) transactions and those involving business to consumer (B2C) transactions. For the most part, Member States agreed with the identified problems and also raised some additional points for consideration by the Commission.

In full keeping with the guiding principle that VAT is a consumption tax, whereby the VAT collected should in principle finally accrue to the Member State where actual consumption takes place, the Commission Services put forward various options for consideration by Member States. These dealt with both B2B and B2C concerns, ranging from significant legislative overhaul to more narrowly focused adjustments addressing particular problems.

There was little enthusiasm amongst Member States for an immediate major overhaul of the present legislative scheme, but it was recognized that changes are necessary in the B2B context. These included definitional issues, such as clarification of ‘place of establishment’, as well as developing the list of exceptions to the general place of supply rule, thereby better reflecting supply in the place of consumption for certain B2B supplies. In particular, several Member States reaffirmed the need to modify the place of taxation rules on cross-border leasing of motor vehicles.

With regard to B2C, it was clear that a majority of Member States do not see a need to change the present regime immediately. Reasons given included uncertainty about the fiscal impact and concerns and fears of additional complexities for tax administrations, businesses and consumers. Given the position expressed by the Council when adopting the E-Commerce VAT Directive, it will, however, be necessary to revisit this matter when reviewing the operation of that Directive before 2006.

4. CONCLUSION

Following this initial consultation of member States, the Commission has concluded that it should focus its work in the near future on modernising the rules for the place of the supply of B2B services.

- To this end, the Commission Services will continue discussions in the Working Group later this year focusing on the B2B concerns, which have been identified, including cross-border leasing of means of transport.

- Subsequently, the Commission hopes to be in a position to bring forth proposals for amending Article 9 of the Sixth VAT Directive in the course of next year.
- The Commission will give further consideration to the rules for taxation of B2C services to ensure that the taxation of international and intra-community supplies of such services achieve the correct results, in the context of the review which it is obliged to carry out under Article 5 of the E-Commerce VAT Directive.