

Initiatives of European Union's Council on the Value Added Tax

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Abstract

Value added tax is an indirect tax, which constitutes an important source of income for the European Community budget and for each state separately. Therefore, European Union grants a special role to avoid fiscal evasion and collect the amounts from taxable transactions under the value added tax for assuring the increase of budgetary incomes. For this purpose, European Commission through its professional bodies has permanent concerns regarding goods importation from states outside European Union and goods and services transfer between communitarian states.

Key words

value added tax, communitarian states, goods transfers, goods delivery.

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The working group for fiscal issues, on the basis of European Commission's proposal and European Parliament's notification examined the necessity of amending the Directive 2006/112/CEE of European Council from the 28th of November 2006 regarding the common system of value added tax for diminishing the fiscal evasion on goods import from European Union area. With this purpose, the taxing for certain categories of products is exempted of value added tax payment, if followed by delivery or transfer of the respective products towards a taxable person from another member state. The respective exemption granting is approved for every member state, with regard to specific conditions and also with regard to the traders' intentions for avoidance of value added tax payment.

In order to prevent fiscal evasion, the Europe's Council received from European Commission proposals for defining the applicability area for value added tax exemption for imports as well as proposals for establishing detailed regulations for their implementation, setting out the nature of transactions and minimal conditions that applies to this measure.

The importer has the obligation to communicate clearly to the importer member state competent authorities its registration code as value added tax payer or the identification code as value added tax payer of its fiscal representative, given to the member state where the importation takes place.

Therefore, the value added tax should be paid by the person that has this payment obligation to the fiscal authorities, and every state will foresee under certain circumstances, a person other than the one required to pay that tax, to pay jointly and severally liable with the taxpayer. Also, the supplier may jointly pay the value added tax for exempted products or may guarantee the payment of this tax if the products are purchased by another person. The delivery person is jointly responsible to value added tax payment for intra-communitarian acquisition of the respective products if not complied with the obligation to prepare a Recapitulative statement containing information relating to respective delivery or the statement that does not contain information on goods delivery importation.

Recapitulative statement is not required when the recipient has filed for the period when he realized the import and value added tax becomes chargeable for the transaction, a statement which shows all the information on this category of taxes on imports respectively. Also the

person who delivers the goods must be duly justified to the competent authorities deficiencies related to that transaction.

These rules application must be made by all member states in terms of transparency by the end of 2009.

The need to amend regulations implementing Directive 2006/112/EC on the common system of value added tax was foreseen in Notice nr. 2009/C306/17 of the European Economic and Social Committee. According to the presented document the aim is simplifying and reducing administrative burdens on operators and especially on small and medium enterprises on the value added tax payment, as well as effective measures to combat tax fraud. In these measures implementing an important role is played by electronic and on paper invoicing of the operations realised by the economic operators, subject to value added. In this sense the European Economic and Social Committee express some reservations concerning the excessive freedom allowed Member States in adapting these rules. Therefore the Council of Europe through the rules issued by tax authorities follows to assign the same evidentiary value to electronic invoices as invoices on paper, but it is an instrument of harmonized rules designed to limit the options left to Member States.

For enhancing the activity of small and medium enterprises, through proposed rules, the Council of Europe considers extending the use of simplified invoices that emphasizes the value added tax, as well as storing of electronic invoices data for streamline and control of commercial transactions, costs reduction and increase labour productivity, diversion of resources consumed, etc.

The implementation of the proposed rules should help to combat fraud to avoid paying value added tax, if using electronic invoicing and making cross-border operations between the fiscal changes of information about intra-communitarian deliveries.

Through implementation of the proposed rules the invoicing, deduction and payment of the value added tax in the case of successive deliveries of goods to the same customer is followed to be done monthly or on other conventional deadlines. In this sense the term conventional may be the calendar year, but the European Economic and Social Committee expresses some reservations about the possibility for Member States to introduce the conventional term of one year in cases that do not fall under the directive that bids the harmonization of value added tax.

Based on the proposed rules, under implementation by the economic operators of cash accountancy, value added tax shall become payable when cashing, and the right to deduct shall arise on delivery of goods and services made or when issuing invoices. This option is valid for economic operators taxable persons, if besides the principle of cash accountancy have an annual turnover that does not exceed two million euro.

Introducing simplified invoicing is allowed for shipments whose tax base is less than 200 euro, and the delivery of goods or services is exempt from value added tax deduction. This possibility is an obligation for traders in the Member States, when for supplies of goods or services the operations place is on the territory where traders have their respective headquarters.

The difference between the „complete” and simplified invoice consists in the manner in which it can be used: the first serves to the right to deduct, and the second does not have this role, with the exception of the cases allowed within that State.

The proposed rules recommend to Member States to require economic operators an official translation in the respective language of those countries of such invoices, obligations that are already applied in some states and that are not mildly bearable for enterprise. Also, through new rules there is the possibility of state tax administrations to carry out the invoices electronically to a trader in another Member State in order to detect whether to comply with legislation on value added tax.

Certain rules of Directive 2006/112/EC on the common system of value added tax were amended by Directive 2009/162/UE of the Council of Europe, in terms of rules on the place

of delivery of gas and electricity through the existing systems centralized on the European Union's territory.

For „deliveries of gas through a natural gas system located within the Community or any commercial network in such a system, the delivery of electricity, or the delivery of energy for heating or cooling through heating or cooling networks to a taxable dealer, where delivery place is considered to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are delivered or, in the absence of such a place, a place where he has its common domicile or residence” [Directive 2009/162/UE, art.38]. Taxable dealer is considered any taxable person that has as main activity object buying gas, electricity and energy for heating or cooling and then reselling these products, and their own consumption of these products is negligible. The exception is gas consumption and energy delivered through a system on the Community's territory or a network connected to such scheme, where the buyer does not have a permanent place, the delivery place is considered the place where the buyer actually uses and consumes goods.

In terms of the rate of value added tax, each Member State may apply a reduced rate for the supply of natural gas, electricity or energy for district heating.

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