



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic mean

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

1.1. Introduction

The development of an information based society is underway in the European Union. The manner in which business is conducted is being rapidly transformed and e-commerce holds the promise of significant wealth generation for Europe. The global nature of the competitive electronic marketplace means that it is not constrained by traditional geographic or economic boundaries and will therefore be exploited by those who are best positioned to benefit from them. Ensuring that Europe maximises these opportunities for employment and wealth creation is one of the significant economic challenges that the Community faces today. To meet this challenge, both European business and public institutions must embrace a process of creative change to ensure that the opportunities are identified, pursued and realised.

The provision of a clear and certain regulatory environment is accepted by both business and governments as an essential prerequisite to creating the climate of confidence in which business will invest and trade. Whilst onerous rules can be stifling to the creative process that drives economic activity, regulatory indecision can be similarly disruptive.

The impact of decisions taken in relation to the tax system will play a role in determining whether e-commerce achieves its potential contribution. It is essential that taxation is not a barrier to its growth but rather fosters the climate within which this can occur whilst protecting the interests of all stakeholders. For tax administrations, this is perhaps the most important issue they face today. Recognising this, in the context of its new VAT Strategy, the Commission has identified the need to modernise the existing VAT rules.¹ This process should encompass measures to simplify and strengthen the VAT system which encourage legitimate commercial transactions within the internal market. The intention is to improve the functioning of the internal market, but without putting in question the long term legal and political commitment to a definitive system of taxation and the degree of harmonisation this will need. The proposal now being made on the taxation of certain services supplied by electronic means is a first step in implementing this strategy.

The Lisbon European Council of 23/24 March 2000 concluded that, as part of the measures needed for e-commerce to reach its full potential in the EU, the rules for e-commerce must be predictable and inspire business and consumer confidence. This proposal is being put forward in furtherance of this objective.

1.2. Development of the issue

Recognising that the emerging electronic business environment – and in particular the growth of the Internet as a medium for international commerce – raises a number of issues for the future of the EU's VAT system, the services of the European Commission began examining the tax implications in 1997. Working closely with representatives of the 15 national tax administrations, the likely impact of the growth of e-commerce on Community taxes was examined in detail. The objective of the exercise was to identify potential problems as well as possible paths towards their resolution.

¹ Communication from the Commission to the Council and the European Parliament "A Strategy to improve the operation of the VAT system within the context of the Internal Market" COM(2000) 349.

The Interim Report on the implications of electronic commerce for VAT and Customs² found that in a good many instances, the existing mechanisms and legal base would be sufficient to ensure that taxes are collected although administrations would need to be mindful of the likely impact of changes in the pattern and in the volume of transactions. This in particular applies when physical goods are purchased by private consumers over electronic networks but are then delivered by traditional means. For VAT purposes, these are treated in the same way as any other form of distance sales (*e.g.*, from catalogues, by phone, post, *etc.*). There are well established channels for taxing these transactions – goods purchased from third countries are taxed at import, exported goods are zero-rated and intra-Community sales of goods are taxed, under a special regime for distance sales, either in the Member State of the seller or the buyer (dependent largely on the volume of such trade carried out by the seller). The Commission is not proposing any change to these rules at this time. The increase in the volume of such sales, which is however already becoming apparent, has however required that attention be given to simplification of customs clearance procedures for imports of small consignments and that, where appropriate, the rules under which the internal distance selling regime operates are updated. The Commission has already initiated work on the first of these points and intends to deal with the issue of distance sales within the Community in the framework of its new VAT strategy.

The present proposal addresses the issue of on-line supply of digital deliveries, in particular those destined to final consumers which was identified as a potential tax problem in the Interim Report. This is a new type of business transaction, which had not been envisaged when the existing legislative base was being drawn up. Furthermore, the compliance, control and enforcement models currently available to tax administrations were likely to be inadequate in certain respects.

Although any threat to revenue was perceived as being very limited for the moment, the growth of e-commerce poses potential long-term problems for tax administrations. The systems and protocols within which it operates were, and are, continuing to evolve. There was the risk that this evolution would be in a direction that would be inimical to taxation if revenue authorities did not take a pro-active role.

A fundamental recommendation of the Interim Report was that existing taxes can, and would, be made to work, and consequently there was no need to consider new or special taxes for e-commerce. Achieving this would require changes in the existing legislative structure but it was also clear that a purely legislative approach to taxing e-commerce was not the sole answer. E-commerce is, by its nature, a truly global process and no tax jurisdiction, acting in isolation, can resolve all the issues it raises. A level of international collaboration is therefore needed. The successful administration and application of taxes will to a great extent depend on, *inter alia*, achieving an international consensus on avoiding double taxation or unintentional non-taxation and at the same time, giving business security and certainty as to its obligations. To this end, the Commission adopted a set of guidelines³ in June of 1998 as a basis for progress and, in particular, to set an agreed framework for advancing the debate within the Community. The intention was that they would also serve as a common basis for the role to be taken by the EU and its Member States on indirect tax issues in the OECD ministerial conference scheduled for October of that year in Ottawa

² Document XXI/98/0359 of 3 April 1998 which is available on http://europa.eu.int/comm/dgs/taxation_customs/

³ E-commerce and indirect taxation – Communication by the Commission to the Council of Ministers, the European Parliament and to the Economic and Social Committee – COM (98)374 final which is available on http://europa.eu.int/comm/dgs/taxation_customs/.

Although formulated primarily in the context of the EU's own VAT system, the guidelines give due recognition to the need for international accord. The interface between the Community's indirect tax system and those of its trading partners should be neutral – in effect all supplies for consumption within the EU are subject to EU VAT whilst supplies to other jurisdictions are not. This reflects the nature of the Community's VAT system as a general and comprehensive tax on consumption.

The Commission's communication was considered by the ECOFIN council at its meeting on 6 July 1998 where Member States, on the basis of the guidelines advocated by the Commission, agreed on "the principles that should form the basis of a consistent Community input to the forthcoming OECD Ottawa conference". They also set the political framework within which the changes to the common VAT system required for on-line electronic e-commerce transactions must now be made. The present proposal is primarily aimed at delivering on these clear political decisions.

The Council endorsed three main principles. The first was that no new or additional taxes need to be considered for e-commerce but that existing taxes – and specifically VAT – should be adapted so that they can be applied to e-commerce.

The second principle was that, for consumption taxes, electronic deliveries should not be considered as goods. In the case of the EU VAT system, they should be treated as supplies of services.

The third principle was that only supplies of such services consumed in Europe should be taxed in Europe (*i.e.*, that taxation should take place in the jurisdiction where consumption takes place).

The current proposal rectifies the shortcomings in the 6th VAT Directive⁴ on taxing such services in accordance with the above principles. The general background to the proposal is described in section 2 of this document and a description and explanation of the proposed legislation is contained in section 5.

The Council also highlighted the following matters:-

- the issue of control and enforcement of VAT on e-commerce. This is dealt with in section 4 of this memorandum.
- the need for rules for the acceptance of paperless electronic invoicing. The Commission has undertaken an extensive process of consultation with business and with the Member States on this question. A proposal for a common set of standards for invoicing in general, including the general acceptance of electronic invoicing in intra-Community trade, will be made in the near future. The Commission sees this as a model which is capable of forming a basis for international agreement on this topic.
- the fact that compliance for non-EU e-commerce operators should, having regard to international agreements, be made as easy and simple as possible. To this end, the Commission is proposing that non-EU e-commerce operators should be required to register only in a single Member State and have the possibility of discharging all their obligations by dealing with a single tax administration.

⁴ Directive 77/388/EEC of 17 May 1977 as amended, most recently by Council Directive 1999/85/EC. This is available from EUR-Lex at <http://europa.eu.int/eur-lex> under ref. 90.30.10.

- the need to provide for the discharge of fiscal obligations by electronic means. The Commission is proposing that operators be enabled to discharge all standard fiscal obligations by means of electronic VAT declarations and accounting. This should be seen as a general measure of modernisation and facilitation and there is no reason why it should be restricted to e-commerce operators.

Internationally, the Taxation Framework Conditions⁵ subsequently endorsed by government and business representatives at Ottawa identified the implementation of a consumption tax system that conformed to traditional broad taxation principles including neutrality, efficiency, certainty and simplicity as being a particular priority. As far as consumption taxes such as VAT are concerned, such a system should meet with specified criteria that effectively correspond with the principles adopted by the Commission⁶.

1.3. Consensus on the basic principles for taxing e-commerce

Since the Ottawa conference, the principles described above have been widely endorsed by non-OECD countries and by regional groupings of national tax administrations. It is also accepted by business as the correct way forward (see section 1.4 below). The challenge since Ottawa has been that of translating broad principles into practical and legal measures capable of clear implementation. The Commission and the EU's national tax administrations are active participants in this process within the OECD and continue to believe, as at the outset, that the best contribution that can be made to its furtherance is to set out clearly the implications for the Community's domestic tax system and to identify and deliver on the measures needed. The current proposal is put forward in that context.

Given the clarity of the principles endorsed by Member States in ECOFIN in July 1998, the Commission has a clear political mandate to bring forward the legal measures required for their implementation. The international agreement reached at Ottawa only serves to reinforce the correctness of this approach.

1.4. Consultation with business

The Commission has, as central to its commitment to the promotion of e-commerce, identified as essential the common involvement of business and public sector representatives in a process of creative change. The consistent message from business, notably as voiced through bodies such as the Global Business Dialogue, was that for e-commerce to realise its potential, what was needed was a certain, transparent and predictable structure which all players should work together to create. Amongst the urgent challenges to be addressed, taxation was singled out as a particular priority – the demand for clarity and certainty remains an on-going concern.

For its part, the Commission is determined, on the basis of the Ottawa Framework Conditions and the ECOFIN conclusions, to seek practical solutions, developed in close contact with the European business community.

As one step in an extensive consultation process, more than 100 European business representatives (including representatives of SMEs) attended a Round Table on the options

⁵ "Electronic Commerce : Taxation Framework Conditions" – Organisation for Economic Co-operation and Development , document reference DAF/FA/CFA(98)38/REV3.
http://www.oecd.org/daf/fa/e_com/Ottawa.htm

⁶ Whilst there are certain differences in the wording and presentation between the Ottawa conclusions and the ECOFIN principles, these are not significant and simply reflect the OECD's wider focus.

for the EU VAT system and e-commerce in Brussels in January of 1999. The opportunity was used by the Commission to put forward some thoughts on how the aforementioned principles might be developed in the context of the VAT system and to invite business reaction. The Round Table also led directly to the creation of an informal contact group to channel the views of stakeholders in the development of European e-commerce. Several other informal groups have spontaneously offered advice and opinions to the Commission's services on this issue.

The consistent message which business expressed was that clarity in the tax rules for e-commerce is a priority and that there is a need for certainty as to what the rules are and how they will be applied. The Commission fully recognises the importance of eliminating the uncertainties and distortions in the current tax system and although the current proposal does not resolve all of the frustrations expressed in the consultation process, it is a significant step in that direction.

2. BACKGROUND TO THE PROPOSAL

The Commission's Taxation and Customs Union Directorate General issued a Working Paper⁷ in June of 1999 setting out some specific options for implementing these principles within the framework of the VAT system and outlining how legislative changes might be approached.

The paper also addressed the reasons why changes in the VAT system were needed. Under the current provisions, unless specifically provided, where a supplier of services is based outside the EU, no VAT would be payable on services supplied to customers within the EU. Although the reverse charge mechanism (which is a form of self assessment for a business acquiring services) will ensure the correct taxation of most business-to-business transactions, the existing provisions do not comprehensively take account of the full range of services which can be delivered electronically today. Given that services and intangibles form an ever increasing part of international trade, this should be rectified. Furthermore, the existing rules do not ensure that electronically delivered services can, in all cases, be exported free of charge and that a sufficient legal base exists for charging VAT on services supplied to EU private consumers by foreign operators. These have the potential to constitute a major distortion of competition and to place EU service providers at a competitive disadvantage in relation to non-EU suppliers.

This is clearly an untenable situation and its rectification is an immediate objective of the current proposal. The extensive consultations undertaken by the Commission have confirmed the view that the modifications needed should be based as closely as possible on the operation of the current VAT system. What is being proposed therefore is predicated on the continued use of the reverse charge system for business-to-business transactions linked to the imposition of a registration obligation on operators supplying to EU non-taxable persons is the preferred option.

Transactions between businesses will be taxed under the reverse charge procedures. For this purpose, suppliers will need to be able to distinguish between business customers (taxable persons) and final consumers (non-taxable persons)– in effect to make a taxing decision they need to know if their customer is registered for VAT. This of course is already an aspect of the taxation of traditional commerce and confirmation of VAT registration numbers is

⁷ Document XXI/1201/99 – Indirect Taxes and e-commerce which is available on http://europa.eu.int/comm/dgs/taxation_customs/.

provided via the supplier's own national tax administration. For e-commerce, this information needs to be available at the point of a transaction and the Commission will therefore take the steps needed to ensure its on-line availability. The necessary legal measures to achieve this are included in the current proposal and the Commission services have already started work on the tools and technical measures needed.

For supplies to non-taxable persons in the Community, no change is proposed and therefore businesses will continue to charge VAT, in the Member State where the supplier is established, as provided for in Article 9(1) of the 6th Directive. For supplies to non-EU customers however, the proposal contains a clear legal base for making such electronic supplies exempt from VAT.

Non-EU suppliers selling to customers in the Community will now be required to apply taxes on the same basis as an EU operator when transacting business in the Community. This means that they must charge and account for VAT on sales to final consumers in the EU. The administrative obligations will however be as light and straightforward as possible for such suppliers. A single registration is envisaged and provision is made for a registration threshold to exclude very small non-Community operators or those making occasional supplies into the Community.

A more detailed description of the legal measures being proposed is contained in section 5 and administrative issues are addressed in section 3.

Similarly, this proposal addresses the tax treatment of radio and television broadcasting services supplied on subscription or pay-per-view basis. This is in conformity with the request made by the Council to the Commission at the time of the adoption of measures relating to the taxation of telecommunications services⁸. The convergence of technologies would in any event demand that broadcasting services be included in any proposal on taxation of electronic deliveries. This is an increasingly significant commercial activity, largely directed at consumers, where the existing tax provisions discriminate against European business and give a significant tax-induced price advantage to the non-EU operator.

3. ADMINISTRATION AND COLLECTION OF VAT IN AN ELECTRONIC WORLD

3.1. The obligations faced by business

The Commission's intention is that this proposal should give e-commerce operators a clear framework in which to charge, collect and remit VAT on electronic deliveries.

To make a correct taxing decision at the point of such a transaction, the supplier needs to be in possession of certain key information elements:

- the tax status of the customer to determine whether the recipient is a registered for VAT purposes or is a private consumer. The measures for modernisation of the VIES⁹ system which the Commission has already initiated will ensure that this information is made available to traders at the time and place it is required. Supplies to a business registered for VAT in the

⁸ Council Directive 1999/59/EC of 17 June amending Directive 388/77/EEC as regards the value added tax arrangements applicable to telecommunications services.

⁹ VAT Information Exchange System.

same Member State should be charged tax (which the recipient can then account for in the normal fashion), whilst for a business registered for VAT in another Member State, no tax is charged by the supplier and the recipient accounts for tax under the reverse charge system.

- where the recipient is a private consumer or is established outside the Community, a decision will be required on the jurisdiction for tax purposes. If on the basis of the information available, it can be reasonably determined that the place where the recipient is established is outside the Community, then no tax should be charged. Because of the manner in which on-line e-commerce functions today, some concerns have been expressed about the capacity of operators to access this information as the data profiles exchanged were not designed for this purpose. Standards and levels of authentication are still developing and achieving greater certainty for tax purposes as well as streamlining transactions must be priorities. The objective is to have a verifiable indicator which can serve as an acceptable proxy for the place of consumption (which in the terminology of the Directive is described as the place of supply). On the information which is accessible today in the course of online supplies to non-taxable persons, the standard commercial practice of requesting a verifiable credit card billing address (with the intention of increasing security and combating fraud) may offer the best option for the moment. Within the address data, only the country indicator would be needed for tax purposes and for which no other item of information about the customer would be needed or be relevant. It is however likely that the dominance of credit cards as the basis for payment for on-line transactions will change as other payment systems mature. The Commission will continue to work, notably within the OECD, on identifying suitable and accessible measures for determining the place of supply. As with credit cards, all that is required is an indication of country of residence or some other equivalent ties and this should not be an obstacle to the use of anonymous payment systems.
- the rate of tax to be applied to the transaction. Under the current provisions, for sales to consumers within the Community, this is the standard rate of VAT for the Member State in which the supplier is registered. In this context, there is a potential issue to be addressed concerning the possibilities of different rates of tax applying to ostensibly similar goods and services. The Commission intends to address this matter in a future review of Annex H of the 6th VAT Directive which lists the supplies of goods and services which may be subject to reduced rates of VAT.

In addition to charging and collecting tax, there is an obligation to pay this over to the tax administration and to provide the required accounts and returns. For e-commerce in particular, tax administrations should take all necessary steps to allow for this process to be completed electronically and on-line. This facility is increasingly a feature of interaction between taxpayers and administrations in some Member State but it should be accepted as the norm.

3.2. Self-assessment and voluntary compliance by business

VAT is, in the first instance, a tax whose effectiveness is based on self-assessment linked to a high level of voluntary compliance on the part of business. The responsibility rests with a

business operator as taxpayer to make its commercial presence known to the tax administration and to collect, account for and remit tax properly due.

The effectiveness of this approach to tax administrations can only be assured when it is underwritten by a reasonable and realistic expectation that non-compliance will be detected, remedied and that appropriate sanctions will be applied. Apart from the direct incentive of avoiding penalties, compliant operators need the reassurance that they will not have to contend with predatory or unfair competition from operators who are not meeting the same tax obligations and will use this to extract an advantage. E-commerce is no different and operators here will have similar expectations.

In the case of operators who are registered for VAT, established reporting requirements will continue to apply. As transactions on the Internet become increasingly automated, it will be necessary to ensure that the software used provides an adequate standard of records and audit trails to ensure that compliance can be verified by tax auditors. In the case of remote suppliers, access to records is likely to be of greater importance than actual physical location. Reporting requirements should evolve in a manner which is compatible with e-commerce and the problems raised by geographical displacement for traditional access and auditing procedures will have to be addressed.

3.3. Addressing non-compliance

For e-commerce, failure to comply with tax obligations poses new and particular problems that tax administrations need to address and resolve. Moreover, it is an obligation which they owe to compliant taxpayers conducting legitimate operations. The Commission's Anti-Fraud Sub-Committee (SCAF) has already established the existence of significant non-compliance as regards VAT in traditional commerce¹⁰. In this respect, e-commerce is likely to be no different and a high level of vigilance on the part of tax administrations will similarly be required.

From the perspective of the non tax compliant business, failure to meet legitimate obligations carries several direct and serious risks. Not the least of these is that an incurred liability for VAT does not resolve itself simply by its concealment or failing to report it to the correct tax administration. Failure to comply with self-assessment obligations does nothing to reduce or remove a debt owing in respect of taxation. Rather, it exposes the business to additional penalty and interest charges which only serve to cause the liability to escalate further.

For an operator, even one located outside the EU, to risk exposure to significant and unresolved tax debts in the world's largest marketplace cannot be considered prudent business practice. Neither does the debt lapse over time but continues to hover over the business and even, in certain circumstances, passes on to a subsequent purchaser of the operation. The presence of such a liability is furthermore hardly likely to assist in access to legitimate capital or funding sources. Normal accepted standards of statutory auditing or due diligence examinations would be expected to detect failure to comply with tax obligations in a significant jurisdiction such as the EU. The risk of punitive tax assessments is also high. Moreover, in certain cases, sanctions under civil or criminal law may attach to the managers or owners of the business. Moreover, existing Community provisions in relation to mutual assistance and recovery ensure that a tax debt in one Member State is effectively enforceable anywhere in the Community.

¹⁰ Report on Administrative Co-operation and VAT Collection and Control Procedures – COM (2000) 28 final of 28 January 2000.

Legitimate operators will moreover wish to ensure that they have access to legal protection and remedies in respect of infringements of copyright or other intellectual property rights. To this end, they will also wish to ensure that they respect their own legal and regulatory obligations.

Although all of the foregoing are strong forces in favour of opting for compliance, they are however not enough in themselves and, particularly for remote suppliers, there is a need to develop tools of direct enforcement on which tax administrations can call. In this respect, malfeasance on the Internet is not a phenomenon which is limited to tax compliance obligations but arises for a range of other public policy issues and the protection of private rights and interests. There is already ample evidence that commercial operators will pursue the issue of legal protection of their own proprietary rights and its enforcement with firmness. In addition to seeking judicial redress for damage suffered, this can extend to stemming ongoing losses. Tax administrations will need to consider similar measures to identify and recover material losses of revenue and, *in extremis*, act to prevent ongoing revenue losses.

To create the climate of trust and confidence which e-commerce needs if it is to achieve its potential, remedies must be available against Internet operations which are illegal or which infringe public or private rights. This should include the capacity for immediate and direct action, subject to the rules of due process, in cases where such an on-going and identifiable loss is being sustained by a stakeholder.

Developing the necessary tools and procedures is a part of the maturing process for e-commerce and there are good indications that this will be achieved. Current developments are driven by particular stakeholders to protect their own interests but these are likely to be capable of being applied more generally for regulatory and enforcement purposes. Indeed the resultant synergy is likely to be a key force in building confidence and security in e-commerce. Such an approach is consistent with the work of fiscal administrations in areas of traditional trade where their intervention frequently delivers significant protection to other stakeholders against fraudulent operators – a good example of this is the protection afforded to legitimate business by customs control procedures against counterfeiting and piracy. The Commission will encourage all national enforcement authorities with an interest in compliance by e-business to co-operate and exchange information.

The Commission will continue to work, together with EU national tax administrations, on identifying and developing the measures needed to achieve security. This raises issues which of course go beyond the physical boundaries of the EU. The Commission will therefore continue with the work on international tax administration which is being undertaken within the OECD. This process should be taken forward in close co-operation with other stakeholders.

4. FURTHER DEVELOPING A VAT SYSTEM FOR E-COMMERCE

There should be no fundamental incompatibility between taxation and the new information society but it does raise certain issues. The electronic marketplace will continue to evolve and tax administrations, like other interested parties, need to plan and react accordingly. In the light of the current state of development of the Internet, and more particularly the emergence of new business models and new ways of transacting existing business, a full scale review of the existing VAT system would be premature but this cannot be deferred indefinitely. The general provisions dealing with the taxation of services do not reflect the changes that have occurred in international trade since they were first drawn up.

The amendments now being proposed to the 6th VAT Directive only serve to highlight the eventual need for such a revision. In particular, the current proposal only deals with the narrow area of taxation of on-line electronic services. The phenomenal increase in trade in services and intangibles cannot be ignored indefinitely. The virtual disappearance of geographical considerations as a limitation on their delivery as well as the development of innovative products highlight the shortcomings in the existing provisions.

Tax administration cannot however limit themselves to simply ensuring that legislation is updated in response to evolving changes in the manner in which taxable economic activity advances. For e-commerce, the systems, protocols and regulatory environment are still in a process of development. The manner in which they evolve will effect the extent and the manner to which all stakeholders achieve their objectives. For their part, tax administrations must exercise vigilance to ensure that public interests are protected. This involves ensuring that e-commerce does not develop in a manner which is not compatible with such interests. Key objectives must be to ensure that taxes can continue to be fairly administered and that taxable activities cannot be concealed.

The objectives of national governments should not be seen as inimical to the interests of other stakeholders or as hindering the growth of e-commerce. Indeed in the vast majority, if not all cases, they coincide with the general objectives of transparency and the creation of confidence and trust which are essential for such growth. A good example is seen in the recent Communication from the Commission on the organisation and management of the Internet¹¹ where the need for identification and location of commercial operations was addressed. Largely on the initiative of WIPO¹², provisions have been included in the registration accreditation policy of ICANN¹³ whereby sufficient information should be collected and made available to securely identify the holders and operators of domain names. WIPO have further recommended that a take down procedure should be applied where these details prove to be inaccurate. This is clearly the only way to secure the accuracy of such information and is therefore also a significant interest for tax administrations.

For its part, the Commission will continue to work to ensure that any aspects of the EU tax system which can be construed as obstacles to the growth of e-commerce are removed. In this respect, the Commission will shortly propose the measures need to remove restrictions on the use of paperless electronic and transaction recording in intra-Community transactions. The technological changes associated with the Internet and e-commerce provide both an opportunity and a powerful impetus for modernising tax systems. The Commission will continue to work to ensure that these benefits are realised.

5. AIM AND CONTENTS OF THE PROPOSAL AMENDING DIRECTIVE 388/77/EEC

This proposal is made with the intention of amending the 6th VAT Directive to ensure that it is compatible with the conclusions reached by ECOFIN on the general principles for charging VAT on electronically delivered services and in respect of broadcasting services for which the recipient pays.

¹¹ COM (2000) 202. Communication from the Commission to the Council and the European Parliament on the Organisation and Management of the Internet – International and European Policy Issues 1998 – 2000.

¹² The World Intellectual Property Organisation.

¹³ The Internet Corporation for Assigned Names and Numbers. This is the international, private, non-profit, industry-led self regulatory body which has management responsibility for the Internet naming and addressing system.

The approach taken is to amend Article 9 of the aforementioned Directive so that such transactions are taxed in the Community when they are supplied for consumption within the Community and that, when supplied by a Community operator for consumption outside the Community, they are not subject to EU VAT.

In addition certain supporting or flanking measures are proposed with the intention of facilitating the administration of the tax in an electronic business environment for both business and tax administrations. These will also serve to reinforce the system of reporting and control.

5.1. Place of taxation

No change is being proposed to Article 9.1 and this leaves the place where the supplier is located as the place of supply for services unless otherwise provided.

Neither is any change being proposed to the existing provisions of Articles 9(2)(a) or to 9(2)(b). Although some elements of the transactions mentioned in the former may well be conducted or communicated between the parties in electronic form or over electronic networks, the principle of deeming the place of supply of these services to be the place where the property is situated remains sound. Communication by electronic means between the parties does not change the essential nature of the process. Similar considerations apply to the second, third and fourth indents of Article 9(2)(c).

The services mentioned in the first indent of Article 9(2)(c) raise questions in so far as they are delivered by electronic means, including broadcasting, which now need to be considered. Where these services continue to be carried out in a traditional setting, on the premise that both the recipient and the supplier of the service will be in close physical proximity, the existing basis for charging taxation should remain unchanged.

Since the provisions were first drawn up however, the way in which these services can be delivered to customers has radically changed. Promoters will want to ensure that the audience of potential purchasers is as wide as possible and the opportunities now becoming available through broadcasting or dissemination over networks for payment provide the means necessary. Examples such as subscription television channels or “pay-per-view” broadcasting of sports events are already widespread. Increases in the capacity of networks, the development of digital broadcasting and in the ability to collect payment will all give further momentum to this development.

No changes are being proposed in respect of the tax treatment of telecommunications services provided for in Council Directive 1999/59/EC

The measures which are being proposed can be summarised as follows:

Article 1, no 1

Supplies by electronic means are supplies of services – this is already clear in Article 6 of the existing Directive. The proposal does not have any effect for services for which no charge is made, such as free Internet access or free downloads. (Article 2 of the Directive makes it clear that only services effected for consideration are subject to VAT.) Its scope is limited to the following services when supplied by electronic means against consideration; and includes also the supply of the rights to use several services :

- 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 (Article 9 (2) (c) first indent) this includes all forms of broadcasting as well as other sound and images released and delivered by electronic means;

- software : this includes for example computer games;
- data processing (Article 9 (2) (e) third indent), and explicitly including computer services including web-hosting, web-design or similar services.
- the supplying of information.

Such services should be taxable where they are consumed.

The current rules of Article 9, in particular paragraphs (1) and (2) (c) and (e) of the 6th Directive however provide that:

- supplies of third country-based operators to non-taxable persons in the EU are exempt from VAT, while EU based operators have to charge VAT on such services, since the place of supply of such services is usually the place where the supplier is established (such cases are not covered by Article 9 (2) (e) and fall under the basic rule in Article 9 (1);
- supplies by EU-based operators of the services mentioned in Article 9 (2) (c) to customers in third countries or to taxable persons established in the Community but not in the same country as the supplier may have to be made with VAT, because the place of supply is the place where the services are physically carried out.

This creates distortions of competition detrimental to EU-based operators. The proposal therefore transfers as a basic rule the supply of the services mentioned above to 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 (Article 9 (2) (f) first sub-paragraph of the proposal. Where the customer is taxable person established in a country other than that where the supplier is established he will assume liability for the tax (see Article 1 paragraph 3).

On the other hand, when supplies are made by taxable persons (established outside or inside the Community) to non-taxable persons established in the Community the proposal introduces a specific provision establishing the place of supply in the Member State where the supplier is identified for VAT (Article 9 (2) (f) second sub-paragraph). This provision applies under the following conditions:

- the supplier must be identified for VAT purposes in accordance with the provisions in force. For suppliers physically established in the Community the provisions in force are those set out by the Member States in accordance with Article 22 (1) (c) of the Directive. For suppliers established outside the Community a new Article 22 (1) (f) introduced by the current proposal will apply (this can be found in Article 1 no 4 (b) of the proposal).
- such services must be supplied to non-taxable persons established in the Community.

In that case

- the supplier is deemed to have a fixed establishment in the Member State of identification, however, only for services covered by the new Article 9 (2) (f) and supplied under that VAT identification;
- their place of supply is the place where the taxable person is deemed to have a fixed establishment.

The term “by electronic means” is defined in the third sub-paragraph of Article 9 (2) (f). It does not include the delivery in a tangible form (such as on CDs or DVDs) of electronic content.

The above proposal can be summarised as follows:

- *for services supplied by a non-EU operator to an EU customer the place of taxation will be within the EU and accordingly they will be subject to VAT.*
- *when these services are provided by an EU operator to a non-EU customer, the place of taxation will be where the customer is located and they will not be subject to EU VAT.*
- *when an EU operator provides these services to a taxable person (i.e., to another business) in another Member State, the place of supply will be the place where the customer is established.*
- *where the same operator, provides these services to a private individual in the EU, or to a taxable person in the same Member State, the place of supply will be where the supplier is located.*

5.2. Facilitation and other measures.

Article 1, no 2

A specific provision is inserted to ensure certainty on the rate of taxation to be applied to the services mentioned in Article 9 (2) (f).

Article 1, no 3

The new Article 24 (2a) provides that third country operators, whose only activity in the Community involves the supply of services by electronic means and which are below an annual threshold of 100000 Euro, are exempted from tax.

This is essentially a practical measure intended to facilitate the functioning of the tax system and to avoid placing undue burdens on the development of international e-commerce and in particular on very small businesses or on those only making occasional sales to EU consumers. It is unlikely to have any significant effect on revenue as, for the most part, consumers buying on-line have shown a marked tendency to deal with operators who have established a high profile and have established a degree of credibility and trust.

Neither is it likely to have any significant effect on neutrality between EU and non-EU businesses. In most Member States, there are already thresholds, or equivalent measures, for very small businesses and this is therefore only a particular problem where an EU operator does not have the opportunity to avail of a threshold in the Member State of establishment but is obliged to account for tax from the first transaction. It is moreover difficult to identify

actual scenarios where competition between small on-line suppliers based within and outside the EU exists. If business-to-consumer e-commerce is dominated by large operators, this issue is likely to be theoretical rather than real.

Article 1, no. 4

The new sub-paragraph added to Article 21 (1) (a) establishes the conditions under which a taxable person is discharged from the liability for VAT for supplies of services by electronic means which is provided for in the new Article 9 (2) (f). In order not to be held liable for the tax on a transaction, the supplier must comply with two conditions which are cumulative and which are as follows:

- the supplier must have acted with all possible diligence normally used in commercial practice of a given sector;
- the supplier must have verified, by a consistent set of data from an independent source, that his customer is a taxable person established in the Community. In most instances this will be effected by verifying the validity of the VAT registration number quoted by the customer. As already mentioned, this verification process should be facilitated by the availability of an on-line, real time confirmation.

Where both of these conditions are fulfilled, the supplier has no further tax liability in respect of the transaction in question and the liability to account for tax passes to the customer. For business-to-business transactions – which are likely to remain the more significant part of the e-commerce transactions covered by this proposal - the supplier can therefore rest assured that no tax liability arises provided these straightforward conditions are followed.

Article 1, no 4

The new text proposed by Article 1 no 4 of the proposal extends the application of Article 21 (1) (b) to supplies of services by electronic means under Article 9 (2) (f). This means that when such services are carried out by a taxable person established abroad, the taxable person to whom the services are supplied is liable for the VAT. (i.e. the reverse charge. Mechanism will apply in such cases).

Article 1, no 5

In paragraph 4 (a) the changes proposed are introduced with the intention of facilitating compliance for suppliers physically established outside the Community in particular. The new text of Article 22 (1) (a) permits taxable persons to inform the relevant tax authority about their activities as a taxable person by electronic means. This facility is not however limited to suppliers physically established outside the Community.

In paragraph 4 (b), the new letter (f) inserted in Article 22 (1) obliges taxable persons established outside the Community and supplying services by electronic means to non-taxable persons established in the Community to become identified for VAT in a Member State into which he supplies such services. However, this applies only to persons supplying in excess of the 100.000 Euro threshold provided for by Article 24 (2a) of the Directive (see Article 1 no 5 of the proposal). Moreover, when taken in conjunction with the provisions already mentioned in Article 1, paragraph 1 above, becoming identified for VAT in a Member State has the result that a taxable person established outside the Community is

deemed to have a fixed establishment there for the purposes of the current provisions. The Commission will review the operation of this particular measure no later than the end of 2003 and report thereon to the Council, making any proposals for change which are considered necessary.

In paragraph 4 (c), the provision of permitting tax returns to be submitted by electronic means is introduced with the intention of facilitating compliance for suppliers physically established outside the Community. The facility is not however limited to such suppliers.

In paragraph 4 (d), a similar provision is introduced of permitting annual accounting statements or returns to be submitted by electronic means. As above, this with the intention of facilitating compliance for suppliers physically established outside the Community but the facility is not however limited to such suppliers.

Article 1, no 6

It is necessary to make an amendment aligning the description of broadcasting services mentioned in Annex H, Category 7 with that used in Article 9 (2) (f) to avoid ambiguity.

The above additional measures can be summarised as follows:

- *tax on supplies to business customers will be accounted for by the customer. Registration for tax purposes will only therefore be necessary if supplies are made to private customers.*
- *registration will not be necessary for non-EU established traders whose annual level of sales within the EU is below €100,000.*
- *a single place of registration (which will in practice normally be the Member State to where a first taxable supply is made) will be possible. This will enable the operator to discharge all obligations for EU VAT with a single administration. This latter measure effectively puts EU and non-EU operators on an equal basis when supplying to EU consumers.*
- *it will also be possible to complete electronically all procedures in relation to registration and the making of tax returns.*
- *tax administrations will provide operators with the means to distinguish easily the status of their customers (i.e., whether the customer is a VAT registered business or not) and this will normally provide the means whereby a supplier, acting with all possible diligence, can determine whether or not a transaction should be charged with tax.*

6. AIM AND CONTENTS OF THE PROPOSAL AMENDING REGULATION (EEC) NO 218/92

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 necessitates a change in the current legal basis for confirming the validity of value added tax (VAT) identification numbers.

The current wording of Article 6 of Regulation (EEC) No 218/92 allows Member States to confirm the validity of the VAT identification number of any specified person. However, the

scope of this confirmation is limited to “persons involved in the intra-Community supplies of goods or of services”.

As services supplied by electronic means, as defined in the proposal to amend Directive 77/388/EEC are not intra-Community supplies of services, an amendment to the scope of the Regulation is necessary to allow Member States to give confirmation of the validity of a customer’s VAT identification number to a person supplying services by electronic means.

Taxable persons supplying services in accordance with Article 9(2)(e) of Directive 77/388/EEC have no legal obligation to confirm that their customer within the Community has a valid VAT identification number. Nevertheless the possibility of verification of customers’ VAT identification numbers should, the Commission believes, also be extended to these suppliers.

At the time of the adoption of Directive 95/7/EC, which deals with the place of supply of services in the case of valuations of or work on movable tangible property, the Regulation was not updated to permit Member States to confirm the validity of a VAT identification number to persons supplying these services. This proposal now confirms that possibility of verification.

As a trade facilitation measure, it is necessary that the confirmation of validity of VAT identification numbers can be made by electronic means. To that end, the current proposal allows for this possibility by means of a Commission Decision made in the framework of Commission exercising its implementing powers.

Because the Council has decided to amend the procedures for the exercise of implementing powers conferred on the Commission, the opportunity provided by the necessity to amend the Regulation is being used to update the comitology procedures.

The Commission is making this proposal under Article 95 of the Treaty, because the measures proposed do not constitute fiscal harmonisation provisions, but are intended to ensure the proper functioning of the internal market for services offered by electronic means.

By choosing Art. 95 EC as the legal basis, the Commission is consistent with its proposal for Regulation 218/92/EEC of June 19th, 1990 (COM (90) 183), where it already suggested Art. 100 A EC-Treaty (now Art. 95 EC) as the appropriate legal basis.

Art. 95 EC constitutes the legal basis for the adoption of “measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.” According to the second paragraph of Art. 95 EC, the first paragraph is not applicable to fiscal provisions. The legal basis for the harmonisation of indirect taxation is Art. 93 EC.

As the Commission understands the derogation contained in the second paragraph can only exclude the application of the general rule laid down in the first paragraph of Art. 95 EC in cases where the fiscal provisions form the principal objective of the proposed measure. This could for instance be the case if the proposed act concerned the definition of the taxable person or the rate of taxation.

Regulation 218/92/EEC and the proposed amendments thereto do not include such provisions. Those Regulations merely aim to enhance the administrative co-operation between the Member States by establishing common rules for the exchange of information and for the access to this information. The fact that the content of this information can be

used for a correct tax assessment does not mean that taxation as such forms the principal objective of Regulation 218/92/EEC or its proposed modifications.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,¹⁴

Having regard to the opinion of the Economic and Social Committee¹⁵

Having regard to the opinion of the Committee of the Regions¹⁶

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁷

Whereas:

- (1) In order to ensure the correct application of Article 9(2)(f) of Council Directive 77/388/EEC¹⁸, the supplier must have verified, by a consistent set of data from an independent source, that his customer is a taxable person established in the Community.
- (2) Such a consistent set of data is available in Member States in the form of electronic data bases which contain a register of persons to whom value added tax identification numbers have been issued in that Member State.
- (3) It is necessary that the procedures for confirmation of the validity of the value added tax identification number of any specified person should include those involved in the supply of certain services by electronic means.
- (4) It is accordingly necessary to extend the common system for the exchange of certain information on intra-Community transaction provided for in Article 6 of Regulation (EEC) No 218/92.
- (5) The purpose of Regulation (EEC) No 218/92 is not harmonisation of fiscal provisions, but to ensure the proper functioning of the internal market by enhancing

¹⁴ OJ C , , p. .

¹⁵ OJ C , , p. .

¹⁶ OJ C , , p. .

¹⁷ OJ C , , p. .

¹⁸ O L L 145, 13.6.1977, p. 1, as last amended by Council Directive 1999/85/EC

the administrative co-operation between national administrations in the field of indirect taxation. The present amendment serves the same objective,

- (6) Provisions concerning the Committee procedure should be amended to take account of Council Decision 1999/468/EC¹⁹ of 28 June 1999 laying down the procedures for the exercise of implementing power conferred on the Commission.
- (7) Regulation (EEC) N.218/92 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 218/92 is amended as follows:

- (1) In Article 2, the ninth indent is replaced by the following:

“ ‘intra-Community supply of services’ shall mean any supply of services covered by Article 9 (2) (e) and (f) or by Article 28b (C), (D),(E) or (F) of Directive 77/388/EEC, ”;

- (2) In Article 4(1), fourth sentence, the words " Under the procedure laid down in Article 10" are replaced by the words " Under the procedure referred to in Article 10 (2)";

- (3) In Article 6, paragraph 4 is replaced by the following

“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) In the second subparagraph of Article 7(1), the words "In accordance with the procedure laid down in Article 10" are replaced by the words " In accordance with the procedure referred to in Article 10(2)";

- (5) Article 10 is replaced by the following:

Article 10

1. The Commission shall be assisted by a Standing Committee on Administrative Co-operation in the field of Indirect Taxation (hereinafter referred to as "the Committee"), composed of representative of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) thereof.

¹⁹ OJ L 184, 17.7.1999, p. 23

3. The period provided for in Article 5 (6) of Decision 1999/468/EC shall be three months.

Article 2

This regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic mean

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission²⁰

Having regard to the opinion of the European Parliament²¹

Having regard to the opinion of the Economic and Social Committee²²,

Whereas:

- (1) The rules currently applicable to VAT on certain services supplied by electronic means under Article 9 of the 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 assessment²³ are inadequate for taxing such services consumed within the Community and for preventing distortions of competition in this area.
- (2) In the interests of the proper functioning of the internal market, such distortions should be eliminated and new harmonised rules introduced for this type of activity. Action should be taken to ensure, in particular, that such services where effected for consideration and consumed by customers established in the Community are taxed in the Community and are not taxed if consumed outside the Community.
- (3) To this end, certain services supplied by electronic means to persons established in the Community or to recipients established in third countries should, in principle, be taxed at the place of the recipient of the services. For the purpose of establishing a special rule for determining the place of supply it has to be defined when services are supplied "by electronic means".
- (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.

²⁰ OJ C , , p. .

²¹ OJ C , , p. .

²² OJ C , , p. .

²³ OL L 145, 13.6.1977, p. 1, as last amended by Council Directive 1999/85/EC

- (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.
- (6) Subject to conditions which they lay down, Member States should allow statements and returns to be made by electronic means.
- (7) By reason of administrative simplification supplies of services by electronic means within a threshold indicating a negligible economic activity in the Community should benefit from a special scheme for small undertakings. and this threshold should be reviewed and changed if necessary.
- (8) The change of the place of supply involves adjustments in the area of Directive 77/388 as to the modalities of the definition of the person liable to tax and its obligations.
- (9) It appears appropriate to ensure certainty on the rate of taxation to be applied to the services supplied by electronic means, which will be in principle the normal VAT rate.
- (10) Directive 77/388/ECC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is amended as follows:

(1) In Article 9 (2), the following point (f) is added:

- “(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
- established in the Community to customers established outside the Community; or
 - established in the Community to taxable persons established in the Community but not in the same country as the supplier; or
 - established outside the Community to persons established in the Community.

For such services however, when they are supplied by a taxable person identified in accordance with the provisions in force to non-taxable persons established in the Community, the place of supply shall be the place where

the supplier has established his business or has a fixed establishment from which the service is supplied. For the purposes of point f, a taxable person established outside the Community shall be deemed to have a fixed establishment in the Member State of identification for services covered by this provision and supplied under that identification.

For the purpose of this Article the term “supply by electronic means” shall mean a transmission sent initially and received at its destination by means of equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electronic means, including television broadcasting within the meaning of Directive EEC/89/552 and radio broadcasting.”

(2) In Article 12 (3) (a), the following fourth sub-paragraph is added:

With the exception of the reception of broadcasting services mentioned in Category 7 of Annex H, the third sub-paragraph shall not apply to the services referred to in Article 9 (2) (f).

(3) In Article 24 the following point (2a) is added:

“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 EUR100,000.

This threshold shall be calculated in accordance with paragraph 4.”

(4) In Article 28g, Article 21(1) is amended as follows:

(a) in point (a) the following sub-paragraph is added :

“Where a supplier of services under Article 9 (2) (f) 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 number referred to in Article 22 paragraph (1) point (c), that his customer is a taxable person established in the Community, Member States shall provide that the supplier be discharged from being liable for tax and that the tax is payable by the person to whom the service is supplied.”

(b) Point (b) is replaced by the following:

“ (b) taxable persons to whom services covered by Article 9(2)(e) and (f) first sub-paragraph second and third indent are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person established abroad; however, without prejudice to the third sub-paragraph of point (a) Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax;

(5) In Article 28h, Article 22(1) is amended as follows:

(a) Point(a) is replaced by the following:

“(a) Every taxable person shall state when his activity as a taxable person commences, changes or ceases. Subject to conditions which they lay down, Member States shall allow such statements to be made by electronic means.”

(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.

On the basis of a report from the Commission, the Council shall, no later than 31 December 2003, review this provision. The Council, acting unanimously on a proposal from the Commission, may decide on whatever changes are necessary”

(c) In paragraph 4, point (a) is replaced by the following:

“(a) Every taxable person shall submit a return by a deadline to be determined by Member States. That deadline may not be more than two months later than the end of each tax period. The tax period shall be fixed by each Member State at one month, two months or a quarter. Member States may, however set different periods provided they do not exceed one year. Subject to conditions which they lay down, Member States shall allow such returns to be submitted by electronic means.”

(d) In paragraph 6, point (a) is replaced by the following:

“(a) Member States may require a taxable person to submit a statement, including all the particulars specified in paragraph 4, concerning all transactions carried out in the preceding year. That statement shall provide all the information necessary for any adjustments. Subject to conditions which they lay down, Member States shall allow such statements to be made by electronic means.”

(6) In Annex H, Category 7, the words “Reception of broadcasting services.” are replaced by the following: “Reception of broadcasting services, including television broadcasting within the meaning of Directive 89/552/EEC and radio broadcasting.”.

Article 2

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.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSALS ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSALS

Proposal for a Council Directive amending Directive 388/77/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic mean.

Proposal for a Council Regulation amending Council Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT)

DOCUMENT REFERENCE NUMBERS

THE PROPOSALS

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

There are serious problems in correctly applying VAT to transactions involving the supply of products in digital form over electronic networks. These can only be resolved by modifying Community VAT law, essentially because such transactions were never envisaged when the current legislation was drawn up and the existing provisions reflect this. The resultant problems are twofold. In the first instance, there is a potential for revenue loss which, although not really significant today, is likely to grow rapidly. Secondly, and of more immediate concern, the current rules discriminate against EU business in favour of third country operators and are likely to hinder the development of e-commerce in the Community since they result in most digital products sold by a European supplier being taxed in Europe, even if sold to a client in a third country whilst the same products when sold to a European final consumer by a supplier established outside the EU are not taxed.

What is now being proposed is an amendment to the provisions of the 6th VAT Directive dealing with the place of supply of services so that, in respect of electronically delivered services, when these are supplied for consumption in the EU, they bear EU VAT and when supplied for consumption outside the EU, they are free of VAT.

The changes in the place of taxation are linked to a number of facilitation and simplification measures to assist business in meeting their fiscal obligations. For traders, VAT is essentially a self-assessment tax and is characterised by a high level of voluntary compliance. This requires that the system is as straightforward as possible and the measures being proposed have been constructed accordingly.

Failure to act at this stage would be to perpetuate the discrimination against EU e-commerce business which is a feature of the current provisions.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?
- which sectors of business? On-line e-commerce businesses which supply digital products are likely to be effected.
 - which sizes of business (what is the concentration of small and medium-sized firms)? It will effect businesses of all sizes.
 - are there particular geographical areas of the Community where these businesses are found? No.

3. What will business have to do to comply with the proposal?

As far as business-to-business transactions are concerned (and these account for upwards of 90% in value of on-line transaction), implementing these changes will not cause any particular problem as tax implications are handled by the recipient company on the established reverse charge (or self-assessment) basis. As far as sales to private consumers are concerned. EU suppliers should already be registered and will therefore face no new obligations. In order to implement the changes within the overall parameters of the current tax system however, it will be necessary that non-EU suppliers making such supplies register, change and account for VAT on their sales to private consumers in the EU

4. What economic effects is the proposal likely to have?

- on employment?
- by providing EU operators with a level playing field, this will encourage the growth of e-commerce within the Community and consequent employment opportunities.
- on investment and the creation of new businesses?
- the net impact on investment and business creation is expected to be positive.
- on the competitiveness of businesses?
- the present provisions constitute a significant competitive disadvantage to EU business, especially those involved in supplies to private consumers or to customers located outside the EU The proposal redresses this.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The proposals specifically exempt small non-EU suppliers (with a turnover within the Community less than €100.000) In addition, the provisions in relation to online VAT registration and submission of tax returns represent an opportunity for cost saving which will have a proportionately greater effect on such businesses.

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

The preparation of the proposal involved extensive consultation with business – both directly with the operators concerned and through representative organisations. The actual list of the interlocutors extends to over 100, but some of the more significant organisations were the Global Business Dialogue on Electronic Commerce, the European Public Telecommunications Network Operators Association, the Confédération Fiscale Européenne, the Fédération des Experts Comptables Européens, the International Communications Round Table, the Federation of European Direct Marketing, UNICE, Eurocommerce, European Mortgage Federation, European Convergent Networks Association, as well as various *ad hoc* groups such as the Electronic Commerce Tax Study Group.

In general, reaction can be summarised as indicating an acceptance that the Commission's proposal are the correct approach but that the application of the measures envisaged should be made as simple as possible and that bureaucratic impositions should be minimised.