

Council Directive 2006/69/EC of 24 July 2006 amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decisions granting derogations

COUNCIL DIRECTIVE 2006/69/EC

of 24 July 2006

amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decisions granting derogations

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 Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Whereas:

- (1) In order to combat tax evasion or avoidance and to simplify the procedure for charging value added tax, certain derogations covering similar problems were granted under varying terms to individual Member States by the Council pursuant to Article 27(1) of 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 assessment<sup>(3)</sup>. A solution to the said problems should be made available to all Member States through incorporation into that Directive. Those measures should be proportionate and limited to countering the problem concerned. Given that the Member States have different needs, that incorporation should be limited to extending the option of adopting the rules concerned to all Member States, as and when the need arises.
- (2) Member States should be able to take action to ensure that measures provided for in Directive 77/388/EEC relating to the taxable person and the transfer of a business as a going concern are not being exploited to evade and avoid tax.
- (3) It should be possible for Member States to intervene as regards the value of supplies and acquisitions in specific limited circumstances, to ensure that there is no loss of tax through the use of connected parties to derive tax benefits.
- (4) It should be possible for Member States to include, within the taxable amount of a transaction which involves the working of investment gold provided by a customer, the value of that investment gold where, by virtue of being worked, the gold loses its status of investment gold.

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- (5) It should be emphasised that certain services with the nature of capital items may be included in the scheme which allows the adjustment of deductions for capital items over the lifetime of the asset, according to its actual use.
- (6) Member States should be able, in specific cases, to designate the recipient of supplies as the person responsible for paying and accounting for value added tax. This should assist Member States in simplifying the rules and countering tax evasion and avoidance in identified sectors and on certain types of transactions.
- (7) Directive 77/388/EEC should therefore be amended accordingly.
- (8) Consequently, Member States should not be able to continue to avail themselves of individual derogations granted to them by certain Council Decisions adopted pursuant to Article 27(1) of Directive 77/388/EEC and which are covered by the provisions in this Directive. The Decisions concerned should therefore be explicitly repealed. This Directive should not affect measures applied by Member States pursuant to Article 27(5) of Directive 77/388/EEC; nor should it affect derogations which have been granted pursuant to Article 27(1) of that Directive and which have not been repealed by this Directive.
- (9) The application of certain provisions in this Directive should be optional and they should allow Member States a certain degree of discretion. Where appropriate for reasons of transparency, it should be provided that Member States should inform the other Member States through the Advisory Committee on value added tax established under Article 29 of Directive 77/388/EEC of any national law adopted pursuant to those provisions. Such information should not be necessary with respect to national measures taken under a Decision which is repealed by this Directive, or which expires at the date of this Directive's entry into force, but which a Member State continues to apply under the provisions of this Directive,

HAS ADOPTED THIS DIRECTIVE:

*F1 Article 1*

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**Textual Amendments**

**F1** Deleted by [Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.](#)

*Article 2*

Decisions listed in Annex II of this Directive shall be repealed with effect from 1 January 2008.

*Article 3*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive.

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They shall apply the provisions necessary to comply with Article 1(3), as concerns a new Article 11A(7) of Directive 77/388/EEC, and with Article 1(4), as concerns the reference in Article 17(4) points (a) and (b) of Directive 77/388/EEC in the version set out in Article 28f(1) to Article 21(1)(f) of that Directive, from 1 January 2008 at the latest.

When Member States adopt provisions under this Directive, they shall forthwith communicate to the Commission the text of those provisions, which shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### *Article 4*

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

#### *Article 5*

This Directive is addressed to the Member States.

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## ANNEX I

### ANNEX M

List of supplies of goods and services as referred to in Article 21(2)(c)(iv)

- (a) the supply of ferrous and non ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of ferrous and non-ferrous metals and their alloys;
- (b) the supply of ferrous and non-ferrous semi-processed products and certain associated processing services;
- (c) the supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, scale and industrial residues containing metals or their alloys and the supply of selection, cutting, fragmenting and pressing services for these products;
- (d) the supply of, and certain processing services relating to, ferrous and non-ferrous waste as well as parings, scrap, waste and used and recyclable material consisting of cullet, glass, paper, paperboard and board, rags, bone, leather, imitation leather, parchment, raw hides and skins, tendons and sinews, twine, cordage, rope, cables, rubber and plastic;
- (e) the supply of the materials referred to in this annex after processing in the form of cleaning, polishing, selection, cutting, fragmenting, pressing or casting into ingots;
- (f) the supply of scrap and waste from the working of base materials.

## ANNEX II

List of Decisions under Article 27 of Directive 77/388/EEC repealed by this Directive

The Council Decision deemed to have been adopted on 15 April 1984 authorising the United Kingdom to apply a measure derogating from the Sixth Directive with a view to avoiding certain types of fraud or tax evasion on supplies of gold, gold coins and gold scrap between taxable persons by a special tax accounting scheme<sup>(4)</sup>.

The Council Decision deemed to have been adopted on 11 April 1987 authorising the United Kingdom to apply a measure derogating from Article 11 of Directive 77/388/EEC<sup>(5)</sup>.

Council Decision 88/498/EEC<sup>(6)</sup> authorising the Kingdom of the Netherlands to apply a measure derogating from Article 21(1)(a) of Directive 77/388/EEC.

A Council Decision deemed to have been adopted on 18 February 1997 under the procedure contained in Article 27(4) of Directive 77/388/EEC in its version of 17 May 1977 authorising the Republic of France to apply a measure derogating from Articles 2 and 10 of Directive 77/388/EEC. This decision follows notification of the request to Member States on 18 December 1996.

Council Decision 98/23/EC<sup>(7)</sup> authorising the United Kingdom to extend application of a measure derogating from Article 28e(1) of Directive 77/388/EEC.

Council Decision 2002/439/EC<sup>(8)</sup> authorising Germany to apply a measure derogating from Article 21 of Directive 77/388/EEC.

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Council Decision 2002/880/EC<sup>(9)</sup> authorising Austria to apply a measure derogating from Article 21 of Directive 77/388/EEC.

Council Decision 2004/290/EC<sup>(10)</sup> authorising Germany to apply a measure derogating from Article 21 of Directive 77/388/EEC.

Council Decision 2004/736/EC<sup>(11)</sup> authorising the United Kingdom to introduce a special measure derogating from Article 11 of Directive 77/388/EEC.

Council Decision 2004/758/EC<sup>(12)</sup> authorising Austria to apply a measure derogating from Article 21 of Directive 77/388/EEC.

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- (1) Opinion of 6 July 2006 (not yet published in the Official Journal).
- (2) OJ C 65, 17.3.2006, p. 103.
- (3) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).
- (4) OJ L 264, 5.10.1984, p. 27.
- (5) OJ L 132, 21.5.1987, p. 22.
- (6) OJ L 269, 29.9.1988, p. 54.
- (7) OJ L 8, 14.1.1998, p. 24. Decision as last amended by Decision 2003/909/EC (OJ L 342, 30.12.2003, p. 49).
- (8) OJ L 151, 11.6.2002, p. 12.
- (9) OJ L 306, 8.11.2002, p. 24.
- (10) OJ L 94, 31.3.2004, p. 59.
- (11) OJ L 325, 28.10.2004, p. 58.
- (12) OJ L 336, 12.11.2004, p. 38.