

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

Article 1

Directive 77/388/EEC is amended as follows:

1. In Article 4(4), the following subparagraph shall be added:

A Member State exercising the option provided for in the second subparagraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision..
2. In Article 5(8) the second sentence shall be replaced by the following:

‘Where appropriate, Member States may, in cases where the recipient is not wholly liable to tax, take the measures necessary to prevent distortion of competition. They may also adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.’.
3. Article 11(A) shall be amended as follows:
 - (a) in paragraph (1)(d) the second subparagraph shall be deleted;
 - (b) the following paragraphs shall be added:
 5. Member States shall have the option of including in the taxable amount in respect of the supply of goods and services, the value of exempt investment gold within the meaning of Article 26b, which has been provided by the customer to be used as a basis for working and which as a result, loses its VAT exempt investment gold status when such goods and services are supplied. The value to be used is the open market value of the investment gold at the time that those goods and services are supplied.
 - 6 In order to prevent tax evasion or avoidance, Member States may take measures to ensure that the taxable amount in respect of a supply of goods or services shall be the open market value. The option shall be applied only in respect of supplies of goods and services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State. For these purposes legal ties may include the relationship between an employer and employee or the employee's family, or any other closely connected persons.

The option in the first subparagraph may apply only in any of the following circumstances:

 - a where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction under Article 17;
 - b where the consideration is lower than the open market value and the supplier does not have a full right of deduction under Article 17 and the supply is subject to an exemption under Article 13 or Article 28(3)(b);

- c where the consideration is higher than the open market value and the supplier does not have a full right of deduction under Article 17.

Member States may restrict the categories of suppliers or recipients to whom the measures in the first and the second subparagraph shall apply.

Member States shall inform the Committee established in accordance with Article 29 of any new national measure adopted pursuant to the provisions of this paragraph.

7 For the purposes of this Directive, “open market value” shall mean the full amount that, in order to obtain the goods or services in question at that time, a customer at the same marketing stage at which the supply of goods or services takes place, would have to pay, under conditions of fair competition, to a supplier at arm's length within the territory of the Member State in which the supply is subject to tax.

Where no comparable supply of goods or services can be ascertained, “open market value” shall mean, in respect of goods, an amount that is not less than the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply; in respect of services it shall mean not less than the full cost to the taxable person of providing the service..

4. Article 17(4), in the version set out in Article 28f(1), shall be amended as follows:
 - (a) in point (a) of the second subparagraph ‘Article 21(1)(a) and (c)’ shall be replaced by ‘Article 21(1)(a), (1)(c) or (1)(f) or Article 21(2)(c)’;
 - (b) in point (b) of the second subparagraph ‘Article 21(1)(a)’ shall be replaced by ‘Article 21(1)(a), or (1)(f) or Article 21(2)(c)’.
5. In Article 18(1)(d), in the version set out in Article 28f(2), ‘Article 21(1)’ shall be replaced by ‘Article 21(1) or Article 21(2)(c)’.
6. In Article 20(4), the following subparagraph shall be added:

Member States may also apply paragraphs 2 and 3 to services which have characteristics similar to those normally attributed to capital goods..
7. In Article 21(2), in the version set out in Article 28g, the following point shall be added:
 - (c) where the following supplies are carried out, Member States may lay down that the person liable to pay tax is the taxable person to whom those supplies are made:
 - (i) the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works considered to be a supply of goods by virtue of Article 5(5);
 - (ii) the supply of staff engaged in activities covered by (i);
 - (iii) the supply of immovable property, as referred to in Article 13(B) (g) and (h), where the supplier has opted for taxation of the supply pursuant to point (C)(b) of that Article;

Status: This is the original version (as it was originally adopted).

- (iv) the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non industrial waste, recyclable waste, part processed waste and certain goods and services, as identified in Annex M;
- (v) the supply of goods provided as security by one taxable person to another in execution of that security;
- (vi) the supply of goods following the cession of the reservation of ownership to an assignee and the exercising of this right by the assignee;
- (vii) the supply of immovable property sold by the judgment debtor in a compulsory sale procedure.

For the purposes of this point, Member States may provide that a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2 shall be deemed to be a taxable person in respect of supplies received as referred to in the first subparagraph. A non-taxable body governed by public law, may be deemed to be a taxable person in respect of supplies received as referred to in (v), (vi) and (vii).

For the purposes of this point, Member States may specify the supplies of goods and services covered, and the categories of suppliers or recipients to whom these measures may apply. They may also limit the application of this measure to some of the supplies of goods and services listed in Annex M.

Member States shall inform the Committee established in accordance with Article 29 of any new national measure adopted pursuant to the provisions of this point..

8. Annex M set out in Annex I to this Directive shall be added.

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.

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.

Done at Brussels, 24 July 2006.

For the Council

The President

K. RAJAMÄKI