



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 988**

**CONSULTATION
PROVIDED FOR UNDER DIRECTIVE 2006/112/EC**

ORIGIN: Denmark
REFERENCE: Article 27
SUBJECT: Application of intangible property to be treated as a supply for consideration

1. INTRODUCTION

According to Article 27 of the VAT Directive¹, Member States may, in order to prevent distortion of competition and after consulting the VAT Committee, treat as a supply of services for consideration the supply by a taxable person of a service for the purposes of his business, where the VAT on such a service, were it supplied by another taxable person, would not be wholly deductible.

The Danish authorities have informed the Commission that, in accordance with Article 398 of the VAT Directive, they wish to consult the VAT Committee on an amendment of their national legislation on the taxation of certain services, where these services are supplied by a taxable person for the purposes of his business as provided for under Article 27 of the VAT Directive.

More particularly, Denmark wants to bring **intangible property** under the scope of Article 27 of the VAT Directive. According to Denmark, this provision might become increasingly important in the future as a result of the digitalisation of the economy.

To that end, the following is introduced in the Danish legislation²:

The application of intangible property is treated as a supply for consideration where the VAT on the acquisition, production etc. thereof became wholly or partly deductible, if the application is for purposes which is not wholly deductible.

2. THE COMMISSION SERVICES' OPINION

The Commission services take note of the intention of Denmark to bring intangible property under the scope of Article 27 of the VAT Directive and to consider internal supplies of such property within an undertaking as a supply of services for consideration. It is recalled that any measure under this article has to be confined to the purpose of preventing distortion of competition. According to the applicable rule, as laid down in Article 77 of the VAT Directive, the taxable amount of such a supply of services is the open market value.

It is also understood that this is a part of a wider reform as to align Danish legislation to the EU law following the ruling of the Court of Justice of the European Union of 23 April 2015 in case C-16/14, *Property Development Company*³ (of which the other aspects are not covered by this consultation since they are outside the scope of Article 27 of the VAT Directive).

Denmark does not provide any further explanation or examples of what they assume would be covered in practice by this new rule; it is supposedly mainly related to intellectual property such as the creation of copyrights, patents or trademarks. However, in

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

² Non-official translation provided by the Danish authorities.

³ ECLI:EU:C:2015:265.

order to have a clearer and more precise understanding of the actual measure⁴, Denmark is invited to provide additional explanations on the scope of the measure and the notion of “intangible property” for these purposes. Further, it would be appropriate for Denmark to explain why use is made of the option in Article 27 of the VAT Directive only in regard to “internal” supplies of intangible property and not to any other kind of services, and the extent to which this might be an issue in regard to the principle of neutrality.

3. DELEGATIONS' OPINION

The delegations are requested to give their opinion on this matter.

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⁴ The Commission reminds all delegations that a request for consultation raised by a Member State to the VAT Committee should be exhaustive and understandable and in normal circumstances require no further explanations.

**CONSULTATION BY DENMARK
PURSUANT TO ARTICLE 27 OF DIRECTIVE 2006/112/EC**

The Danish delegation to the VAT Committee wishes to consult the VAT Committee in accordance with Article 27 of the VAT Directive.

Background

In Case C-16/14, Property Development Company, the Court of Justice of the European Union (CJEU) determined, with regards to the use by a taxable person of goods forming part of his/her business assets for private use, or of the staff or for an economic activity exempt from VAT or more generally, for purposes other than those of his business, that the taxable amount for the calculation of VAT is the “purchase price of the goods”. “The purchase price of the goods” is defined as the “residual value of the goods at the time of the allocation”, and only in the absence of a purchase price the taxable amount is the “cost price” (paras. 34-37).

Based on this case Denmark is in the process of bringing the Danish legislation closer to the wording of the relevant provisions of VAT Directive, as interpreted by the ECJ, ctf. article 74¹.

We have previously written a separate letter to the Commission in order to submit an application for a derogation from the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT-Directive) to introduce a simplified procedure for collecting VAT concerning another matter in the bill.

Proposed change

As a part of this legislative work it is proposed that the implementation of Articles 16, 18, 26 and 27 in the Danish VAT Act should be restructured. As part of the restructuring it is proposed in the bill that a new section 5, paragraph 3 is introduced:

“Stk. 3. Med levering mod vederlag sidestilles udtagning af immaterielle goder, såfremt der er opnået fuld eller delvis fradragret ved indkøb, fremstilling m.v. heraf, når udtagningen sker til formål, som ikke vedrører den registreringspligtige virksomheds levering af varer og ydelser.“

Non-official courtesy translation:

“3. The application of intangible property is treated as a supply for consideration, where the VAT on the acquisition, production etc. hereof became wholly or partly deductible, if the application is for purposes which is not wholly deductible.”

The aim of the new provision is to avoid distortion of competition. This will however not change the state of the law significantly as the present section 8, paragraph 2, states that the application of business assets not covered by the rules on adjustment of the initial

¹ Changes in Danish VAT act has been adopted by the Danish parliament. The changes in the rules will not enter into force before the derogation process is completed. See <https://www.ft.dk/samling/20191/lovforslag/l27a/index.htm>

deduction in the case of capital goods is treated as a supply [of goods or services] for consideration, where the VAT on the acquisition, production etc. hereof became wholly or partly deductible, if the application is for purposes other than taxable transactions².

It is our assessment that the proposed provision may become more important in the future as result of the digitalisation of the economy which means that intangible property may very well make up a bigger part of business assets in the future than previously.

² “Other than taxable transactions” (“a non-taxable area of activity” is the term used in the directive) in this regard also covers transactions that is taxable but exempt, cf. the remarks of the Commission in the Explanatory Memorandum to proposal for the sixth directive (COM(73) 950) (Article 5(3)(c) adopted as Article 5(7)(b))
