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COMMISSION OF THE EUROPEAN COMMUNITIES

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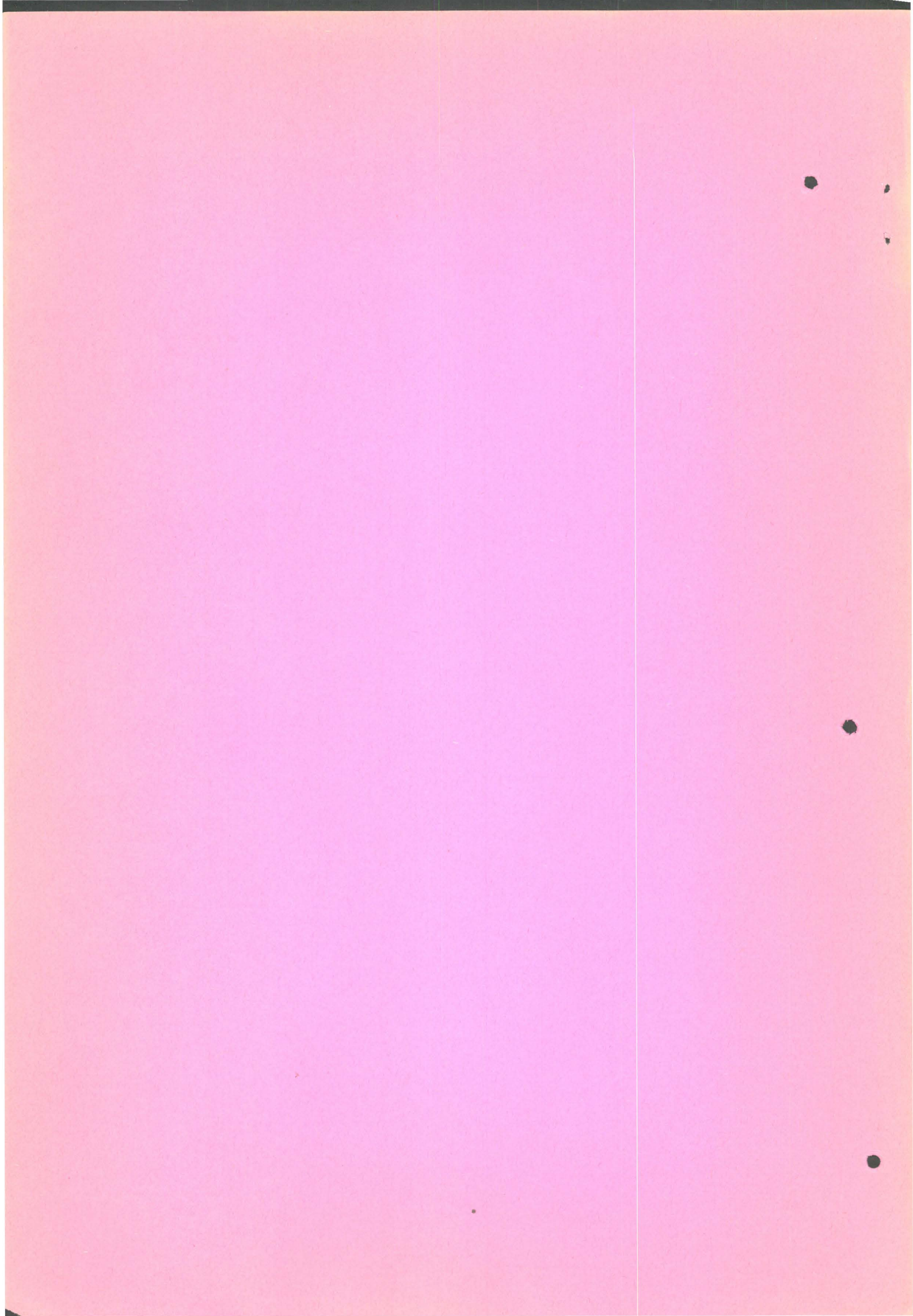
GIFT & EXCHANGE

AUG 21 1979

Proposal for a
TENTH COUNCIL DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE
MEMBER STATES RELATING TO TURNOVER TAXES, SUPPLEMENTING DIRECTIVE
77/388/EEC - APPLICATION OF VALUE ADDED TAX TO THE HIRING OUT OF
MOVABLE TANGIBLE PROPERTY

(submitted to the Council by the Commission)

COM(79) 181 final



EXPLANATORY MEMORANDUM

In order to take account of the fact that some Member States are encountering difficulties as regards application of VAT to movable tangible property, other than forms of transport, hired out in a Member State by a supplier established outside that country, it seems that certain clarifying details, which in no way affect the principles laid down, are required to be added to Article 9 (1) of the Sixth Directive of 17 May 1977, which defines the place where a service is supplied.

Except for the special case referred to in Article 9 (2)(d) of the Sixth Directive, the place where services consisting of the hiring out of movable tangible property are supplied is defined in paragraph 1 of the same Article as "the place where the supplier has established his business or has a fixed establishment from which the service is supplied."

In view of the fact that Article 4(2) of the Sixth Directive stipulates that "the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity", it is clear that a person who buys movable tangible property in a Member State or imports such property into a Member State with a view to hiring it out in that country is exercising an economic activity there - an activity in respect of which he must satisfy the obligations laid down in Article 22 of the Sixth Directive. Practical difficulties may nevertheless arise in determining, in accordance with Article 9 (1), the place where the supplier has established his business.

The aim of this proposal for a tenth directive is to avoid these difficulties by supplementing the provisions of Article 9(1).

More specifically, the aim is to create a legal fiction to the effect that the supplier is established in the same country in which he buys or into which he imports the property hired out by him and in which that property is physically made available to the customer.

It is felt that this legal fiction should not be extended to the hiring out of forms of transport, firstly because a supplier rarely purchases vehicles in, or imports them into, a country in which he has no establishment for the purpose of hiring them out there and secondly because problems of control would arise since such property is by definition mobile and can easily cross frontiers. For this reason, Article 9(1) as it stands at present should continue to be applied strictly to such supplies of services, i.e. the place of supply is, in all cases, the place where the supplier has established his business.

However, this still leaves unresolved the problem of the exact scope of Article 9(2)(d) of the Sixth Directive. Taken literally, this provision covers only the case where hired out property (other than forms of transport) is exported from one Member State by the lessor with a view to its being used in another Member State. It is clear that this provision also applies where the property is exported by a third party on behalf of the lessor.

In the context of the proposal for a tenth directive, subparagraph (d) would still be meaningful only if the property hired out had already been placed at the customer's disposal before being exported by the supplier. Conversely, where the property hired out is placed at the customer's disposal in the country of importation, the fact that the operation took place in that country under the proposal for a tenth directive) would render Article 9(2)(d) meaningless.

If this provision was originally drafted in the context of property being, in practice, always imported by the supplier into the country of the customer, it is reasonable to consider that the proposal for a tenth directive has no effect on the present situation.

It can therefore be concluded that the only innovation in the proposal for a tenth directive is to specify how the "foreign" supplier (i.e. the lessor) is to be taxed where he buys the property in the country in which it is hired out by him.

PROPOSAL FOR A TENTH COUNCIL DIRECTIVE ON THE HARMONIZATION OF THE
LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES, SUPPLEMENTING
DIRECTIVE 77/388/EEC - APPLICATION OF VALUE ADDED TAX TO THE HIRING
OUT OF MOVABLE TANGIBLE PROPERTY

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 99 and 100 thereof,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977
on the harmonization of the laws of the Member States relating to turn-
over taxes - Common system of value added tax: uniform bases of assess-
ment,

Having regard to the proposal from the Commission,

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

Whereas, pursuant to Article 4(2) of the aforementioned Directive, the
hiring out of movable tangible property may constitute an economic
activity subject to value added tax;

Whereas any person exercising an economic activity within a Member State
must satisfy the obligations laid down in Article 22 of the aforementioned
Directive;

(1) OJ No L 145, 13.6.1977

Whereas movable tangible property may be hired out in a Member State and placed at the disposal of a customer in the same country or in another Member State by a taxable person established abroad ;

Whereas, in such cases, application of Article 9 (1) of the aforementioned Directive may give rise to practical difficulties, particularly where a single operation is involved ;

Whereas it is therefore necessary to provide for the irrebuttable presumption that the supplier is established in the country in which the property is at the time it is actually made available to the customer ;

Whereas, however, such a legal fiction should not be created with regard to the hiring out of forms of transport, and whereas Article 9 (1) should, in particular, for reasons of control, be strictly applied, the place where the supplier has established his business being treated as the place of supply of such services,

HAS ADOPTED THIS DIRECTIVE :

Article 1

The following subparagraph shall be added to Article 9 (1) of Council Directive 77/388/EEC of 17 May 1977 :

"In the case of the hiring out of movable tangible property, other than forms of transport, the supplier shall be deemed to have established his business at the place where the property is at the time it is actually made available to the customer."

Article 2

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1980.
2. Member States shall inform the Commission of the provisions which they adopt for the purpose of applying this Directive. The Commission shall inform the other Member States thereof.

Article 3

This Directive is addressed to the Member States.

For the Council,

The President

