

COMMISSION OF THE EUROPEAN COMMUNITIES

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**PROPOSAL FOR A
COUNCIL DIRECTIVE
AMENDING DIRECTIVE 77/388/EEC
AND INTRODUCING SIMPLIFICATION MEASURES**

(presented by the Commission)

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EXPLANATORY MEMORANDUM

I. INTRODUCTION

Council Directive 91/680/EEC of 16 December 1991⁽¹⁾ supplemented, with a view to completing the internal market, the common system of value added tax with the provisions necessary for the abolition of all the checks and formalities that now have to be carried out when an internal frontier of the Community is crossed: on 1 January 1993, the concepts of importation and exportation will be definitively abolished for all transactions between Member States and will be limited solely to trade with third territories. The Directive also introduces transitional arrangements for taxation of intra-Community trade: for a limited period and by way of derogation from the principle of taxation in the Member State of origin of the goods or services supplied, intra-Community transactions - essentially transactions carried out between taxable traders - will be subject to the tax at the rates and on the conditions obtaining in the Member State of destination of the goods and services supplied. Major changes have thus been made to the sixth Directive (77/388/EEC).⁽²⁾ In order to facilitate implementation on 1 January 1993, it is appropriate to refine and expand some of these new provisions.

The common purpose of the additional measures which are the subject of this proposal is to simplify taxation procedures, for both traders and Member States' administrations, without altering the principles of taxation and the rules for declaring taxable transactions laid down by the Directive of 16 December 1991. Five sets of provisions are proposed.

First, these additional measures clarify the wording of some of the provisions of the sixth Directive, as amended by Directive 91/680/EEC.

Simplification measures are also introduced for the tax treatment of transactions effected with third territories under the common system of value added tax but relating to goods which rank as Community goods under customs legislation. The proposed simplifications relate to both the presentation of the principles of taxation and the application to these

1 OJ No L 376 of 31 December 1991.

2 OJ No L 145 of 13 June 1977, p. 1.

transactions of the same tax provisions as those applicable to any non-Community goods entering the customs territory of the Community.

For intra-Community trade in products subject to excise duty, the rules for the imposition of value added tax are adapted to the provisions of Directive 92/12/EEC of 25 February 1992⁽³⁾ on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products. These new measures obviate the need for traders who are not subject to the general arrangements for taxing their intra-Community acquisitions to be identified for VAT purposes solely because they buy products subject to excise duty from other Member States. The procedures introduced for the purpose of applying excise duties are used for the purpose of applying VAT. This results not only in an easing of the obligations regarding declarations to which traders are subject but also in a reduction of the burden facing Member States' administrations in connection with VAT identifications.

For supplies of goods and services⁽⁴⁾ taxable within a Member State on the territory of which the trader is not established, the present text of the sixth Directive imposes obligations which differ depending on the Member State in which these transactions are effected. The purpose of the new proposals is to guarantee that these transactions are treated in the same way whatever the Member State concerned. To this end, the provisions relating to the person liable for payment of the tax are amended: the principles set out in Directive 77/388/EEC are confirmed but it is proposed that the provisions which at present are only options, available to each Member State, under Article 21(1)(a) apply throughout the Community. Traders can thus choose between one of the following arrangements: either they designate a tax representative who will fulfil on their behalf the obligations incumbent on all persons liable for payment of VAT, or the person for whom the goods or services are supplied is designated as the person liable for payment of the tax. In the latter case, it would thus be possible for the taxable supplier not to have to be identified for VAT purposes in a Member State where he is not established.

The last set of additional measures relates to the changeover from the provisions in force until 31 December 1992 to those which will enter into force on 1 January 1993. They concern all transactions which give rise to a movement of goods between Member States and which, although they began before 1 January 1993, i.e. under cover of an

3 OJ No L 76 of 23 March 1992.

4 Other than supplies of services referred to in Article 21(1)(b).

import/export procedure, will not be completed until after 31 December 1992, when the concepts of importation and exportation will have disappeared for the Community's internal regime. Without extra common measures ensuring this changeover, such transactions could result in definitive situations of either double taxation or non-taxation, thereby creating distortions of treatment within the Community.

II. PRESENTATION OF EACH OF THE PROVISIONS OF ARTICLE 1

Point 1

In view of the amendments made to the definition of importation of goods (see point 2), Article 3(4) has been made more explicit so as to avoid any risk of confusion with regard to the treatment applicable to transactions effected with the Principality of Monaco or the Isle of Man, due regard being had to the conventions and treaties applicable to them.

Point 2

The definition of importation of goods is expanded so as to take account of all transactions with territories within which the common system of value added tax is not applied, irrespective of the way in which these transactions are treated and classified under the Community customs provisions.

Point 3

The first subparagraph of Article 7(3) can, by definition, relate only to goods from third countries which are placed under a customs regime involving suspension of the import duties to which they are subject. Only points (a), (b), (c) and (d) of Article 16(1)(B) refer to these arrangements.

The second amendment concerns the provisions applicable to goods which, while ranking as Community goods under customs legislation, must give rise to the charging of VAT as imports in that they come from territories within which the common system of value added tax is not applied (parts of the territory of the Member States to which the tax provisions of the Treaty establishing the European Economic Community do not apply or which are excluded from the territorial coverage of the sixth Directive; territories - or parts of the territory - of countries which are not members of the Community but are included in its customs territory).

The new wording makes it possible to ensure more effectively that these transactions are covered by the same provisions as apply to any non-Community goods temporarily admitted to the Community's customs territory. This combines in one and the same subparagraph provisions which at present appear in Articles 14 and 33a. This amendment represents a major simplification of the principles and rules for applying VAT to these transactions and, at the same time, makes the legal text less cumbersome (see points 7 and 24).

Point 4

Since the present definition of the place of supply in relation to goods supplied on board ships, aircraft or trains during intra-Community transport could give rise to confusion, it has been amended in order to clarify the transactions to which the provision applies.

Point 5

The purpose of the amendment is to confirm that, at importation, the value for customs purposes is used to determine the taxable amount for VAT purposes, including imports of goods from territories which, while forming part of the customs territory of the Community, are third territories in the common VAT system.

Point 6

This amendment is merely an adjustment reflecting the new wording of Article 10(3).

Point 7

This amendment follows from point 3.

Point 8

This amendment, which follows the logic of the completion of the internal market, adapts the exemptions on exportation solely to relations with third countries or territories.

Points 9, 10 and 11

The text proposed under these points is a rearrangement of the provisions which currently appear in the second subparagraph of Article 28a(1)(a). The purpose of these amendments is twofold: (i) to simplify the text by distinguishing between the definition of acquisitions on which tax is not to be charged and the provisions relating to the determination and operation of the threshold at which this derogation applies, and (ii) with regard to taxable acquisitions, to make a clear distinction between those to which the general scheme applies and those covered by

special schemes (acquisitions of products subject to excise duty and of new means of transport made by traders "below the threshold", acquisitions of new means of transport by individuals). A new paragraph 1a sets out the conditions governing the derogation from the principle of taxation of all acquisitions made by a trader. In addition, within this new paragraph, a distinction is made between the actual conditions for application of the derogation and the information to be taken into account in determining the threshold at which the derogation applies. These drafting changes also make it possible to confine the obligation of identification for VAT purposes solely to traders who are, automatically or by choice, covered by the general scheme for the taxation of acquisitions, thereby excluding traders taxable at destination solely in respect of acquisitions of products subject to excise duty. These amendments explain the provisions presented in points 13 and 21.

Point 12

This provision supplements the simplification measures adopted in respect of the person liable for payment of the tax and allows them to be effectively implemented. A taxable person makes in a Member State in which he is not established an intra-Community acquisition of goods for the purposes of a supply within that Member State.

Point 13

Because traders who are taxable solely in respect of acquisitions of products subject to excise duty are no longer required to be identified for VAT purposes, it was necessary to amend the conditions under which such purchasers may receive the products exempt of the tax due in the Member State from which the goods are dispatched or transported. The wording of new point (c) of Article 28c(A) now refers directly to the formalities laid down by Directive 92/13/EEC with regard to the movement of products subject to excise duty. These provisions thus enable traders, and Member States' administrations, to make use of the obligations laid down with regard to excise duties for the purposes of applying VAT.

Point (d) added to Article 28c(A) clarifies and adapts the exemptions provided for under (a), (b) and (c) to cases of transfers of goods treated as supplies effected for consideration.

Point 14

This rearrangement of Title E is designed to clarify the conditions under which the exemptions that Member States implement pursuant to Article 16(1) or (2) also apply to intra-Community trade.

Points 15 and 16

These provisions define the moment at which the tax becomes chargeable for both intra-Community acquisitions of goods and intra-Community supplies of goods effected exempt of VAT.

Points 17 and 18

Additions are made to the references to Article 11 concerning the elements to be taken into account in establishing the taxable amount, in particular for intra-Community transfers of goods on which the tax is chargeable. For acquisitions of products subject to excise duty effected outside the duty-suspension regime, a new provision is introduced which reduces the taxable amount where the person acquiring the goods obtains a refund of the excise duties paid in the Member State in which the products are released for consumption.

Point 19

During the period in which the transitional arrangements for taxing trade between Member States apply, the tax due or paid in one Member State may not be deducted in another Member State; it may be refunded only under the conditions laid down in Article 17(3) and (4). Article 17(4) has been expanded in order to guarantee this right to a refund in the case of traders who purchase goods or services in, or import goods into, a Member State in which they are not themselves liable to tax. In order to avoid certain forms of tax evasion or avoidance, the benefit of these provisions does not, however, extend to supplies of goods transported to another Member State by or on behalf of the person acquiring the goods.

Point 20

The purpose of the amendments made to Article 21(1)(a) is to make it possible throughout the Community for taxable persons not established in the Member State in which they effect taxable transactions to designate a tax representative or the person for whom the transaction is effected as the person liable for payment of the tax. As a result of this provision, such traders' obligations regarding declarations can be eased without any dilution of the principles adopted with regard to the definition of transactions subject to VAT and the place of taxation of such transactions. Nevertheless, this option should not permit an individual to be designated as the person liable for payment of the tax.

Similarly, with respect to supplies of services for which the transitional arrangements alter the place of taxation, the customer may not be the person liable for payment of the tax unless he is a taxable person or a non-taxable legal person identified for VAT purposes.

Point 21

The purpose of these amendments is to ensure that any trader covered by the general scheme for taxation of intra-Community acquisitions of goods is given a VAT identification number and is thus able to receive from another Member State goods exempt from the tax due in that other Member State.

The amendment to Article 22(11) follows from points 9, 10 and 11.

Point 22

Traders not established within a Member State do not qualify for the tax exemption under Article 24(2) in order to ensure that no limitation is imposed on their right to deduct input tax which they exercise in the Member State in which they are established.

Point 23

Article 28n implements the measures necessary for the changeover from the provisions in force until 31 December 1992 to those which will enter into force on 1 January 1993.

However, VAT will not have been charged on certain importations of goods effected prior to 1 January 1993: for example, in the case of goods placed under a transit or temporary importation regime, the chargeable event for the tax on importation would have been deferred until the goods were removed from that regime, in accordance with the provisions in force before 1 January 1993. These provisions concern not only goods imported from third countries, but also intra-Community trade. So as to avoid a hiatus in the conditions governing the taxation of these transactions, the benefit of the provisions in force prior to 1 January 1993 is prolonged until the goods are removed from these "suspensive" regimes (paragraph 1). At the same time, and in order to avoid situations of non-taxation, paragraph 2 treats the removal from these regimes as an importation of goods in accordance with the provisions applicable with effect from 1 January 1993, while paragraph 3 defines the place where this importation takes place.

These provisions ensure that transactions effected in similar conditions do receive equivalent treatment. All importations of goods from other Member States, by definition effected before 1 January 1993, are taxed in the same way, whether or not the chargeable event giving rise to the tax has been deferred. As for importations of goods from third countries effected before 1 January 1993 but not yet taxed at that date, the same provisions apply as if they had been effected after 31 December 1992: these goods are deemed not to have entered the Community until the moment at which the regime under which they were placed in 1992 - or before - comes to an end. Consequently, Article 7(3) can be applied to them.

Paragraph 2 also treats the end of certain internal Community transit operations in the same way as an importation of goods. This treatment is nevertheless subject to several limitations. First, it applies only to transit operations initiated for the purposes of a supply of taxable goods effected prior to 1 January 1993. Any supply of goods effected after 31 December 1992 by a taxable person is automatically covered by the transitional arrangements for the taxation of trade between Member States. In addition, such treatment applies only to supplies of goods which have qualified, or are eligible, for an exemption in the Member State from which the transport leaves, by virtue of the fact that the goods are being exported to another Member State. This restriction consequently avoids situations of double taxation.

By way of derogation from these principles of taxation, special measures are taken so that the tax is not charged in cases where goods are re-exported outside the Community or redispached to the Member State from which they were temporarily exported. These measures also apply to means of transport (i) where these have been acquired or imported in accordance with the general conditions of taxation in force on the domestic market of a Member State, (ii) where they were first put into service before 1 January 1988, or (iii) where the amount of the tax due is insignificant.

These special measures make for considerable simplification of the rules for taxing means of transport which are placed under a national VAT-exempt temporary importation regime prior to 1 January 1993 and which are not removed from this regime by 31 December 1992.

Point 24

This amendment follows from the provisions added to Article 7(3).

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**Proposal for a
COUNCIL DIRECTIVE
amending Directive 77/388/EEC
and introducing simplification measures**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Article 3 of Directive 91/680/EEC¹ amending the Sixth Directive 77/388/EEC of 17 May 1977² sets 1 January 1993 as the date of the entry into force of these provision in all the Member States;

Whereas in order to facilitate the application of these provisions and to introduce the simplifications needed, it is necessary to complete the common system of value added tax, as applicable on 1 January 1993, so as to clarify how the tax shall apply to certain operations carried out with third territories and certain operations carried out inside the Community, as well to define the transitional measures between the provisions in force on 31 December 1992 and those which will enter into force on 1 January 1993;

¹OJ No L 376 of 31.12. 1991

²OJ No L 145 of 13.6.1977, p 1

Whereas in order to guarantee the neutrality of the common system of value added tax in respect of the origin of goods the concept of a third territory and the definition of an import must be completed;

Whereas goods which for customs purposes do not satisfy the conditions laid down in Articles 9 and 10 of the Treaty and to which customs duty suspension arrangements also apply in respect of value added tax, remain subject to the specific value added tax rules when leaving the duty suspension arrangements; whereas for reasons of transparency it would appear necessary to specify the application of this principle;

Whereas it is necessary to state the definition of the place of taxation of goods sold on board a vessel, aircraft or train carrying out a movement inside the Community;

Whereas the transitional regime of taxation of trade between the Member States must be completed to take account both of the Community provisions relating to excise duties and the need to clarify and simplify the modalities of the application of the tax to certain operations carried out between the Member States as from 1 January 1993;

Whereas Directive 92/12/EEC¹ of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products lays down the procedures and obligations in relation to declarations particular to the shipment of such products to another Member State; whereas as a result the method of applying tax to certain supplies and intra-Community acquisitions of products liable to excise duties can be simplified to the benefit both of the persons liable to pay tax and the competent administrations;

Whereas it is necessary to define the field of application of the exemptions referred to in Article 28c; whereas it is also necessary to add to the provisions concerning the chargeability of the tax and the means for determining the taxable amount of certain intra-Community operations;

Whereas for the taxable operations in the domestic market which are carried out during the period laid down in Article 28l by taxable persons not established in that country, other than supplies of services for which the user is liable, it is necessary to guarantee an equivalent treatment in all the Member States; whereas to achieve this it is necessary that the provisions concerning the person liable to tax are harmonised and that all the Member States apply the normal regime of taxation to these operations; whereas these provisions allow, under certain conditions, to simplify taxation of intra-Community acquisitions of goods made in the Member State referred to in Article 28b(A)(1);

¹ OJ No L 76 of 23.3.92

Whereas in order to take account of the provisions relating to the person liable to pay tax in the domestic market and to avoid certain forms of fiscal fraud or evasion, it is necessary to lay down the Community provisions concerning the repayment of the tax to taxable persons not resident in the country referred to in Article 17(3) as modified by Article 28f;

Whereas the suppression as from 1 January 1993 of taxation at import and detaxation at export for trade between the Member States makes it necessary to have transitional measures in order to assure the neutrality of the common system of value added tax and to avoid situations of double-taxation or non-taxation;

Whereas consequently it is necessary to lay down special provisions for the case where a Community procedure, started before 1 January 1993 for the purposes of a supply effected before that date by a taxable person acting as such in respect of goods dispatched or transported to another Member State, is not completed until after 31 December 1992;

Whereas these provisions should also apply to taxable operations made before 1 January 1993 to which particular exemptions were applied which as a result delayed the taxable event;

Whereas it is also necessary to lay down special measures for means of transport which, not having been acquired or imported subject to the general domestic tax conditions of a Member State, have benefited, by the application of national measures, from an exemption from tax because of their temporary import from another Member State;

Whereas the application of these transitional measures, both in relation to trade between the Member States and operations with third territories, supposes the finalising of the definition of the operations to be submitted to taxation as from 1 January 1993 and to lay down for them the concepts of the place of taxation, the taxable event and the chargeability of the tax,

Whereas it is accordingly necessary to amend Directive 77/388/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended as follows:

(1) Article 3 (4) shall be replaced by the following:

"4. By way of derogation from paragraph 1, in view of the conventions and treaties applicable to them, the Principality of Monaco and the Isle of Man shall not be treated as third territories.

Member States shall take the measures necessary to ensure that transactions originating in or intended for:

-the Principality of Monaco are treated as transactions originating in or intended for the French Republic,

-the Isle of Man are treated as transactions originating in or intended for the United Kingdom of Great Britain and Northern Ireland."

(2) Article 7(1)(b) shall be replaced by the following:

"(b) the entry into the Community of goods from a third territory, other than the goods covered by (a)."

(3) In Article 7(3):

- first sub-paragraph add "(a),(b), (c) and (d)" after "Article 16(1)(B)";

- second sub-paragraph, the expression "under a temporary import regime in exemption from value added tax or" shall be added after the expression "on entry into the Community,";
- the following sub-paragraph shall be added

"For the application of the second sub-paragraph, "a temporary import regime with exemption from VAT" refers to Directive 85/362/EEC (1) as well as to the customs regime of temporary importation in total exemption to import duties which the goods could have benefited from if they had been imported within the meaning of paragraph 1(a).

(1) OJ No L 192 of 24.7.85, p 20"

(4) Article 8(1)(c) shall be replaced by the following:

"(c) in the case where the supply is made to passengers on board a ship, aircraft or train during an intra-Community transport of passengers: at the place of the departure of the transport. In the case of a return trip, the return leg is considered to be a separate transport.

For the purposes of applying this provision:

- "intra-Community transport of passengers" shall mean any transport of passengers where the place of departure and the point of arrival are situated on the territory of different Member States;

- "the place of departure of an intra-Community transport of passengers" shall mean the first point of passenger embarkation foreseen within the Community;
- "the point of arrival of an intra-Community transport of passengers" shall mean the last point of disembarkation of passengers foreseen within the Community

(5) Article 11(B)(1) shall be replaced by the following:

"1. The taxable amount shall be the value for customs purposes, determined in accordance with the Community provisions in force, this shall also apply for the import of goods referred to in Article 7(1)(b)."

(6) Article 12(1)(b) shall be replaced by the following:

"(b) In the cases provided for in the second and third sub-paragraphs of Article 10(3), the rate applicable shall be that in force at the time when the tax becomes chargeable.",

(7) Article 14(1)(c) shall be deleted.

(8) In Article 15 point 2 "The supply of goods dispatched or transported to a destination outside the Community by on behalf of a purchaser not established within the territory of the country" shall be replaced by "The supply of goods dispatched or transported to a destination outside the Community by on behalf of a purchaser not established within the Community",

(9) Article 28a(1)(a) second sub-paragraph shall be replaced by the following:

"By way of derogation from the first sub-paragraph intra-Community acquisitions of goods made under the conditions set out in paragraph 1a by a taxable person or non-taxable legal person shall not be subject to value added tax;"

(10) In Article 28a (1) a new point (c) shall be added as follows;

"(c) The intra-Community acquisition of goods which are subject to excise duties effected for consideration within the territory of the country by a taxable person, or a non-taxable legal person, who qualifies for the derogation referred to in point (a) second sub-paragraph, and for which the excise duties become chargeable within the territory of the country pursuant to Directive 92/12/EEC⁽¹⁾.

(1) OJ No L 24 of 23.3.1992"

(11) In Article 28a the following paragraph shall be inserted:

"(1a) The derogation provided for in the second sub-paragraph of paragraph 1(a) applies to intra-Community acquisitions of goods effected:

- by a taxable person who is eligible for the flat rate scheme provided for in Article 25, by a taxable person who carries out only supplies of goods or services in respect of which value added tax is not deductible, or by a non-taxable legal person,

- for a total amount not exceeding, during the current calendar year, a threshold which the Member States shall determine but which may not be less than the equivalent in national currency of ECU 10 000,

and

- provided that the total amount of intra-Community acquisitions of goods did not, during the previous calendar year, exceed the threshold referred to in the second indent.

The threshold which serves as the reference for the application of the above shall consist of the total amount, exclusive of value added tax due or paid in the Member State from which the goods are dispatched or transported, of intra-Community acquisitions of goods other than new means of transport and other than goods subject to excise duty."

(12) In Article 28b A(2) the following sub-paragraph shall be added:

" For the application of the first sub-paragraph, the intra-Community acquisition of goods is deemed to have been subject to tax in the Member State of arrival of the dispatch or transport of the goods insofar as the person acquiring the goods establishes that he has made a subsequent taxable supply in that Member State for which the purchaser has been designated liable for the tax due."

(13) In Article 28c (A):

- point (c) shall be replaced by the following:

"(c) the supply of goods subject to excise duty dispatched or transported to the purchaser, by the vendor, by the purchaser or on his behalf, outside the territory referred to in Article 3 but inside the Community, effected for taxable persons or non-taxable legal persons who qualify for the derogation set out in Article 28a(1)(a) second sub-paragraph, when the dispatch or transport of the goods is carried out in conformity with Article 7(4) and (5), or Article 16 of Directive 92/12/EEC.

This exemption shall not apply to supplies of goods subject to excise duty effected by taxable persons who benefit from the exemption from tax set out in Article 24";

- the following shall be added:

"(d) the supply of goods, in the sense of Article 28a(5)(b), which benefit from the exemptions set out above if they have been made on behalf of another taxable person."

14) Article 28c(E) shall be replaced by the following:

"E. Other Exemptions

(1) The following paragraph shall be added to Article 16:

"(1a) When they take up the option provided for in paragraph 1, the Member States shall take the measures necessary in order to ensure that the intra-Community acquisitions of goods placed under one of the regimes or in one of the situations foreseen in Article 16(1)(B) benefit from the same provisions as supplies of goods carried out within the territory of the country under the same conditions."

(2) In Article 16(2):

- **-"intra-Community acquisitions of goods made by a taxable person and" shall be added after "may opt to exempt" and "outside the Community" shall be added after "export them";**
- **-the following sub-paragraphs shall be added:**

"When they take up this option the Member States shall, subject to the consultation provided for in Article 29, extend the benefit of this exemption to intra-Community acquisitions of goods by a taxable person, imports for and supplies of goods to a taxable person intending to supply them, as they are or after processing, under the conditions laid down in Article 28c(A), as well as supplies of services relating to such supplies, up to a maximum equal to the value of his supplies of goods effected under the conditions laid down in Article 28c(A) during the preceding 12 months.

The Member States may set a unique maximum amount for transactions which they exempt under the previous sub-paragraphs."

(15) Article 28d(3) shall be replaced by the following:

"(3) By way of derogation from paragraph 2, tax shall become chargeable on the issue of the invoice provided for in Article 22(3)(a) first sub-paragraph where the invoice is issued to the person acquiring the goods after the date of the taxable event but before the 15th day of the month following that during which the taxable event occurs."

(16) In Article 28d(4) second sub-paragraph "after the date of the taxable event but" shall be added after "the invoice is issued".

(17) In Article 28e(1);

-first sub-paragraph, the second sentence shall be replaced by:

"In particular, in the case of the intra-Community acquisition of goods referred to in Article 28a(6), the taxable amount shall be determined in accordance with Article 11(A)(1)(b),(2) and (3)."

-second sub-paragraph, the following sentence shall be added:

"When, after the moment the intra-Community acquisition of goods was effected, the acquirer obtains the refund of excise duties paid in the Member State from which the goods were dispatched or transported, the taxable amount shall be reduced accordingly in the Member State where the acquisition took place."

(18) In Article 28e paragraphs(2) and (3) shall be renumbered (3) and (4) and a new paragraph (2) shall be inserted as follows:

"(2) For the supply of goods referred to in Article 28d(A)(d), the taxable amount shall be determined in accordance with Article 11(A)(1)(b), (2) and (3)."

(19) The following sub-paragraph shall be added to Article 17(4) as modified by Article 28f:

"For the application of the above:

- (a) the taxable persons referred to in Article 1 of Directive 79/1072/EEC shall also be considered for the application of the said Directive as taxable persons who are not established in the country when, inside the territory of the country, they only carry out supplies of goods and services to a person who has been designated as the person liable to pay the tax in accordance with Article 21(1)(a),
- (b) the taxable persons referred to in Article 1 of Directive 86/560/EEC shall also be considered for the application of the said Directive as taxable persons who are not established in the Community when, inside the territory of the country, they only carry out supplies of goods and services to a person who has been designated as the person liable to pay the tax in accordance with Article 21(1)(a),
- (c) Directives 79/1072/EEC and 86/560/EEC shall not apply to supplies of goods which are, or may be exempted under Article 28c(A) when the goods supplied are dispatched or transported by the acquirer or for his account."

(20) In Article 28g:

-- Article 21(1)(a) shall be replaced by the following:

"(a) taxable persons who carry out taxable transactions other than supplies of services referred to in (b).

Where the taxable supply of goods or services is effected by a taxable person not established in the country :

-the Member States shall authorise this taxable person to designate another taxable person, or a non taxable legal entity, established or identified for value added tax purposes in that country as liable for the tax. A tax representative or the person for whom the taxable transaction was carried out may be designated for this purpose;

-if this designation is not made the Member States may take measures to ensure that the tax is payable by another taxable person, or a non taxable legal entity, established or identified for value added tax purposes in that country. Inter alia a tax representative or the person for whom the taxable transaction was carried out may be designated for this purpose.

Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;"

-- Article 21(1)(b) shall be replaced by the following;

"(b) persons to whom services covered by Article 9(2)(e) are supplied, or persons, identified for value added tax purposes in the country, to whom services referred to in Article 28b (C),(D) or (E) are supplied, when the service is carried out by a taxable person established abroad; however, Member States may require that the supplier of the service shall be held jointly and severally liable for payment of the tax;"

-- Article 21(1)(d) shall be replaced by the following:

"(d) any person effecting a taxable intra-Community acquisition of goods.

Where an intra-Community acquisition of goods is effected by a taxable person or a non-taxable person established abroad:

- the Member States shall authorise this person to designate another taxable person, or non taxable legal entity, established or identified for value added tax purposes in that country as liable for the tax. A tax representative may be designated as that other person;
- if this designation is not made, the Member States may take measures to ensure that the tax is payable by another taxable person, or a non taxable legal entity, established or identified for value added tax purposes in that country. Inter alia a tax representative may be designated for this purpose.

Member States may also provide that someone other than the person who has carried out the intra-Community acquisition shall be held jointly and severally liable for payment of the tax;"

(21) In Article 28h:

-- in Article 22(1)(c) first indent "and other than a supply of goods or services to a person who has been designated as the person liable for the tax in accordance with Article 21(1)(a)" shall be added after "in accordance with Article 21(1)(b)";

-- in Article 22(1)(c) the following indent shall be inserted after the second indent:

"--every taxable person who, within the territory of the country, effects intra-Community acquisitions of goods for the purposes of his operations relating to the economic activities referred to in Article 4(2) carried out abroad,"

-- in Article 22(11) the following shall be added at the start of the paragraph:

"In the case of intra-Community acquisitions of products subject to excise duty referred to in Article 28a(1)(c) as well as"

(22) Article 28i shall be replaced by the following:

"Article 28i

Special scheme for small undertakings

The following sub-paragraph shall be added to Article 24(3):

"In all circumstances supplies of new means of transport effected under the conditions laid down in Article 28c (A) as well as supplies of goods and services effected by a taxable person who is not established in the territory of the country shall be excluded from the exemption from tax under paragraph 2."

(23) The following Article shall be added:

"Article 28n

Transitional measures

1. When goods:

--entered the territory of the country within the meaning of Article 3 before 1 January 1993,

and

--were placed, on entry into the territory of that country, under one of the arrangements referred to in Article 14(1)(b) or (c), or under one of the regimes referred to under Article 16(1)(A),

and

--have not left this regime before 1 January 1993,

the provisions in force at the moment the goods were placed under that regime shall continue to apply for the period, as determined by those provisions, the goods remain under that regime.

2. The following shall be deemed to be an import within the meaning of Article 7(1):

- (a) the removal, including irregular removal, of goods from the regime referred to in Article 14(1)(c) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;
- (b) the removal, including irregular removal, of goods from the regime referred to in Article 16(1)(A) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;
- (c) the termination of a Community internal transit operation started before 1 January 1993 in the Community for the purpose of the supply of goods for consideration made before 1 January 1993 in the Community by a taxable person acting as such,
- (d) the termination of an external Community transit operation started before 1 January 1993;

- (e) any irregularity or offence committed during a Community internal transit operation entered into under the conditions set out in (c)) or any Community external transit operation referred to in (d).
3. In the cases referred to in paragraph 2, the place of import, in the meaning of Article 7(2), shall be the Member State within the territory of which the goods cease to be covered by the regime under which they were placed before 1 January 1993.
4. By derogation to Article 10(3), the import of the goods in the sense of paragraph 2 shall terminate without the occurrence of chargeable event when:
- (a) the imported goods are dispatched or transported outside the Community within the meaning of Article 3;
- or
- (b) the imported goods, within the meaning of paragraph 2(a), are other than a means of transport and are dispatched or transported to the Member State from which they were exported and to the person who exported them;
- or
- (c) the imported goods, within the meaning of paragraph 2(a), are means of transport which were acquired or imported, before 1 January 1993 in accordance with the general conditions of taxation in force on the domestic market of a Member State, within the meaning of Article 3, and/or have not been subject by reason of their exportation to any exemption from or refund of VAT.

This condition is deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1988 or when the amount of tax due because of the importation is insignificant.

(24) The third indent of Article 33a (1)(b) shall be deleted.

Article 2

1. The Member States shall bring into force such laws, regulations and administrative provisions as are necessary to conform with this Directive on 1 January 1993.
2. Member States shall inform the Commission of the provisions which they adopt to apply this Directive.
3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.
4. When Member States adopt such measures they shall include a reference to this Directive or shall accompany them by such a reference on the occasion of their official publication. The manner in which such references shall be made shall be laid down by the Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

STATEMENT OF IMPACT ON SMES AND EMPLOYMENT

Council Directive 91/680/EEC of 16 December 1991 supplemented, with a view to completing the internal market, the common system of value added tax with the provisions necessary for the abolition of the fiscal frontiers. Major changes have thus been made to the sixth VAT Directive (77/388/EEC). In order to facilitate implementation on 1 January 1993, it is appropriate to refine and expand some of these new provisions.

This is purpose of this Directive. Therefore, the impact on SMEs of the proposed Directive is identical to that set out in the proposal for a Directive on the removal of fiscal frontiers (see statements of impact annexed to the documents COM(87)322 final/2 and COM(90) 182 final).

FINANCIAL STATEMENT

Application of this Directive will not affect the Community's own resources.

COM(92) 448 final

DOCUMENTS

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