

## COMMISSION DECISION

of 24 July 1998

**on the treatment for national accounts purposes of VAT fraud (the discrepancies between theoretical VAT receipts and actual VAT receipts)**

*(notified under document number C(1998) 2202)*

(Text with EEA relevance)

(98/527/EC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Directive 89/130/EEC, Euratom, of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices<sup>(1)</sup>, and in particular Article 1 thereof,

Whereas Commission Decision 94/168/EC, Euratom, of 22 February 1994 on measures to be taken for the implementation of Council Directive 89/130/EEC, Euratom on the harmonization of the compilation of gross national product at market prices<sup>(2)</sup>, relates in particular to tax evasion but does not explicitly describe how VAT evasion should be treated; whereas it is therefore appropriate to describe how such evasion should be treated;

Whereas, in order to ensure the exhaustiveness of their GDP and GNP estimates in accordance with Directive 89/130/EEC, Euratom, the Member States need to adjust those estimates so as to take VAT evasion into account;

Whereas such adjustment relates to that component of the discrepancies between theoretical VAT receipts and actual VAT receipts which is attributable to evasion not involving the connivance of the buyer ('without complicity');

Whereas the measures provided for in this Decision are compatible with the opinion of the committee set up by Article 6 of Directive 89/130/EEC, Euratom,

HAS ADOPTED THIS DECISION:

*Article 1*

The Member States shall calculate the value of VAT evasion 'without complicity' by applying the methods set out in the Annex to this Decision.

For the purposes of the above-mentioned calculation, the Member States shall determine theoretical VAT receipts and actual VAT receipts and calculate the discrepancy between these two amounts, by applying the following formula:

Evasion 'without complicity' = Theoretical VAT receipts *less* actual VAT receipts *less* time differences *less* insolvencies *less* missing revenue (evasion 'with complicity')

The Member States shall adjust, if necessary, the amount of value added included in their GDP and GNP estimates made in accordance with Directive 89/130/EEC, Euratom by adding to it the value, calculated using the above formula, of evasion 'without complicity'.

*Article 2*

In order to make the adjustment described in Article 1, the Member States may apply a method which is equivalent to that described in the first subparagraph of Article 1, and which produces comparable results.

<sup>(1)</sup> OJ L 49, 21. 2. 1989, p. 26.

<sup>(2)</sup> OJ L 77, 19. 3. 1994, p. 51.

*Article 3*

The Member States shall, no later than 1 October 1998, provide the Commission with an explanation of the sources and methods applied and state the value of the adjustments made. The Commission shall, in accordance with Article 19 of Council Regulation (EEC, Euratom) No 1552/89<sup>(1)</sup>, examine the validity of the sources and methods used and the adjustments made, and the comparability of the results obtained, particularly in cases where, in accordance with Article 2, the method described in the first subparagraph of Article 1 has not been used.

The time limit for the new Member States (Austria, Finland and Sweden) is fixed at 1 October 1999.

*Article 4*

If a Member State can demonstrate to the Commission that the equivalent calculation is already implicit in its accounts, Article 1 shall have no effect. Any Member State wishing to follow this route shall supply full documentation to the Commission by 1 October 1998 (for Austria, Finland and Sweden: 1 October 1999).

The Commission shall inform the GNP Committee on the outcome of the implementation of this Decision and, in particular, on the methods used by the Member States.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 24 July 1998.

*For the Commission*  
Yves-Thibault DE SILGUY  
*Member of the Commission*

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<sup>(1)</sup> OJ L 155, 7. 6. 1989, p. 1.

## ANNEX

The value of VAT evasion not involving the connivance of the buyer ('without complicity') is calculated using the two following variables:

1. The value of theoretical VAT receipts;
2. The discrepancies between theoretical VAT receipts and VAT receipts actually collected during the period.

**Calculation of theoretical VAT receipts**

The theoretical VAT receipts are the amounts of VAT which would be collected if all units subject to VAT were to pay it as required by law.

In order to calculate theoretical VAT receipts, the first step is to bring the VAT base into line with current legislation: in other words, to identify all the transactions which are subject to non-deductible VAT. Final household consumption is treated as wholly subject to non-deductible VAT, whereas other categories of uses have to be broken down in order to determine a rate of non-deductibility. This calculation is made using the most highly disaggregated national accounts data available. The VAT base is calculated in the light of all current legislation and rules governing VAT.

The second step is to apply the appropriate rate of VAT to each transaction constituting the VAT base as defined in the previous paragraph. The VAT rates applied must be those in force during the year for which the VAT base has been calculated. Theoretical VAT receipts are calculated in the light of all current legislation and rules governing VAT.

**Calculation of the discrepancies between theoretical VAT receipts and VAT receipts actually collected during the reference period**

The discrepancies between theoretical VAT receipts (calculated in the light of all current legislation and rules) and actual VAT receipts comprises four components:

1. Time differences between treasury data and national accounts data;
2. *Ad hoc* cancellations by the tax authorities of certain VAT claims in cases of insolvency;
3. Evasion involving the buyers' connivance (with complicity) (cases where the buyer does not pay VAT to the seller);
4. Evasion not involving the buyers' connivance (without complicity) (cases where the buyer pays VAT to the seller, but the latter fails to remit it to the tax authorities).

As a result, the value of evasion 'without complicity' is arrived at by deducting evasion 'with complicity' and insolvency-related cancellations from the discrepancies between theoretical VAT receipts and actual VAT receipts, taking into account time differences between the transaction giving rise to the VAT and the collection of VAT receipts by the tax authorities.

$\text{Evasion 'without complicity'} = \text{Theoretical VAT receipts less actual VAT receipts less time differences less insolvencies less missing receipts (evasion 'with complicity')}$
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Actual VAT receipts are the amounts actually collected by the tax authorities during the period to which the calculation of theoretical VAT receipts relates.

Adjustments for time differences are intended to correct receipts so as to allow for the fact that some payments of VAT made in the current year (*n*) relate to the previous year (*n-1*) and that some VAT payable in respect of year *n* is not actually collected until the following year (*n+1*).

There may be instances where current legislation entitles the tax authorities to make *ad hoc* cancellations of VAT claims in cases of insolvency. In such cases, the value of the cancellations must be deducted from the difference between theoretical VAT receipts and actual VAT receipts (unless it has already been taken into account in the calculation of theoretical VAT receipts).

In order to calculate the value of evasion 'with complicity', only those activities should be taken into account in respect of which an adjustment for undeclared work (non-recording in statistical files of economically active units) has been made.

By using this method, applying the adjustments for undeclared work previously made to the output of branches of economic activity and multiplying the corresponding amounts for additional sales (undeclared sales) by the appropriate rates of VAT, it is possible to estimate the value of 'missing' VAT receipts which the tax authorities have been denied because of VAT evasion 'with complicity'.

By way of example: if, following an adjustment for undeclared work, the estimate of the household consumption of a given product, excluding VAT, is increased by 15 %, and if the rate of VAT applying to purchases of that product is 18,6 %, the amount owing to the tax authorities can be calculated as follows:

Missing VAT receipts due to evasion 'with complicity' = value of sales of the product before adjustment × 15 % × 18,6 %.

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