

COUNCIL REGULATION (EEC, EURATOM) No 1553/89

of 29 May 1989

on the definitive uniform arrangements for the collection of own resources accruing from value added tax

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision (EEC, Euratom) 88/376 of 24 June 1988 on the Communities' own resources ⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the proposal from the Commission ⁽²⁾,

Having regard to the opinion of the European Parliament ⁽³⁾,

Having regard to the opinion of the Court of Auditors ⁽⁴⁾,

Whereas by virtue of Article 14 thereof, Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽⁵⁾ as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85 ⁽⁶⁾, applies for a transitional period ending on 31 December 1988;

Whereas the provisions relating to the definitive uniform arrangements for collecting resources from value added tax, hereinafter referred to as 'VAT resources' and the detailed rules for giving effect to these arrangements are to apply from 1 January 1989;

Whereas the revenue method should be chosen as the sole definitive method for determining the VAT resources base since this method is reliable and already applied by most Member States;

Whereas the provisions of Regulation (EEC, Euratom, ECSC) No 2892/77 may be retained unless they are no longer necessary or need to be amended in the light of experience acquired;

Whereas the experience acquired in implementing the procedures for correcting the statements has shown the need

to clarify the scope thereof, stipulating that it is generally applicable to all corrections;

Whereas Member States must provide the Commission with information concerning the procedures which they apply for registering taxable persons and determining and collecting VAT and on the modalities and results of their VAT control systems; whereas the Commission should consider, together with the Member State concerned, whether improvements to these procedures can be contemplated with a view to improving their effectiveness; whereas the Commission should produce a report every three years on the procedures applied in the Member States and on any improvements contemplated;

Considering the powers of the Court of Auditors pursuant to Article 206a of the EEC Treaty and Article 180a of the EAEC Treaty,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

VAT resources shall be calculated by applying the uniform rate, set in accordance with Decision 88/376/EEC, Euratom, to the base determined in accordance with this Regulation.

TITLE II

Scope

Article 2

1. The VAT resources base shall be determined from the taxable transactions referred to in Article 2 of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽⁷⁾ as last amended by Decision 84/386/EEC ⁽⁸⁾, with the exception of transactions exempted under Articles 13 to 16 of that Directive.

⁽⁷⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁸⁾ OJ No L 208, 3. 9. 1984, p. 58.

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 24.

⁽²⁾ OJ No C 128, 17. 5. 1988, p. 4 and OJ No C 15, 19. 1. 1989, p. 11.

⁽³⁾ OJ No C 309, 5. 12. 1988, p. 30.

⁽⁴⁾ OJ No C 191, 20. 7. 1988, p. 3.

⁽⁵⁾ OJ No L 336, 27. 2. 1977, p. 8.

⁽⁶⁾ OJ No L 356, 31. 12. 1985, p. 1.

2. For the purposes of applying paragraph 1, the following shall be taken into account for determining VAT resources:

- transactions which, in accordance with Article 28 (2) of Directive 77/388/EEC, are subject to exemption with refund of the tax paid at the preceding stage,
- transactions which Member States continue to subject to tax pursuant to Article 28 (3) (a) of Directive 77/388/EEC,
- transactions which Member States continue to exempt pursuant to Article 28 (3) (b) of Directive 77/388/EEC,
- transactions which are taxed under the right of option granted to taxable persons by Member States pursuant to Article 28 (3) (c) of Directive 77/388/EEC.

3. By way of derogation from paragraph 1, Member States shall have the option of leaving out of account, for the purpose of determining VAT resources, the transactions of taxable persons whose annual turnover, determined in accordance with the rules laid down in Article 24 (4) of Directive 77/388/EEC, does not exceed ECU 10 000 converted into national currency at the average rate for the financial year concerned; Member States may round upwards or downwards, by up to 10 %, the amounts which result from the conversion.

TITLE III

Method of calculation

Article 3

For a given calendar year, and without prejudice to Articles 5 and 6, the VAT resources base shall be calculated by dividing the total net VAT revenue collected by a Member State during that year by the rate at which VAT is levied during that same year.

If more than one VAT rate is applied in a Member State, the VAT resources base shall be calculated by dividing the total net VAT revenue collected by the weighted average rate of VAT. In this case the Member State shall calculate the weighted average rate, to four decimal places, by the common method defined in Article 4. This weighted average rate shall be expressed as a percentage.

Article 4

1. In order to calculate the weighting of the various rates as referred to in Article 3, the Member State shall break down, by VAT rate applied, all transactions which are

taxable under its national legislation and which do not entitle the customer to deduction of VAT, account being taken of Article 17 of Directive 77/388/EEC, and consumption on the farm by flat-rate farmers and their direct sales to final consumers.

The VAT rates used for the purposes of such calculation shall be those which, in accordance with paragraph 7, affect the VAT revenue collected during the year in question.

Transactions which are subject, pursuant to Article 28 (2) of Directive 77/388/EEC, to exemption with refund of the tax paid at the preceding stage shall be regarded as taxable transactions subject to a zero rate.

2. The breakdown by rate of VAT shall be applied to the following categories, if subject to non-deductible VAT:

- final consumption of private households, including consumption on the farm by flat-rate farmers and their direct sales to final consumers,
- intermediate consumption of private non-profit institutions and general government,
- intermediate consumption of other sectors,
- gross fixed capital formation of private non-profit institutions and general government,
- gross fixed capital formation of other sectors,
- improved and unimproved building land, as defined in Article 4 (3) (b) of Directive 77/388/EEC,
- transactions involving gold other than gold for industrial use

carried out in the territory referred to in Article 3 of Directive 77/388/EEC in respect of the Member State concerned.

3. For the purposes of the breakdown of final consumption, consumption on the farm by flat-rate farmers and their direct sales to final consumers shall be subject to a rate equivalent to the charge on inputs.

4. The breakdown of transactions by statistical category shall be effected by means of data taken from national accounts prepared in accordance with the European System of Integrated Economic Accounts (ESA). In order to calculate the VAT own resources base for any given financial year, reference shall be made to the national accounts relating to the last year but one before that financial year.

A Member State may be authorized, in accordance with the procedure provided for in Article 13, to use data relating to another year, which may not be earlier than the fifth year before the financial year in question.

5. For the purpose of identifying transactions subject to non-deductible VAT and effecting the breakdown by rate of

VAT, Member States may refer to data taken from sources complementary to the ESA and capable of being adapted thereto, that is, is the first instance, from internal national accounts if they provide the necessary breakdown, or, if not, from any other appropriate source.

6. In order to determine the weighting of each rate, Member States shall calculate the relationship between the value of the transactions to which that rate applies and the aggregate value of all transactions.

7. Should a Member State amend the VAT rate applicable to all or some transactions or the tax treatment for certain transactions in such a way as to affect the VAT revenue collected, it shall calculate a new weighted average rate. The new weighted average rate shall be applied to the revenue derived from application of the amended rate or tax treatment.

By way of derogation from the first subparagraph, the Member State may calculate a single weighted average rate. To this end, transactions in respect of which the rate or treatment has been changed shall be allocated to the old and new rates or to the old and new treatment *pro rata temporis*, with account being taken of the average period of time elapsing between entry into force of the new rate or treatment and the collection of revenue resulting therefrom, calculated over the entire year in question. This average period may be rounded off to the full month.

Article 5

1. For the purposes of applying Article 3, Member States shall, if appropriate, add to the revenue collected an amount corresponding to the total VAT which would have been collected but for the application of a scheme of graduated tax relief under Article 24 (2) of Directive 77/388/EEC.

2. The revenue collected by a Member State shall be corrected if the flat-rate compensation percentage fixed pursuant to Article 25 (3) of Directive 77/388/EEC applicable to transactions carried out by flat-rate farmers does not correspond to the percentage of the input VAT charge which was actually applied to such transactions with the exception of that relating to consumption on the farm and direct sales to final consumers during the year in question. The amount of the correction shall be equal to the difference between the two percentages.

Article 6

1. For the purposes of applying Article 2 (1) to transactions carried out by taxable persons whose annual turnover exceeds ECU 10 000 but who are exempted under Article 24 (2) of Directive 77/388/EEC and to the cases referred to in paragraph 2, Member States shall determine the VAT resources base from the returns to be made by taxable persons in accordance with Article 22 of that Directive or, where there is no return or the return does not

contain the necessary information, from appropriate data such as other tax returns, professional accounts or complete statistical series.

2. For the purposes of applying the second, third and fourth indents of Article 2 (2):

— with regard to the transactions listed in Annex E to Directive 77/388/EEC which Member States continue to tax pursuant to Article 28 (3) (a) of that Directive, Member States shall calculate the VAT resources base as if these transactions were exempted;

— with regard to the transactions listed in Annex F to Directive 77/388/EEC which Member States continue to exempt pursuant to Article 28 (3) (b) of that Directive, Member States shall calculate the VAT resources base as if these transactions were taxed;

— with regard to the transactions referred to in paragraph 1 (a) of Annex G to Directive 77/388/EEC which are taxed under the option given to taxable persons by Member States pursuant to Article 28 (3) (c) of that Directive, Member States shall calculate the VAT resources base as if these transactions were exempted.

3. Under the procedure provided for in Article 13, a Member State may be authorized:

— either not to take into account in calculating the VAT resources base:

(a) one or more of the categories of transactions listed in Annexes E, F and G to Directive 77/388/EEC to which paragraph 2 of this Article applies;

(b) the amount corresponding to the tax which would have been collected but for the application of a scheme of graduated tax relief under Article 24 (2) of Directive 77/388/EEC;

— or to calculate the VAT resources base in the cases referred to in (a) and (b) by using approximate estimates,

where precise calculation of the VAT resources base in these cases would be likely to involve administrative burdens which would be unjustified in relation to the effect of the transactions in question on the total VAT resources base of that Member State.

4. Where a Member State makes use of the second subparagraph of Article 17 (6) and of Article 17 (7) of Directive 77/388/EEC to restrict the exercise of the right to deduct, the VAT own resources base may be determined as if the exercise of the right to deduct had not been restricted.

The preceding subparagraph shall apply, in relation to the second subparagraph of Article 17 (6) of Directive 77/388/EEC, only in respect of the purchase of petroleum products and passenger cars used for business purposes, and of expenditure relating to the leasing and hiring and also the maintenance and repair of such cars.

5. Where tax refunds are granted by a Member State pursuant to Article 6 of Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel ⁽¹⁾ as last amended by Directive 89/194/EEC ⁽²⁾, the taxable amount of the transactions which gave rise to these refunds shall, if necessary, be subtracted from the VAT resources base.

TITLE IV

Provisions relating to accounting and making available of own resources

Article 7

1. Before 31 July the Member States shall send the Commission a statement of the total amount of the VAT resources base for the previous calendar year, calculated in accordance with Article 3, to which the rate referred to in Article 1 is to be applied.

2. The statement shall contain all the data used to determine the base which are required for the control referred to in Article 11. It shall indicate separately the base resulting from the transactions referred to in Article 5 and Article 6 (1) to (4).

3. The data to be used to establish the base shall be the most recent data available when the statement is produced.

Article 8

Member States shall send the Commission by 15 April each year an estimate of the VAT resources base for the following financial year.

Article 9

1. Any corrections, for whatever reason, to the statements referred to in Article 7 (1) for previous financial years shall be made in agreement between the Commission and the Member State concerned.

If the Member State does not give its agreement, the Commission, after re-examining the matter, shall take whatever measures it considers necessary for correct application of this Regulation.

All corrections shall be incorporated in aggregate statements at 31 July, which shall amend the previous statements for the financial years concerned.

2. No further corrections may be made to the annual statement referred to in Article 7 (1) after 31 July of the

⁽¹⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽²⁾ OJ No L 73, 17. 3. 1989, p. 47.

fourth year following the financial year concerned, unless they concern points previously notified either by the Commission or by the Member State concerned.

TITLE V

Provisions relating to control

Article 10

1. Member States shall inform the Commission by 30 April of each financial year of the solutions and modifications thereto that they propose to adopt in order to determine the VAT resources base for each of the categories of transaction referred to in Article 5 and Article 6 (1) to (4), indicating, where applicable, the nature of the data which they consider appropriate and an estimate of the value of the base for each of these categories of transactions.

Within 30 days the Commission shall send the other Member States the information referred to above which it has received from each Member State.

2. The Commission shall examine, in accordance with the procedure laid down in Article 13, the proposed solutions and modifications.

Article 11

1. As regards VAT resources, the Commission's controls shall be carried out with the competent authorities in the Member States. During these controls, the Commission shall ensure, in particular, that the operations to centralize the assessment base and to determine the weighted average rate referred to in Articles 3 and 4 and the total net value added tax collected have been performed correctly; it shall also ascertain that the data used where appropriate and that the calculations made to determine the amount of VAT resources resulting from the transactions referred to in Article 5 and Article 6 (1) to (4) comply with this Regulation.

2. Council Regulation (EEC, Euratom, ECSC) No 165/74 of 21 January 1974 determining the powers and obligations of officials appointed by the Commission pursuant to Article 14 (5) of Regulation (EEC, Euratom, ECSC) No 2/71 ⁽³⁾ shall apply to VAT resources controls. For the purposes of applying Article 5 of that Regulation, it shall be understood that the information referred to therein may be communicated only to those persons who, by virtue of their duties in making available and controlling VAT resources, must have knowledge of such information.

3. Following the controls referred to in paragraph 1, the annual statement for a given financial year shall be corrected as specified in Article 9.

⁽³⁾ OJ No L 20, 24. 1. 1974, p. 1.

Article 12

1. The Member States shall provide the Commission with information concerning the procedures which they apply for registering taxable persons and determining and collecting VAT and on the modalities and results of their VAT control systems.

2. The Commission shall consider, together with the Member State concerned, whether improvements to these procedures can be contemplated with a view to improving their effectiveness.

3. The Commission shall produce a report every three years on the procedures applied in the Member States and on any improvements contemplated.

The Commission shall submit that report to Parliament and the Council for the first time by 31 December 1991.

Article 13

1. The committee referred to in Article 20 of Regulation (EEC, Euratom, ECSC) No 1552/89 ⁽¹⁾, hereinafter called 'the committee', shall regularly examine, on the initiative of the Commission or at the request of a Member State, problems arising out of application of this Regulation.

2. Member States applying for the authorization provided for in Article 4 (4) or Article 6 (3) shall refer their application to the Commission as soon as possible and not later than 30 April of the financial year from which the authorization is to apply.

The Commission representative shall submit a draft decision to the committee as soon as possible and not later than 31 December of the financial year.

3. On the initiative of the Commission or at the request of a Member State, the committee shall examine the solutions referred to in Article 10.

If the committee's examination reveals differences of opinion as to the solutions envisaged, the Commission representative

shall submit a draft decision to the committee as soon as possible and not later than 31 December of the financial year from which the solution is to apply.

4. The committee shall deliver its opinion on the draft decisions referred to in paragraphs 2 and 3 within a period which the chairman may lay down according to the urgency of the matter involved, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

5. No later than 60 days after the committee has delivered its opinion, the Commission shall adopt a Decision which it shall communicate to the Member States.

TITLE VI

Final provisions

Article 14

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 1989.

It shall not apply, however, to the production or the correction of statements of the VAT resources base for years before 1989 which have been produced in accordance with Regulation (EEC, Euratom, ECSC) No 2892/77, which remains in force in respect of the statements concerned.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 May 1989.

For the Council
The President
C. ROMERO HERRERA

⁽¹⁾ See page 1 of this Official Journal.