

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 16 December 1991

supplementing the common system of value added tax and amending Directive 77/388/EEC  
with a view to the abolition of fiscal frontiers

(91/680/EEC)

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Article 8a of the Treaty defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas the completion of the internal market requires the elimination of fiscal frontiers between Member States and that to that end the imposition of tax on imports and the remission of tax on exports in trade between Member States be definitively abolished;

Whereas fiscal controls at internal frontiers will be definitively abolished as from 1 January 1993 for all transactions between Member States;

Whereas the imposition of tax on imports and the remission of tax on exports must therefore apply only to transactions

with territories excluded from the scope of the common system of value added tax;

Whereas, however, in view of the conventions and treaties applicable to them, transactions originating in or intended for the Principality of Monaco and the Isle of Man must be treated as transactions originating in or intended for the French Republic and the United Kingdom of Great Britain and Northern Ireland respectively;

Whereas the abolition of the principle of the imposition of tax on imports in relations between Member States will make provisions on tax exemptions and duty-free allowances superfluous in relations between Member States; whereas, therefore, those provisions should be repealed and the relevant Directives adapted accordingly;

Whereas the achievement of the objective referred to in Article 4 of the First Council Directive of 11 April 1967 <sup>(4)</sup>, as last amended by the Sixth Directive 77/388/EEC <sup>(5)</sup>, requires that the taxation of trade between Member States be based on the principle of the taxation in the Member State of origin of goods and services supplied without prejudice, as regards Community trade between taxable persons, to the principle that tax revenue from the imposition of tax at the final consumption stage should accrue to the benefit of the Member State in which that final consumption takes place;

Whereas, however, the determination of the definitive system that will bring about the objectives of the common system of value added tax on goods and services supplied

<sup>(1)</sup> OJ No C 252, 22. 9. 1987, p. 2,  
OJ No C 176, 17. 7. 1990, p. 8 and  
OJ No C 131, 22. 5. 1991, p. 3.

<sup>(2)</sup> OJ No C 324, 24. 12. 1990, p. 97.

<sup>(3)</sup> OJ No C 237, 12. 9. 1988, p. 19,  
OJ No C 332, 31. 12. 1990, p. 121.

<sup>(4)</sup> OJ No 71, 14. 4. 1967, p. 1301/67.

<sup>(5)</sup> OJ No L 145, 13. 6. 1977, p. 1.

between Member States requires conditions that cannot be completely brought about by 31 December 1992;

Whereas, therefore, provision should be made for a transitional phase, beginning on 1 January 1993 and lasting for a limited period, during which provisions intended to facilitate transition to the definitive system for the taxation of trade between Member States, which continues to be the medium-term objective, will be implemented;

Whereas during the transitional period intra-Community transactions carried out by taxable persons other than exempt taxable persons should be taxed in the Member States of destination, at those Member States' rates and under their conditions;

Whereas intra-Community acquisitions of a certain value by exempt persons or by non-taxable legal persons and certain intra-Community distance selling and supplies of new means of transport to individuals or exempt or non-taxable bodies should also be taxed, during the transitional period, in the Member States of destination, at those Member States' rates and under their conditions, in so far as such transactions would, in the absence of special provisions, be likely to cause significant distortions of competition between Member States;

Whereas the necessary pursuit of a reduction of administrative and statistical formalities for undertakings, particularly small and medium-sized undertakings, must be reconciled with the implementation of effective control measures and the need, on both economic and tax grounds, to maintain the quality of Community statistical instruments;

Whereas advantage must be taken of the transitional period of taxation of intra-Community trade to take measures necessary to deal with both the social repercussions in the sectors affected and the regional difficulties, in frontier regions in particular, that might follow the abolition of the imposition of tax on imports and of the remission of tax on exports in trade between Member States; whereas Member States should therefore be authorized, for a period ending on 30 June 1999, to exempt supplies of goods carried out within specified limits by duty-free shops in the context of air and sea travel between Member States;

Whereas the transitional arrangements will enter into force for four years and will accordingly apply until 31 December 1996; whereas they will be replaced by a definitive system for the taxation of trade between Member States based on the principle of the taxation of goods and services supplied in the Member State of origin, so that the objective referred to in Article 4 of the First Council Directive of 11 April 1967 is achieved;

Whereas to that end the Commission will report to the Council before 31 December 1994 on the operation of the

transitional arrangements and make proposals for the details of the definitive system for the taxation of trade between Member States; whereas the Council, considering that the conditions for transition to the definitive system have been fulfilled satisfactorily, will decide before 31 December 1995 on the arrangements necessary for the entry into force and the operation of the definitive system, the transitional arrangements being automatically continued until the entry into force of the definitive system and in any event until the Council has decided on the definitive system;

Whereas, accordingly, Directive 77/388/EEC, as last amended by Directive 89/465/EEC<sup>(1)</sup>, should be amended,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

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

1. Article 3 shall be replaced by the following:

#### Article 3

- (1) For the purposes of this Directive:

- "territory of a Member State" shall mean the territory of the country as defined in respect of each Member State in paragraphs 2 and 3,
- "Community" and "territory of the Community" shall mean the territory of the Member States as defined in respect of each Member State in paragraphs 2 and 3,
- "third territory" and "third country" shall mean any territory other than those defined in paragraphs 2 and 3 as the territory of a Member State.

- (2) For the purposes of this Directive, the "territory of the country" shall be the area of application of the Treaty establishing the European Economic Community as defined in respect of each Member State in Article 227.

- (3) The following territories of individual Member States shall be excluded from the territory of the country:

- Federal Republic of Germany:  
the island of Heligoland,  
the territory of Büsingen,
- Kingdom of Spain:  
Ceuta,  
Melilla,
- Republic of Italy:  
Livigno,  
Campione d'Italia,  
the Italian wates of Lake Lugano.

<sup>(1)</sup> OJ NO L 226, 3. 8. 1989, p. 21.

The following territories of individual Member States shall also be excluded from the territory of the country:

- Kingdom of Spain:  
the Canary Islands,
- French Republic:  
the overseas departments,
- Hellenic Republic  
Άγιο Όρος.

(4) 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.

(5) If the Commission considers that the provisions laid down in paragraphs 3 and 4 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council.

2. Article 7 shall be replaced by the following:

*'Article 7*

#### **Imports**

1. "Importation of goods" shall mean:

- (a) the entry into the Community of goods which do not fulfil the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community or, where the goods are covered by the Treaty establishing the European Coal and Steel Community, are not in free circulation;
- (b) the entry into the Community of goods from a territory specified in the second subparagraph of Article 3 (3) or from the Channel Islands.

2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.

3. Notwithstanding paragraph 2, where goods referred to in paragraph 1 (a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16 (1) (B), under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements.

Similarly, where goods referred to in paragraph 1 (b) are placed, on entry into the Community, under the

internal Community transit procedure provided for in Article 33a (1) (b), the place of import shall be the Member State within the territory of which this procedure ceases to apply.'

3. In Article 8 (1) (a), 'in a country other than' shall be replaced by 'in a Member State other than', and 'the Member State into which the goods are imported' shall be replaced by 'the Member State within the territory of which the installation or assembly is carried out'.

4. The following subparagraph shall be added to Article 8 (1):

'(c) in the case of goods supplied on board ships, aircraft or trains during transport the places of departure and destination of which are within the territory of the Community: the place where the goods are at the time of departure of the transport.'

5. Article 8 (2) shall be replaced by the following:

'2. By way of derogation from paragraph 1 (a), where the place of departure of the consignment or transport of goods is in a third territory, the place of supply by the importer as defined in Article 21 (2) and the place of any subsequent supplies shall be deemed to be within the Member State of import of the goods.'

6. Article 10 (3) shall be replaced by the following:

'3. The chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7 (3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by those arrangements.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and the tax shall become chargeable when the chargeable event for those Community duties occurs and those duties become chargeable.

Where imported goods are not subject to any of those Community duties, Member States shall apply the provisions in force governing customs duties as regards the occurrence of the chargeable event and the moment when the tax becomes chargeable.'

7. In Article 11 (B):

— paragraph 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.'

— paragraph 2 shall be deleted.

## 8. Article 11 (B) (3) shall be replaced by the following:

'3. The taxable amount shall include, in so far as they are not already included:

- (a) taxes, duties, levies and other charges due outside the importing Member State and those due by reason of importation, excluding the value added tax to be levied;
- (b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the importing Member State.

'First place of destination' shall mean the place mentioned on the consignment note or any other document by means of which the goods are imported into the importing Member State. In the absence of such an indication, the first place of destination shall be taken to be the place of the first transfer of cargo in the importing Member State.

Equally, Member States may include in the taxable amount the incidental expenses referred to above where they result from transport to another place of destination within the territory of the importing Member State if that place is known when the chargeable event occurs.'

9. In Article 11 (B) (5), 'from the Community' shall be added after 'have been temporarily exported', 'abroad' shall be replaced by 'outside the Community' and 'and the re-importation is not exempt under the provisions of Article 14 (1) (f)' shall be deleted.

## 10. Article 11 (C) (2) shall be replaced by the following:

'2. Where information for determining the taxable amount on importation is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate shall be determined in accordance with the Community provisions governing the calculation of the value for customs purposes.

Where information for the determination of the taxable amount of a transaction other than an import transaction is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate applicable shall be the latest selling rate recorded, at the time the tax becomes chargeable, on the most representative exchange market or markets of the Member State concerned, or a rate determined by reference to that or those markets, in accordance with the down by that Member State. However, for some of those transactions or for certain categories of taxable person, Member States may continue to apply the exchange rate determined in accordance with the Community provisions in force governing the calculation of the value for customs purposes.'

## 11. In Article 14 (1):

- subparagraph (b) shall be deleted,
- subparagraph (c) shall be replaced by the following:
  - '(c) goods imported for possible sale as defined in Article 29 of Directive 85/362/EEC (\*), as last amended by Directive 90/237/EEC (\*\*);

(\*) OJ No L 192, 24. 7. 1985, p. 20.

(\*\*) OJ No L 133, 24. 5. 1990, p. 91.'

- in subparagraph (d), 'or which would qualify therefor if they were imported from a third country' and 'on the home market' shall be deleted,
- in subparagraph (e), 'or would qualify therefor if they were imported from a third country' shall be deleted,
- subparagraph (f) shall be deleted,
- in subparagraph (g), 'or would qualify therefor if they were imported from a third country' shall be deleted.

## 12. The heading of Article 15 shall be replaced by the following:

'Exemption of exports from the Community and like transactions and international transport'.

## 13. In Article 15 (1) and (2), 'outside the territory of the country as defined in Article 3' shall be replaced by 'outside the Community'.

## 14. Article 15 (3) shall be replaced by the following:

- '3. The supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory of the Community, and dispatched or transported out of the Community by the person providing the services or by the customer if established in a third country or on behalf of either of them;'

## 15. The following indent shall be added to the first subparagraph of Article 15 (10):

- to another Member State and intended for the forces of any Member State which is a party to the North Atlantic Treaty, other than the Member State of destination itself, for the use of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defense effort.'

16. In the second subparagraph of Article 15 (10), 'subject to conditions and limitations laid down by Member States' shall be replaced by 'subject to conditions and limitations laid down by the host Member State'.
17. In Article 15 (12), 'from the Community' shall be added after 'which export them', and 'abroad' shall be replaced by 'outside the Community'.
18. Article 15 (13) shall be replaced by the following:
- '13. The supply of services including transport and ancillary transactions but excluding the supply of services exempt pursuant to Article 13, when they are directly linked:
- to the external transit or the export of goods from the Community or to the import of goods eligible under Articles 14 (1) (c) or 16 (1) (A),
  - to goods referred to in Article 7 (1) (b) which are subject to the internal Community transit procedure provided for in Article 33a (1) (b).'
19. In Article 15 (14), 'outside the territory of the country as defined in Article 3' shall be replaced by 'outside the Community'.
20. In Article 16 (1):
- A shall be replaced by the following:
 

'A. imports of goods which are intended to be placed under warehousing arrangements other than customs;'
  - B shall be replaced by the following:
 

'B. supplies of goods which are intended to be

    - a) produced to customs and, where applicable, placed in temporary storage;
    - b) placed in a free zone or in a free warehouse;
    - c) placed under customs warehousing arrangements or inward processing arrangements;
    - d) admitted into territorial waters:
      - in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland,
      - for the fuelling and provisioning of drilling or production platforms;
- e) placed under warehousing arrangements other than customs.
- The places referred to in (a), (b), (c) and (d) shall be as defined by the Community customs provisions in force;'
- C shall be replaced by the following:
 

'C. supplies of services relating to the supplies of goods referred to in B;'
  - D shall be replaced by the following:
 

'D. supplies of goods and of services carried out in the places listed in B and still subject to one of the arrangements specified therein;'
  - the following point E shall be added:
 

'E. supplies:
 
    - of goods referred to in Article 7 (1) (a) still subject to arrangements for temporary importation with total exemption from import duty or to external transit arrangements,
    - of goods referred to in Article 7 (1) (b) still subject to the internal Community transit procedure provided for in Article 33a,
 as well as supplies of services relating to such supplies.'
21. The following paragraph shall be inserted in Article 28:
- '3a. Pending a decision by the Council, which, under Article 3 of Directive 89/465/EEC (\*), is to act on the abolition of the transitional derogations provided for in paragraph 3, Spain shall be authorized to exempt the transactions referred to in point 2 of Annex F in respect of services rendered by authors and the transactions referred to in points 23 and 25 of Annex F.
- (\*) OJ No L 226, 3. 8. 1989, p. 21.'
22. The following Title XVIa and Articles 28a to 28m shall be inserted:
- 'TITLE XVIa
- TRANSITIONAL ARRANGEMENTS FOR THE TAXATION OF TRADE BETWEEN MEMBER STATES
- Article 28a*
- Scope**
1. The following shall also be subject to value added tax:
- a) intra-Community acquisitions of goods for consideration within the territory of the country by a taxable person acting as such or by a non-taxable

legal person where the vendor is a taxable person acting as such who is not eligible for the tax exemption provided for in Article 24 and who is not covered by the arrangements laid down in the second sentence of Article 8 (1) (a) or in Article 28b (B) (1).

By way of derogation from the first subparagraph, value added tax shall not be chargeable on intra-Community acquisitions of goods other than new means of transport and other than products subject to excise duty 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 of services that are not deductible, or by a non-taxable legal person,
- for a total amount, less value added tax due or paid in the Member State from which the goods are dispatched or transported, not exceeding, during the current calendar year, a threshold which 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, less 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 products subject to excise duty did not, during the previous calendar year, exceed the threshold referred to in the second indent.

Member States shall grant taxable persons and non-taxable legal persons eligible under the second subparagraph the right to opt for the general scheme laid down in the first subparagraph. Member States shall determine the detailed rules for the exercise of that option, which shall in any case apply for two calendar years;

- (b) intra-Community acquisitions of new means of transport effected for consideration within the country by taxable persons or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of (a) or by any other non-taxable person.

## 2. For the purposes of this Title:

- (a) the following shall be considered as 'means of transport': vessels exceeding 7,5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power

of which exceeds 7,2 kilowatts, intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15 (5) and (6);

- (b) the means of transport referred to in (a) shall not be considered as 'new' where both of the following conditions are fulfilled:

- they were supplied more than three months after the date of first entry into service,
- they have travelled more than 3 000 kilometres in the case of land vehicles, sailed for more than 100 hours in the case of vessels or flown for more than 40 hours in the case of aircraft.

Member States shall lay down the conditions under which the above facts can be regarded as established.

3. 'Intra-Community acquisition of goods' shall mean acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods to a Member State other than that from which the goods are dispatched or transported.

Where goods acquired by a non-taxable legal person are dispatched or transported from a third territory and imported by that non-taxable legal person into a Member State other than the Member State of arrival of the goods dispatched or transported, the goods shall be deemed to have been dispatched or transported from the Member State of import. That Member State shall grant the importer as defined in Article 21 (2) a refund of the value added tax paid in connection with the importation of the goods in so far as the importer establishes that his acquisition was subject to value added tax in the Member State of arrival of the goods dispatched or transported.

4. Any person who from time to time supplies a new means of transport under the conditions laid down in Article 28c (A) shall also be regarded as a taxable person.

The Member State within the territory of which the supply is effected shall grant the taxable person the right of deduction on the basis of the following provisions:

- the right of deduction shall arise and may be exercised only at the time of the supply,
- the taxable person shall be authorized to deduct the value added tax included in the purchase price or paid on the importation or intra-Community acquisition of the means of transport, up to an amount not exceeding the tax for which he would be liable if the supply were not exempt.

Member States shall lay down detailed rules for the implementation of these provisions.

5. The following shall be treated as supplies of goods effected for consideration:

(a) the delivery to another taxable person of contract work, as defined in Article 5 (5) (a), physically carried out within a Member State other than that within the territory of which the customer is identified for purposes of value added tax, where the following conditions are fulfilled:

- the materials used by the person undertaking the work have been dispatched or transported by or on behalf of the customer from the Member State within the territory of which the customer is identified for purposes of value added tax,
- the work finished or assembled by the person undertaking the work is transported or dispatched to the customer in the Member State in which the customer is identified for purposes of value added tax;

(b) the transfer by a taxable person of goods from his undertaking to another Member State.

The following shall be regarded as having been transferred to another Member State: any tangible property dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community for the purposes of his undertaking, other than for the purposes of one of the following transactions:

- the supply of the goods in question by the taxable person within the territory of the Member State of arrival of the dispatch or transport under the conditions laid down in the second sentence of Article 8 (1) (a) and in Article 28b (B) (1),
- the supply of the goods in question by the taxable person under the conditions laid down in Article 8 (1) (c),
- the supply of the goods in question by the taxable person within the territory of the country under the conditions laid down in Article 15 or in Article 28c (A),
- the supply to the taxable person, under the conditions set out in (a), of contract work carried out in the Member State of arrival of the dispatch or transport of the goods in question,
- the supply of a service performed for the taxable person and involving work on the goods in question physically carried out in the Member State of arrival of the dispatch or transport of the goods,

- temporary use of the goods in question within the territory of the Member State of arrival of the dispatch or transport of the goods for the purposes of the supply of services by the taxable person established within the territory of the Member State of departure of the dispatch or transport of the goods,

- temporary use of the goods in question, for a period not exceeding 24 months, within the territory of another Member State in which the import of the same goods from a third country with a view to temporary use would be eligible for the arrangements for temporary importation with full exemption from import duties.

6. The intra-Community acquisition of goods for consideration shall include the use by a taxable person for the purposes of his undertaking of goods dispatched or transported by or on behalf of that taxable person from another Member State within the territory of which the goods were produced, extracted, processed, purchased, acquired as defined in paragraph 1 or imported by the taxable person within the framework of his undertaking into that other Member State.

7. Member States shall take measures to ensure that transactions which would have been classed as "supplies of goods" as defined in paragraph 5 or Article 5 if they had been carried out within the territory of the country by a taxable person acting as such are classed as "intra-Community acquisitions of goods".

#### Article 28b

##### Place of transactions

##### A. *Place of the intra-Community acquisition of goods*

1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends.

2. Without prejudice to paragraph 1, the place of the intra-Community acquisition of goods referred to in Article 28a (1) (a) shall, however, be deemed to be within the territory of the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that that acquisition has been subject to tax in accordance with paragraph 1.

If, however, the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, the taxable amount shall be

reduced accordingly in the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition.

B. *Place of the supply of goods*

1. By way of derogation from Article 8 (1) (a) and (2), the place of the supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that of arrival of the dispatch or transport shall be deemed to be the place where the goods are when dispatch or transport to the purchaser ends, where the following conditions are fulfilled:

- the supply of goods is effected for a taxable person eligible for the derogation provided for in the second subparagraph of Article 28a (1) (a), for a non-taxable legal person who is eligible for the same derogation or for any other non-taxable person,
- the supply is of goods other than new means of transport and other than goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

Where the goods thus supplied are dispatched or transported from a third territory and imported by the supplier into a Member State other than the Member State of arrival of the goods dispatched or transported to the purchaser, they shall be regarded as having been dispatched or transported from the Member State of import.

2. However, where the supply is of goods other than products subject to excise duty, paragraph 1 shall not apply to supplies of goods dispatched or transported to the same Member State of arrival of the dispatch or transport where:

- the total value of such supplies, less value added tax, does not in one calendar year exceed the equivalent in national currency of ECU 100 000, and
- the total value, less value added tax, of the supplies of goods other than products subject to excise duty effected under the conditions laid down in paragraph 1 in the previous calendar year did not exceed the equivalent in national currency of ECU 100 000.

The Member State within the territory of which the goods are when dispatch or transport to the purchaser ends may limit the thresholds referred to above to the equivalent in national currency of ECU 35 000 where that Member State fears that the threshold of ECU 100 000 referred to above would lead to serious distortions of the conditions of competition. Member States which exercise this

option shall take the measures necessary to inform the relevant public authorities in the Member State of dispatch or transport of the goods.

Before 31 December 1994, the Commission shall report to the Council on the operation of the special ECU 35 000 thresholds provided for in the preceding subparagraph. In that report the Commission may inform the Council that the abolition of the special thresholds will not lead to serious distortions of the conditions of competition. Until the Council takes a unanimous decision on a Commission proposal, the preceding subparagraph shall remain in force.

3. The Member State within the territory of which the goods are at the time of departure of the dispatch or transport shall grant those taxable persons who effect supplies of goods eligible under paragraph 2 the right to choose that the place of such supplies shall be determined in accordance with paragraph 1.

The Member States concerned shall determine the detailed rules for the exercise of that option, which shall in any case apply for two calendar years.

C. *Place of the supply of services in the intra-Community transport of goods*

1. By way of derogation from Article 9 (2) (b), the place of the supply of services in the intra-Community transport of goods shall be determined in accordance with paragraphs 2, 3 and 4. For the purposes of this Title the following definitions shall apply:

- “the intra-Community transport of goods” shall mean transport where the place of departure and the place of arrival are situated within the territories of two different Member States,
- “the place of departure” shall mean the place where the transport of goods actually starts, leaving aside distance actually travelled to the place where the goods are,
- “the place of arrival” shall mean the place where the transport of goods actually ends.

2. The place of the supply of services in the intra-Community transport of goods shall be the place of departure.

3. However, by way of derogation from paragraph 2, the place of the supply of services in the intra-Community transport of goods rendered to customers identified for purposes of value added tax in a Member State other than that of the departure of the transport shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

4. Member States need not apply the tax to that part of the transport corresponding to journeys made over waters which do not form part of the territory of the Community as defined in Article 3.

D. *Place of the supply of services ancillary to the intra-Community transport of goods*

By way of derogation from Article 9 (2) (c), the place of the supply of services involving activities ancillary to the intra-Community transport of goods, rendered to customers identified for purposes of value added tax in a Member State other than that within the territory of which the services are physically performed, shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

E. *Place of the supply of services rendered by intermediaries*

1. By way of derogation from Article 9 (1), the place of the supply of services rendered by intermediaries, acting in the name and for the account of other persons, where they form part of the supply of services in the intra-Community transport of goods, shall be the place of departure.

However, where the customer for whom the services rendered by the intermediary are performed is identified for purposes of value added tax in a Member State other than that of the departure of the transport, the place of the supply of services rendered by an intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

2. By way of derogation from Article 9 (1), the place of the supply of services rendered by intermediaries acting in the name and for the account of other persons, where they form part of the supply of services the purpose of which is activities ancillary to the intra-Community transport of goods, shall be the place where the ancillary services are physically performed.

However, where the customer of the services rendered by the intermediary is identified for purposes of value added tax in a Member State other than that within the territory of which the ancillary service is physically performed, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him by the intermediary.

3. By way of derogation from Article 9 (1), the place of the supply of services rendered by

intermediaries acting in the name and for the account of other persons, when such services form part of transactions other than those referred to in paragraph 1 or 2 or in Article 9 (2) (e), shall be the place where those transactions are carried out.

However, where the customer is identified for purposes of value added tax in a Member State other than that within the territory of which those transactions are carried out, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him by the intermediary.

*Article 28c*

**Exemptions**

A. *Exempt supplies of goods*

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- (a) supplies of goods, as defined in Articles 5 and 28a (5) (a), dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods.

This exemption shall not apply to supplies of goods by taxable persons exempt from tax pursuant to Article 24 or to supplies of goods effected for taxable persons or non-taxable legal persons who qualify for the derogation in the second subparagraph of Article 28a (1) (a);

- (b) supplies of new means of transport, dispatched or transported to the purchaser by or on behalf of the vendor or the purchaser out of the territory referred to in Article 3 but within the Community, effected for taxable persons or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of Article 28a (1) (a) or for any other non-taxable person;

- (c) supplies of goods as defined in Article 28a (5) (b) which would qualify for the exemption provided for in (a) if they were carried out for another taxable person.

**B. Exempt intra-Community acquisitions of goods**

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- (a) the intra-Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within the territory of the country;
- (b) the intra-Community acquisition of goods the importation of which would in all circumstances be exempt under Article 14 (1);
- (c) the intra-Community acquisition of goods where, pursuant to Article 17 (3) and (4), the person acquiring the goods would in all circumstances be entitled to full reimbursement of the value added tax due under Article 28a (1).

**C. Exempt transport services**

Member States shall exempt the supply of intra-Community transport services involved in the dispatch or transport of goods to and from the islands making up the autonomous regions of the Azores and Madeira as well as the dispatch or transport of goods between those islands.

**D. Exempt importation of goods**

Where goods dispatched or transported from a third territory are imported into a Member State other than that of arrival of the dispatch or transport, Member States shall exempt such imports where the supply of such goods by the importer as defined in Article 21 (2) is exempt in accordance with paragraph A.

Member States shall lay down the conditions governing this exemption with a view to ensuring its correct and straightforward application and preventing any evasion, avoidance or abuse.

**E. Other exemptions**

- (a) Member States shall take the measures necessary to ensure that intra-Community acquisitions of goods placed under one of the arrangements or in one of the situations referred to in Article 16 (1) (B) benefit from the

same provisions as supplies of goods effected within the territory of the country under the same conditions.

- (b) Article 16 (2) shall be replaced by the following:

“2. Subject to the consultation provided for in Article 29, Member States may opt to exempt:

- (a) the intra-Community acquisition of goods by a taxable person, the importation and the supply of goods to a taxable person with a view to exportation, as they are or after processing, to third territories and supplies of services relating to his exporting activities, up to the value of his exports during the preceding 12 months;
- (b) the intra-Community acquisition of goods by a taxable person, the importation and the supply of goods to a taxable person with a view to supply to another Member State under the conditions laid down in Article 28c (A), as well as supplies of services relating to such supplies to another Member State, up to the value of his supplies of goods under the conditions laid down in Article 28c (A), during the preceding 12 months.

Member States may jointly set a maximum value for transactions which they exempt under (a) and (b).”

*Article 28d*

**Chargeable event and chargeability of tax**

1. The chargeable event shall occur when the intra-Community acquisition of goods is effected. The intra-Community acquisition of goods shall be regarded as being effected when the supply of similar goods is regarded as being effected within the territory of the country.
2. For the intra-Community acquisition of goods, tax shall become chargeable on the 15th day of the month following that during which the chargeable event occurs.
3. By way of derogation from paragraph 2, tax shall become chargeable on the issue of the invoice where the invoice is issued to the person acquiring the goods before the date laid down in paragraph 2.

4. By way of derogation from Article 10 (2) and (3), tax shall become chargeable for supplies of goods effected under the conditions laid down in Article 28c (A) on the 15th day of the month following that during which the chargeable event occurs.

However, tax shall become chargeable on the issue of the invoice where the invoice is issued before the 15th day of the month following that during which the chargeable event occurs.

#### Article 28e

##### Taxable amount and rate applicable

1. In the case of the intra-Community acquisition of goods, the taxable amount shall be established on the basis of the same elements as those used in accordance with Article 11 (A) to determine the taxable amount for supply of the same goods within the territory of the country. 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).

Member States shall take the measures necessary to ensure that the excise duty due or paid by the person effecting the intra-Community acquisition of a product subject to excise duty is included in the taxable amount in accordance with Article 11 (A) (2) (a).

2. The tax rate applicable to the intra-Community acquisition of goods shall be that in force when the tax becomes chargeable.

3. The tax rate applicable to the intra-Community acquisition of goods shall be that applied to the supply of like goods within the territory of the country.

#### Article 28f

##### Right of deduction

1. Article 17 (2), (3) and (4) shall be replaced by the following:

"2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

- (a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person liable for the tax within the territory of the country;
- (b) value added tax due or paid in respect of imported goods within the territory of the country;
- (c) value added tax due pursuant to Articles 5 (7) (a), 6 (3) and 28a (6);

(d) value added tax due pursuant to Article 28a (1) (a).

3. Member States shall also grant every taxable person the right to the deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

- (a) transactions relating to the economic activities referred to in Article 4 (2), carried out in another country, which would be deductible if they had been performed within the territory of the country;
- (b) transactions which are exempt pursuant to Article 14 (1) (i), 15, 16 (1) (B), (C), (D) or (E) or (2) or 28c (A);
- (c) any of the transactions exempt pursuant to Article 13 (B) (a) and (d) (1) to (5), when the customer is established outside the Community or when those transactions are directly linked with goods to be exported to a country outside the Community.

4. The refund of value added tax referred to in paragraph 3 shall be effected:

- to taxable persons who are not established within the territory of the country but who are established in another Member State in accordance with the detailed implementing rules laid down in Directive 79/1072/EEC (\*),
- to taxable persons who are not established within the territory of the Community, in accordance with the detailed implementing rules laid down in Directive 86/560/EEC (\*\*).

(\* ) OJ No L 331, 27. 12. 1979, p. 11.

(\*\* ) OJ No L 326, 21. 11. 1986, p. 40."

2. Article 18 (1) shall be replaced by the following:

"1. To exercise his right of deduction, a taxable person must:

- (a) in respect of deductions pursuant to Article 17 (2) (a), hold an invoice drawn up in accordance with Article 22 (3);
- (b) in respect of deductions pursuant to Article 17 (2) (b), hold an import document specifying him as consignee or importer and stating or permitting the calculation of the amount of tax due;
- (c) in respect of deductions pursuant to Article 17 (2) (c), comply with the formalities established by each Member State;
- (d) when he is required to pay the tax as a customer or purchaser where Article 21 (1) applies, comply with the formalities laid down by each Member State;

- (e) in respect of deductions pursuant to Article 17 (2) (d), set out in the declaration provided for in Article 22 (4) all the information needed for the amount of the tax due on his intra-Community acquisitions of goods to be calculated and hold an invoice in accordance with Article 22 (3)."

3. The following paragraph shall be inserted in Article 18:

"3a. Member States may authorize a taxable person who does not hold an invoice in accordance with Article 22 (3) to make the deduction referred to in Article 17 (2) (d); they shall determine the conditions and arrangements for applying this provision."

#### *Article 28g*

##### **Persons liable for payment of the tax**

Article 21 shall be replaced by the following:

"Article 21

##### **Persons liable to pay tax to the authorities**

The following shall be liable to pay value added tax:

1. under the internal system:
  - (a) the taxable person carrying out the taxable supply of goods or of services other than one of the supplies of services referred to in (b).

Where the taxable supply of goods or of services is effected by a taxable person established abroad, Member States may adopt arrangements whereby tax is payable by another person. Inter alios, a tax representative or the person for whom the taxable supply of goods or of services is carried out may be designated as that other person. Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;

- (b) the customer for a service referred to in Article 9 (2) (e) or Article 28b (C), (D) or (E) and effected by a taxable person established abroad.

However, Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax;

- (c) any person who mentions the value added tax on an invoice or other document serving as invoice;

- (d) any person effecting a taxable intra-Community acquisition of goods. Where an intra-Community acquisition of goods is effected by a person established abroad, Member States may adopt arrangements whereby tax is payable by another person. Inter alios, a tax representative may be designated as that other person. Member States may also provide that someone other than the person effecting the intra-Community acquisition of goods shall be held jointly and severally liable for payment of the tax;

2. on importation: the person or persons designated or accepted as being liable by the Member State into which the goods are imported."

#### *Article 28h*

##### **Obligations of persons liable for payment**

Article 22 shall be replaced by the following:

"Article 22

##### **Obligations under the internal system:**

1. (a) Every taxable person shall state when his activity as a taxable person commences, changes or ceases.
- (b) Without prejudice to (a), every taxable person referred to in Article 28a (1) (a), second subparagraph, shall state that he is effecting intra-Community acquisitions of goods when the conditions for application of the derogation provided for in that Article are not fulfilled.
- (c) Member States shall take the measures necessary to identify by means of an individual number:
  - every taxable person, with the exception of those referred to in Article 28a (4), who within the territory of the country effects supplies of goods or of services giving him the right of deduction, other than provisions of services for which tax is payable solely by the customer in accordance with Article 21 (1) (b). However, Member States need not identify certain taxable persons referred to in Article 4 (3),

— every taxable person referred to in paragraph 1 (b) and every taxable person who exercises the option provided for in the third subparagraph of Article 28a (1) (a).

(d) Each individual identification number shall have a prefix in accordance with ISO International Standard No 3166 — alpha 2 — by which the Member State of issue may be identified.

(e) Member States shall take the measures necessary to ensure that their identification systems distinguish the taxable persons referred to in (c) and to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions as laid down in this Title.

2. (a) Every taxable person shall keep accounts in sufficient detail for value added tax to be applied and inspected by the tax authority.

(b) Every taxable person shall keep a register of the goods he has dispatched or transported or which have been dispatched or transported on his behalf out of the territory defined in Article 3 but within the Community for the purposes of the transactions referred to in the fourth, fifth, sixth and seventh indents of Article 28a (5) (b).

Every taxable person shall keep a register of materials dispatched to him from another Member State by or on behalf of a taxable person identified for purposes of value added tax in that other Member State with a view to the supply to that taxable person of contract work.

3. (a) Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also issue an invoice, or other document serving as invoice, in respect of the supplies of goods referred to in Article 28b (B) (1) and in respect of goods supplied under the conditions laid down in Article 28c (A). A taxable person shall keep a copy of every document issued.

Every taxable person shall likewise issue an invoice in respect of any payment to account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment to account made to him by another taxable person or by a non-taxable legal person before the provision of services is completed.

(b) The invoice shall state clearly the price exclusive of tax and the relevant tax at each rate as well as any exemptions.

The invoice shall also indicate:

— in the case of the transactions referred to in Article 28b (C), (D) and (E), the number by which the taxable person is identified in the territory of the country and the number by which the customer is identified and under which the service has been rendered to him,

— in the case of the transactions referred to in Article 28c (A) (a), the number by which the taxable person is identified in the territory of the country and the number by which the person acquiring the goods is identified in another Member State,

— in the case of the supply of new means of transport, the particulars specified in Article 28a (2).

(c) Member States shall lay down the criteria that shall determine whether a document may be considered an invoice.

4. (a) Every taxable person shall submit a return by a deadline to be determined by Member States. That deadline may not be more than two months later than the end of each tax period. The tax period shall be fixed by each Member State at one month, two months or a quarter. Member States may, however, set different periods provided that they do not exceed one year.

(b) The return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions relative to such tax and deductions and the value of any exempt transactions.

(c) The return shall also set out:

— on the one hand, the total value, less value added tax, of the supplies of goods referred to in Article 28c (A) on which tax has become chargeable during the period.

The following shall also be added: the total value, less value added tax, of the supplies of goods referred to in the second sentence of Article 8 (1) (a) and in Article 28b (B) (1) effected within the territory of another

Member State for which tax has become chargeable during the return period where the place of departure of the dispatch or transport of the goods is situated in the territory of the country,

- on the other hand, the total value, less value added tax, of the intra-Community acquisitions of goods referred to in Article 28a (1) and (6) on which tax has become chargeable.

The following shall also be added: the total value, less value added tax, of the supplies of goods referred to in the second sentence of Article 8 (1) (a) and in Article 28b (B) (1) effected in the territory of the country on which tax has become chargeable during the return period, where the place of departure of the dispatch or transport of the goods is situated within the territory of another Member State.

5. Every taxable person shall pay the net amount of the value added tax when submitting the regular return. Member States may, however, set a different date for the payment of that amount or may demand an interim payment.

6. (a) Member States may require a taxable person to submit a statement, including all the particulars specified in paragraph 4, concerning all transactions carried out in the preceding year. That statement shall provide all the information necessary for any adjustments.

(b) Every taxable person identified for purposes of value added tax shall also submit a recapitulative statement of the persons acquiring goods identified for purposes of value added tax to whom he has supplied goods under the conditions laid down in Article 28c (A).

The recapitulative statement shall be drawn up for each calendar quarter within a period and in accordance with procedures to be determined by the Member States, which shall take the measures necessary to ensure that the provisions concerning administrative cooperation in the field of indirect taxation are in any event complied with.

The recapitulative statement shall set out:

- the number by which the taxable person is identified for purposes of value added tax in the territory of the country and under which he effected supplies of goods in the conditions laid down in Article 28c (A),
- the number by which each person acquiring goods is identified for purposes of value added tax in another Member State and under which the goods were supplied to him and, where appropriate,

an indication that supplies of goods as defined in Article 28a (5) (a) were effected for the person acquiring those goods,

- for each person acquiring goods, the total value of the supplies of goods effected by the taxable person. Those amounts shall be declared for the calendar quarter during which the tax became chargeable.

The recapitulative statement shall also set out:

- for the supplies of goods covered by Article 28c (A) (c), the number by means of which the taxable person is identified for purposes of value added tax in the territory of the country, the number by which he is identified in the Member State of arrival of the dispatch or transport and the value of the goods supplied determined in accordance with Article 28e (1),
- the amounts of adjustments made pursuant to Article 11 (C) (1). Those amounts shall be declared for the calendar quarter during which the person acquiring the goods is notified of the adjustment.

Where goods are dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community, with a view to the supply to the taxable person of contract work under the conditions set out in Article 28a (5) (a), the recapitulative statement drawn up for the quarter during which the goods were thus dispatched or transported shall set out:

- the number by means of which the taxable person is identified for purposes of value added tax in the territory of the Member State of departure of the dispatch or transport of the goods,
  - the number by means of which the taxable person to whom the goods have been sent with a view to the supply of contract work is identified in the Member State of arrival of the dispatch or transport of the goods,
  - a statement that the goods have been dispatched or transported under the conditions referred to above, for the purposes of contract work physically carried out in the Member State of arrival of the dispatch or transport.
- (c) By way of derogation from (b), Member States may:
- require recapitulative statements to be filed on a monthly basis,

- require that recapitulative statements give additional particulars.

(d) In the case of supplies of new means of transport effected under the conditions laid down in Article 28c (A) (b) by a taxable person identified for purposes of value added tax to a purchaser not identified for purposes of value added tax or by a taxable person as defined in Article 28a (4), Member States shall take the measures necessary to ensure that the vendor communicates all the information necessary for value added tax to be applied and inspected by the tax authority.

(e) Member States may require taxable persons who in the territory of the country effect intra-Community acquisitions of goods as defined in Article 28a (1) (a) and (6) to submit statements giving details of such acquisitions provided, however, that such statements may not be required for a period of less than one month.

Member States may also require persons who effect intra-Community acquisitions of new means of transport as defined in Article 28a (1) (b) to provide, when submitting the return referred to in paragraph 4, all the information necessary for value added tax to be applied and inspected by the tax authority.

7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21 (1) (a) and (b), are considered to be liable to pay the tax instead of a taxable person established abroad or who are jointly and severally liable for the payment comply with the above obligations relating to declaration and payment.

8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

9. (a) Member States may release from certain or all obligations:

- taxable persons carrying out only supplies of goods or of services which are exempt pursuant to Articles 13 and 15,
- taxable persons eligible for the exemption from tax provided for in Article 24 and for

the derogation provided for in Article 28a (1) (a), second subparagraph,

- taxable persons carrying out none of the transactions referred to in paragraph 4 (c).

(b) Member States may release taxable persons other than those referred to in (a) from certain of the obligations referred to in 2 (a).

(c) Member States may release taxable persons from payment of the tax due where the amount involved is insignificant.

10. Member States shall take measures to ensure that non-taxable legal persons who are liable for the tax payable in respect of intra-Community acquisitions of goods covered by the first subparagraph of Article 28a (1) (a) comply with the above obligations relating to declaration and payment and that they are identified by an individual number as defined in paragraph 1 (c), (d) and (e).

11. In the case of intra-Community acquisitions of new means of transport covered by Article 28a (1) (b), Member States shall adopt arrangements for declaration and subsequent payment.

12. Acting unanimously on a proposal from the Commission, the Council may authorize any Member State to introduce particular measures to simplify the statement obligations laid down in paragraph 6 (b). Such simplification measures, which shall not jeopardize the proper monitoring of intra-Community transactions, may take the following forms:

(a) Member States may authorize taxable persons who meet the following three conditions to file one-year recapitulative statements indicating the numbers by which the persons to whom those taxable persons have supplied goods under the conditions laid down in Article 28c (A) are identified for purposes of value added tax in other Member States:

- the total annual value, less value added tax, of their supplies of goods or provisions of services, as defined in Articles 5, 6 and 28a (5), does not exceed by more than ECU 35 000 the amount of the annual turnover which is used as a reference for application of the exemption from tax provided for in Article 24,
- the total annual value, less value added tax, of supplies of goods effected by them under the conditions laid down in Article 28c (A) does not exceed the equivalent in national currency of ECU 15 000,

- supplies of goods effected by them under the conditions laid down in Article 28c (A) are other than supplies of new means of transport;
- (b) Member States which set at over three months the tax period for which taxable persons must submit the returns provided for in paragraph 4 may authorize such persons to submit recapitulative statements for the same period where those taxable persons meet the following three conditions:
  - the overall annual value, less value added tax, of the goods and the services they supply, as defined in Articles 5, 6 and 28a (5), does not exceed the equivalent in national currency of ECU 200 000,
  - the total annual value, less value added tax, of supplies of goods effected by them under the conditions laid down in Article 28c (A) does not exceed the equivalent in national currency of ECU 15 000,
  - supplies of goods effected by them under the conditions laid down in Article 28c (A) are other than supplies of new means of transport."

#### Article 28i

##### Special scheme for small undertakings

The following subparagraph shall be added to Article 24 (3):

"In any event supplies of new means of transport effected under the conditions laid down in Article 28c (A) shall be excluded from exemption from tax under paragraph 2."

#### Article 28j

##### Common flat-rate scheme for farmers

1. The following subparagraph shall be added to Article 25 (4):

"When they exercise this option, Member States shall take the measures necessary to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions as laid down in Title XVIa."

2. Article 25 (5) and (6) shall be replaced by the following:

"5. The flat-rate percentages provided for in paragraph 3 shall be applied to the prices, exclusive of tax, of:

- (a) agricultural products supplied by flat-rate farmers to taxable persons other than those eligible within the territory of the country for the flat-rate scheme provided for in this Article;

- (b) agricultural products supplied by flat-rate farmers, under the conditions laid down in Article 28c (A), to non-taxable legal persons not eligible, in the Member State of arrival of the dispatch or transport of the agricultural products thus supplied, for the derogation provided for in Article 28a (1) (a), second subparagraph;
- (c) agricultural services supplied by flat-rate farmers to taxable persons other than those eligible within the territory of the country for the flat-rate scheme provided for in this Article.

This compensation shall exclude any other form of deduction.

6. In the case of the supplies of agricultural products and of agricultural services referred to in paragraph 5, Member States shall provide for the flat-rate compensation to be paid either:

- (a) by the purchaser or customer. In that event, the taxable purchaser or customer shall be authorized, as provided for in Article 17 and in accordance with the procedures laid down by the Member States, to deduct from the tax for which he is liable within the territory of the country the amount of the flat-rate compensation he has paid to flat-rate farmers.

Member States shall refund to the purchaser or customer the amount of the flat-rate compensation he has paid to flat-rate farmers in respect of any of the following transactions:

- supplies of agricultural products effected under the conditions laid down in Article 28c (A) to taxable persons, or to non-taxable legal persons acting as such in another Member State within which they are not eligible for the derogation provided for in the second subparagraph of Article 28a (1) (a),
- supplies of agricultural products effected under the conditions laid down in Article 15 and in Article 16 (1) (B), (D) and (E) to taxable purchasers established outside the Community, provided that the products are used by those purchasers for the purposes of the transactions referred to in Article 17 (3) (a) and (b) or for the purposes of services which are deemed to be supplied within the territory of the country and on which tax is payable solely by the customers under Article 21 (1) (b),
- supplies of agricultural services to taxable customers established within the Community but in other Member States or to taxable customers established outside the Community, provided that the services are used by those customers for the purposes of the transactions

referred to in Article 17 (3) (a) and (b) and for the purposes of services which are deemed to be supplied within the territory of the country and on which tax is payable solely by the customers under Article 21 (1) (b).

Member States shall determine the method by which the refunds are to be made; in particular, they may apply Article 17 (4); or

(b) by the public authorities.”

3. The following subparagraph shall be added to Article 25 (9):

“Whenever they exercise the option provided for in this Article, Member States shall take all measures necessary to ensure that the same method of taxation is applied to supplies of agricultural products effected under the conditions laid down in Article 28b (B) (1), whether the supply is effected by a flat-rate farmer or by a taxable person other than a flat-rate farmer.”

#### Article 28k

#### Miscellaneous provisions

The following provisions shall apply until 30 June 1999:

1. Member States may exempt supplies by tax-free shops of goods to be carried away in the personal luggage of travellers taking intra-Community flights or sea crossings to other Member States. For the purposes of this Article:

- (a) “tax-free shop” shall mean any establishment situated within an airport or port which fulfils the conditions laid down by the competent public authorities pursuant, in particular, to paragraph 5;
- (b) “traveller to another Member State” shall mean any passenger holding a transport document for air or sea travel stating that the immediate destination is an airport or port situated in another Member State;
- (c) “intra-Community flight or sea crossing” shall mean any transport, by air or sea, starting within the territory of the country as defined in Article 3, where the actual place of arrival is situated within another Member State.

Supplies of goods effected by tax-free shops shall include supplies of goods effected on board aircraft or vessels during intra-Community passenger transport.

This exemption shall also apply to supplies of goods effected by tax-free shops in either of two Channel Tunnel terminals, for passengers holding valid tickets for the journey between those two terminals.

2. Eligibility for the exemption provided for in paragraph 1 shall apply only to supplies of goods:

- (a) the total value of which per person per journey does not exceed the limits laid down by the Community provisions in force for the movement of travellers between third countries and the Community.

Where the total value of several items or of several supplies of goods per person per journey exceeds those limits, the exemption shall be granted up to those amounts, on the understanding that the value of an item may not be split;

- (b) involving quantities per person per journey not exceeding the limits laid down by the Community provisions in force for the movement of travellers between third countries and the Community.

The value of supplies of goods effected within the quantitative limits laid down in the previous subparagraph shall not be taken into account for the application of (a).

3. Member States shall grant every taxable person the right to a deduction or refund of the value added tax referred to in Article 17 (2) in so far as the goods and services are used for the purposes of his supplies of goods exempt under this Article.

4. Member States which exercise the option provided for in Article 16 (2) shall also grant eligibility under that provision to imports, intra-Community acquisitions and supplies of goods to a taxable person for the purposes of his supplies of goods exempt pursuant to this Article.

5. Member States shall take the measures necessary to ensure the correct and straightforward application of the exemptions provided for in this Article and to prevent any evasion, avoidance or abuse.

#### Article 28l

#### Period of application

The transitional arrangements provided for in this Title shall enter into force on 1 January 1993. Before 31 December 1994 the Commission shall report to the Council on the operation of the transitional arrangements and submit proposals for a definitive system.

The transitional arrangements shall be replaced by a definitive system for the taxation of trade between Member States based in principle on the taxation in the Member State of origin of the goods or services supplied. To that end, after having made a detailed examination of that report and considering that the conditions for transition to the definitive system have been fulfilled satisfactorily, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall decide before 31 December 1995 on the arrangements necessary for the entry into force and the operation of the definitive system.

The transitional arrangement shall enter into force for four years and shall accordingly apply until 31 December 1996. The period of application of the transitional arrangements shall be extended automatically until the date of entry into force of the definitive system and in any event until the Council has decided on the definitive system.

#### *Article 28m*

#### **Rate of conversion**

To determine the equivalents in their national currencies of amounts expressed in ecus in this Title Member States shall use the rate of exchange applicable on 16 December 1991 (\*).

(\* ) OJ No C 328, 17. 12. 1991, p. 4.'

23. Article 33 shall be replaced by the following:

#### *'Article 33*

1. Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes, provided however that those taxes, duties or charges do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

2. Any reference in this Directive to products subject to excise duty shall apply to the following products as defined by current Community provisions:

- mineral oils,
- alcohol and alcoholic beverages,
- manufactured tobacco.'

24. The following Article shall be inserted:

#### *'Article 33a*

1. Goods entering the Community from any of the territories specified in the second subparagraph of Article 3 (3) or from the Channel Islands shall be subject to the following provisions:

- (a) the formalities relating to the entry of such goods into the Community shall be completed in accordance with Regulation (EEC) No 717/91 (\*).
- (b) the internal Community transit procedure shall apply where, on entry into the Community, those goods are:
  - intended for a Member State other than that within the territory of which they are at the time of their entry into the Community,
  - intended for re-export from the Community after repair, alteration, adjustment, contract or processing work within the Community,
  - placed under temporary importation arrangements within the meaning of Directive 85/362/EEC.

2. Goods originating in the Community and dispatched or transported to any of the territories specified in the second subparagraph of Article 3 (3) or to the Channel Islands shall be subject to the following provisions:

- (a) the formalities relating to the export of those goods with the Community shall be completed in accordance with Regulation (EEC) No 717/91;
- (b) the internal Community transit procedure shall apply where those goods are supplied for export in a Member State other than that from which the goods leave the Community.

(\* ) OJ No L 78, 26. 3. 1991, p. 1.'

#### *Article 2*

1. The following Directives shall cease to have effect on 31 December 1992 as regards relations between Member States:

- Directive 83/181/EEC <sup>(1)</sup>, as last amended by Directive 89/219/EEC <sup>(2)</sup>,
- Directive 85/362/EEC.

<sup>(1)</sup> OJ No L 105, 23. 4. 1983, p. 38.

<sup>(2)</sup> OJ No L 92, 5. 4. 1989, p. 13.

2. The provisions on value added tax laid down in the following Directive shall cease to have effect on 31 December 1992:

- Directive 74/651/EEC <sup>(1)</sup>, as last amended by Directive 88/663/EEC <sup>(2)</sup>,
- Directive 83/182/EEC <sup>(3)</sup>,
- Directive 83/183/EEC <sup>(4)</sup>, as amended by Directive 89/604/EEC <sup>(5)</sup>.

3. The provisions of Directive 69/169/EEC <sup>(6)</sup> as last amended by Directive 91/191/EEC <sup>(7)</sup> relating to value added tax shall cease to have effect on 31 December 1992 as regards relations between Member States.

#### Article 3

1. Member States shall adapt their present value added tax systems to this Directive.

They shall bring into force such laws, regulations and administrative provisions as are necessary for their arrangements thus adapted to Article 1 (1) to (20) and (22) to (24) and 2 of this Directive to enter into force 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 4

This Directive is addressed to the Member States.

Done at Brussels, 16 December 1991.

*For the Council*  
*The President*  
W. KOK

<sup>(1)</sup> OJ No L 354, 30. 12. 1974, p. 6.

<sup>(2)</sup> OJ No L 382, 31. 12. 1988, p. 40.

<sup>(3)</sup> OJ No L 105, 23. 4. 1983, p. 59.

<sup>(4)</sup> OJ No L 105, 23. 4. 1983, p. 64.

<sup>(5)</sup> OJ No L 348, 29. 11. 1989, p. 28.

<sup>(6)</sup> OJ No L 133, 4. 6. 1969, p. 6.

<sup>(7)</sup> OJ No L 94, 16. 4. 1991, p. 24.