

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

**SUPPLEMENTING**

**THE COMMON SYSTEM OF VALUE ADDED TAX  
AND AMENDING DIRECTIVE 77/388/EEC  
- SPECIAL SCHEME FOR GOLD -**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### I. INTRODUCTION

Under the sixth VAT Directive, all transactions relating to gold carried out by taxable persons are in principle taxable (except those referred to in Articles 14(1)(j) and 15(11)). However, on the basis of Article 28(3)(b) and point 26 of Annex F, Member States may, for a transitional period, maintain existing exemptions relating to gold other than for industrial use.

In its initial proposal for an eighteenth VAT Directive, the Commission had envisaged abolishing the said derogation with effect from 1 January 1986. In the face of objections from Parliament, the Commission conceded that, in view of the specific nature of this economic sector, the question of VAT on gold would have to be examined in more detail and that an ad hoc proposal would have to be presented.

The eighteenth Council Directive adopted on 18 July 1989 requires the Commission to present proposals on the abolition of the remaining derogations in Annexes E and F (including, consequently, the one relating to gold other than for industrial use), in view of the distortions of competition which exist or might arise as the internal market is completed. Most of these remaining derogations are dealt with in a proposal for a new Directive presented by the Commission to the Council on 22 July 1992. In the case of gold, however, the Commission undertook, given the complexity of the subject, to propose an ad hoc Directive.

A coherent proposal on gold is made all the more necessary by the existing differences between Member States which result not only from the said transitional derogation for so-called investment gold but also from the wide variety of tax schemes applicable to gold in general, for example under the simplification measures referred to in Article 27.

Significant differences can be noted between the Member States' respective laws and special features of taxation in some Member States:

- Some Member States which tax gold are at a disadvantage vis-à-vis others which exempt it. There is a tendency to stock gold in the latter, while the former in addition find themselves unable to track transactions in securities representing that gold.
- Significant differences in the levels of taxation between Member States have given rise to situations in which letter-box companies are formed for the purposes of importing gold from low-tax or tax-free countries and then reselling it with VAT and disappearing before paying over the tax to the Exchequer. Some Member States have already been authorized, under Article 27, to take measures aimed at limiting this fraud.

In order to, as far as possible, rule out distortions of competition and fraud, the Commission proposes specific rules through the insertion into the Sixth Directive of an Article 26a. An Article 28o has also been inserted to take account of the transitional arrangements established by Directive 91/680/EEC on the abolition of fiscal frontiers. At the same time, point 26 of Annex F to the Sixth Directive is deleted.

## II. ARTICLE 1

### (INSERTION OF ARTICLE 26a)

#### A. SCOPE

The scope covers only supplies and the provision of services. Importation is not included as a chargeable event because the normal rules will apply in that case, including the provision in the second subparagraph of Article 23 of the Sixth Directive allowing an option.

#### Intermediaries

The services of intermediaries, i.e. persons acting on behalf and for the account of others, should be made subject to the same arrangements as laid down for the supplies of goods to which they relate. This is because, given the special scheme set up, in particular the exemption of investment gold, sales and the services relating to those sales are to be placed on an equal footing so as to avoid affecting transactions in the gold itself.

#### Book gold

This is gold represented by securities (gold certificates) or deposited in accounts (gold accounts). In both cases, the holder is entitled to a quantity of gold stocked at a financial institution.

Certificates may confer a right of ownership or claim, be registered or made out to the bearer, and relate to identified or fungible gold.

In the case of an ownership certificate, the issue and any transfers of the security amount strictly speaking to a supply of goods at the place where the gold is situated; by contrast, in the absence of any other provisions (see point D.2. below), physical delivery of the gold in exchange for the certificate cannot be considered to constitute a supply of goods because the gold has already been transferred when the certificate was itself transferred.

In the case of a certificate of claim, the issue and any subsequent transfers constitute a supply of services (quite distinct from those of intermediaries).

Whatever the nature of these certificates, all these transactions fall within the scope of the Directive being proposed as the supply of either goods or services.

Gold accounts, on the other hand, are evidenced by a deposit contract (supply of a service). This contract may be preceded by a supply of gold in cases where the depositor does not hand over the gold himself but buys it at the bank which opens the account. Transfers of that gold or a part of it to other gold accounts must be regarded as supplies of goods. Withdrawal of the gold does not in itself constitute a chargeable event since the gold has either already been supplied by the bank or has been handed over by the holder of the account. Supplies of gold from a gold account are not explicitly mentioned because they are covered by the first indent, which deals with supplies in general.

#### The futures market and options

Futures contracts embody an obligation to sell or buy a given (predetermined) quantity of gold at a specified date and at a variable price. An option is the right to buy or sell a given quantity of gold at a set price at a fixed date. These obligations or rights constitute the supply of services up to the time when delivery takes place.

### B. DEFINITIONS

These definitions are intended to delimit the scope of the two tax schemes described in sections C and D. The notions of gold for industrial use or other than for industrial use contained in Annex F to the Sixth Directive, have been abandoned. This is because it is considered that the VAT arrangements should not be based on the use made of the metal (and hence on the buyer's intention). The new concept of investment gold (which serves as a basis for exemption) is intended to take in transactions which, being in nature financial investments, do not give rise to actual consumption of the metal either at the final stage or at the stage of industrial use. Moreover, the notion of monetary gold, which, like that of industrial gold, is also used in some national laws, remains confined to gold sold to the Central Banks, in respect of which the Sixth Directive already provides for exemption with deduction (Articles 14(1)(j) and 15(11)). The latter exemption, which concerns both supplies within the territory of the country and imports, is justified by the fact that, in accordance with Directive 88/361/EEC on capital movements, monetary gold is regarded as forming part of central banks' financial capital. All the other types of gold, defined in this proposal for a Directive as investment gold and gold other than investment gold, are to be regarded as goods.

#### (a) Gold in general

Gold is defined by reference to its purity so as to limit the scope of the proposal.

Furthermore, the proposal explicitly excludes certain pieces of gold and objects in general. This is because the value of non-quoted pieces or pieces which do not contain a sufficient quantity of gold, like that of other objects, is determined more by factors other than the intrinsic value of the metal (artistic, numismatic value, etc.). All these objects are subject to the normal arrangements or to the special scheme of Article 32.

- In the case of pieces which do fall within the scope of the proposal, the requirement that they be quoted shows that goods are involved whose value changes almost in parallel with the price of gold.
- Other objects may be defined by the Member States themselves. This does not seem to give rise to any serious problems in relations between Member States. Differences in rates are admissible, within certain limits, even for one and the same good, and are not always due to differences between Member States in how the good is classified.

(b) Investment gold

Starting from the definition of gold in general, as given under (a), the definition of investment gold calls for the simultaneous fulfilment of two conditions: the absence of physical delivery ensures that the scheme is confined to transactions which have the unquestionably character of a financial investment and investment gold is characterized by the fact that the seller has the status of a licensed professional. This is necessary for the purposes of control given the proposed exemption for this type of gold. It goes without saying that the scheme for investment gold will not apply where the sale is by a non-licensed taxable person, even where there is no physical delivery.

Over and above these objective criteria, Member States may determine certain characteristics which investment gold must have, e.g. its form (ingots, bars, etc.) and the requirement that it be stamped.

The notion of physical delivery may be defined by Member States themselves. However, care must be taken to ensure that the deposit of gold with a third party or indeed the seller is not used as a pretext for claiming that no physical delivery has taken place. This risk should be avoided especially where the gold remains deposited with the seller. If this is the case, physical delivery will occur when the buyer is free to take possession of the gold at any time without making the seller/depository responsible for the delivery itself (this is the case, for example, where gold is deposited by a buyer using a safe belonging to the seller without the seller having a right to inspect its contents).

(c) Gold other than investment gold

Where one or other of the conditions and characteristics is not met, gold is no longer investment gold, although, provided it satisfies the definition given at (a), it does remain within the scope of the proposal. However, it comes under a different scheme from that applicable to investment gold.

**C. SCHEME APPLICABLE TO INVESTMENT GOLD**

Investment gold is to be exempted with a right to deduct input tax. Generalized taxation of gold does not seem appropriate where gold is dealt in for purely financial reasons. This is particularly true for transactions which do not give rise to physical delivery: if VAT were charged on top of the selling price, even if it is deductible, the gold market would be likely to be disturbed. Among such purely financial transactions, those carried out using securities are playing (or are destined to play) an increasingly large role on the European gold market. Given the speed at which these securities circulate, it would be extremely difficult, if not impossible, to tax the underlying gold, particularly when it is situated in a Member State other than the one in which the successive transfers of the security take place. It is true that a similar problem may arise for other goods; however, the small number of transactions makes all the difference in the latter case.

Finally, it should be noted that exempting purely financial transactions reduces the risk of gold escaping to third countries and makes it easier to keep gold in the legal circuit.

**D. SCHEME APPLICABLE TO GOLD OTHER THAN INVESTMENT GOLD**

**1. The normal scheme**

As soon as the metal fails to satisfy one or other of the conditions or no longer has one or other of the characteristics required for it to be classified as investment gold, it automatically falls within the category of gold other than investment gold. Since no exemption is provided for in that case (apart from those of Articles 14(1)(j) and 15(11)), the normal scheme applies. However, this scheme is accompanied by a number of special provisions, as described below.

The requirement that the taxable purchaser holds an invoice showing his identification number is justified by the need to avoid that the taxable purchaser deducts the VAT on his purchase of gold and then fraudulently requests a refund under the arrangements described in section 4 below.

Application of the scheme requiring taxation obviously means that gold situated in a Member State must be taxed even if the parties to the contract are not situated there. This is a problem common to all goods, and Article 21 of the Sixth Directive lays down specific measures to cover the situation.

2. Physical delivery classed as a supply of goods

It is vital that the physical delivery following a supply exempted under the rules for investment gold be treated as a supply of goods. This is in order to prevent the gold from being used for industrial or private consumption without payment of VAT.

Since there is no quid pro quo at the actual time when physical delivery takes place, it is proposed that reference be made to the current market price. This enables all buyers of gold other than investment gold to be placed on the same footing, irrespective of when the supply takes place.

3. The deductible proportion

Treating physical delivery as a supply of goods artificially increases the turnover in respect of which input tax is deductible. The new chargeable event has been created solely for reasons to do with the taxation technique. It cannot therefore be dissociated from the previous supply which, because it did not give rise to physical delivery, was exempted with the right to deduct input tax. In order to prevent the right of deduction from being abused, it is proposed that when physical delivery takes place the turnover to be given in the numerator and denominator of the deductible proportion for such delivery be made up solely of the difference between the value of the exempted supply of goods and the (current) value of the physical delivery (positive or negative difference).

4 to 8. Supplies of gold which have been taxed without a right of deduction

One problem that has been raised is that there would be residual tax and double taxation when gold on which a non-deductible tax was charged is reintroduced into the economic circuit.

This drawback is clearly not specific to gold since it generally occurs irrespective of the nature of the goods. This is the very justification of the special scheme proposed by the Commission for second-hand goods, works of art, antiques and collector's items.

On a theoretical level, several solutions might be considered. It would seem useful to compare them and assess their limitations.

The system of generalized refund

The basic idea behind this system is that a scheme which sets out to tax the margin, while being likely to solve the problem of double taxation in most cases, does not seem very appropriate in the case of gold. A closer look at economic reality shows that, apart from a few rare cases, the number of transactions in second-hand goods other than gold covered by the margin scheme when they are introduced into the economic circuit for the second time is very limited.

By contrast, gold, as an object of investment, can be the subject of an unlimited number of transactions. It must be recognized that any system of taxing the margin minimizes but does not completely eliminate the effects of residual tax: it will continue to grow the longer the economic cycle simply because tax on the margin is incorporated into the price and cannot be deducted by the subsequent buyer. The particularly high value of gold and the large number of successive transactions to which it may be subject would amplify this phenomenon.

Moreover, without special measures the margin system would tend to perpetuate itself. This is because once gold has been sold by a person who does not have the right of deduction, all successive sales of that gold by taxable persons would systematically be subject to the margin scheme.

Some have also pointed to the risk of arriving at a situation in which the remunerative price of the seller would exceed the price on the stock exchange (inclusive of tax) and would therefore be impracticable.

Fears have also been expressed that there might be scope for fraud since the taxable reseller would have an interest in artificially increasing the price for his purchases from private individuals in order to reduce the taxable margin.

Thus, the suggestion has been made by some that residual tax be eliminated quite generally by refunding it when the gold is resold to any seller who did not have the right of deduction (because he is either a non-taxable or an exempted taxable person).

The idea of a refund, which might be made either by the State or by the taxable buyer, is very attractive at first glance because of its neutrality. It would leave no residual tax whatever the length of the economic cycle or the status of the persons (taxable or non-taxable) in the chain.



However, the system of generalized refund has several drawbacks.

- (1) Assuming the refund is made by the State, if, for example, a private individual having bought the gold with payment of VAT sells it to another private individual, the latter will receive it without VAT.
- (2) Assuming the refund is made by the buyer, a private individual selling gold to another private individual would be able to recover the VAT he has paid only by increasing his selling price accordingly. This would start another cycle of residual tax. To avoid this, the first private individual would have to transfer his right to a refund to the buyer (who is also a private individual). If we imagine a whole chain of transactions between private individuals, it is apparent how difficult it would be to track this right to a refund over time. It is easy to see the risks of fraud which would arise if a private individual were to claim a refund on the basis of an invoice, even a relatively recent one, and the State were unable to carry out any checks on such an invoice because, for example, the prescribed time-limit would have expired.

Moreover, a refund is possible only if the private individual has received and kept an invoice issued in accordance with certain conditions: this might leave gold already in circulation outside the system.

#### The system of limited refund

To avoid the drawbacks linked to the transfer of invoices, one solution would be to grant a refund to a private seller only where he sells the gold to a taxed taxable person and where he has bought that gold from another taxed taxable person (taxable person -> private individual -> taxable person).

This system, which would eliminate successive transfers of invoices, still presents the other disadvantages of the generalized refund system, in particular the difficulty of monitoring the right to a refund over time (problem of carrying out checks), and the risk that gold already in circulation will be left outside the system.

As for the method of refund (by the State or by the taxable buyer), the consequences of each procedure have to be examined in both of the following situations.

(a) Under the definitive scheme :

- (aa) If the choice between the two methods (State or buyer) is left to Member States, the person entitled to a refund might find that he is not in fact refunded. This would be the case, for example, where a private individual buys gold in a State which has opted for refund by the buyer and resells it in a State which has opted for refund by the public authorities.
- (ab) A scheme which requires that the refund be made by the State privileges purchases from non-taxable persons over those from taxable persons. This is because, since the non-taxable person is refunded by the State, the buyer does not have to prefinance the VAT as he would if he was buying from a taxable person.
- (ac) If, in order to avoid the problem referred to in the previous indent, a compulsory system of refund by the taxable buyer is introduced, other complications arise. For example, if a private individual sells to a taxable person, that person would be required to produce the purchase invoice of the private individual because otherwise the State would have no means of deciding whether a refund was justified (given that the private individual is not in principle subject to checks). In this context, there is the additional problem that if the private individual produces a foreign invoice issued when gold was purchased in a Member State other than his own, the taxable buyer must convert the amount in question into the currency of the transaction.

(b) Under the transitional scheme

- (ba) If Member States are left to choose between the two methods (State or buyer), the consequences are the same as referred to at point (aa) above;
- (bb) If a compulsory system of refund by the State is introduced, the disadvantage described at point (ab) does not occur. In the case of sales between taxable persons, the buyer does not have to prefinance the VAT either under the intra-Community system or (according to the approach indicated in the section on Article 2 - Article 28o) under the domestic system; the same goes for purchases from a private individual (who is refunded by the State). However, there are problems with checks. In order to make sure that the refund is justified, the State must be able to impose certain obligations, such as a declaration of purchase by a taxable buyer. It must be recognized that the State granting the refund might find it difficult in some cases to verify the validity of such a declaration, particularly where it is made by a buyer from another Member State. Moreover, where a sale made by a non-taxable person (or a taxable person with no right of deduction) is cancelled, the sum refunded by the State to the seller should logically be recovered, provided of

course that the State is aware of the cancellation. It must be left to Member States to find solutions to these problems, relying on mutual assistance.

On the other hand, the Member State of the buyer will need to monitor the purchases of the latter so that it can check subsequent supplies. In any case, it is impossible from the outset to avoid all risk of undue refund. It should be remembered that this risk already exists in other areas, such as that governed by the Eighth Directive.

- (bc) The objections outlined at point (bb) would mean that all obligations, including that of making the refund, would have to be transferred to the taxable buyer; this would be unacceptable because purchases from private individuals would be placed on a less favourable footing (because of the need to prefinance VAT) than purchases from taxable persons (where this need does not arise owing to the so-called reverse-charge mechanism described below in section III-1).

The mixed system (limited refund plus margin)

Most of the disadvantages of the limited refund system are due to the difficulty of checking the right to a refund that is not limited in time. Hence the need to fix a limit beyond which a refund will no longer be admitted. Each Member State should be able to fix this limit by reference to the time-limit it has established for the purposes of checks, for example.

Provided such a measure is introduced, the system of limited refund seems to be an appropriate solution to the problem of residual tax, while avoiding most of the above-mentioned problems.

Limited refund would be granted:

- (a) Where the claimant is a non-taxable person (or a taxable person having no right of deduction). A refund would not be granted to a taxable person who had been entitled to partial

deduction. Otherwise many complications would arise.<sup>1</sup> Moreover, it is precisely in order to avoid complications that Article 13(B)(c) of the Sixth Directive does not exempt goods which have been the subject of even minimal deduction, thus accepting a degree of double taxation.

- (b) Where a non-taxable person (or a taxable person having no right of deduction) resells<sup>2</sup> to a taxable person with a right of deduction (even partial) gold he has bought from a taxable person who invoiced VAT to him. On resale, it will not matter whether the buyer has a right of total or partial deduction since he will be able to deduct the amount of the refund corresponding to his deductible proportion.

As for the method of refund, an assessment of the pros and cons suggests that preference should be given, under the definitive scheme, to refund by the taxable buyer and under the transitional scheme to refund by the State.

It would seem that this system could work in the majority of cases. However, a complementary solution should be sought in a limited number of cases where this system cannot work.

These are as follows:

- (a) cases in which a non-taxable reseller (or a taxable reseller having no right of deduction) has bought the gold from another non-taxable person (or a taxable person having no right of deduction); a refund is not possible in this case since the person concerned cannot present an invoice including VAT made out in his name;

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1 These complications are due mainly to the difficulty of tracking changes in the deductible proportion. If a refund were granted to a taxable person having carried out a partial deduction (e.g. 10%), the refund would initially relate to 90%. If, at the end of the year, the final proportion turned out to be greater than 10%, the taxable person would have to pay back the corresponding tax which the State would already have refunded under the present special scheme. This correction might extend throughout the adjustment period allowed for capital goods (a bank's gold reserves might fall into that category).

2 On the question of resale, it should be noted that the need for legal certainty suggested redefining the notion of "supply" (for the purposes of applying the refund scheme) to cover cases of supply carried out by non-taxable persons. This is because the "traditional" definition of supply is linked to the taxable status of the seller.

- (b) cases in which a non-taxable reseller (or a taxable reseller having no right of deduction) does not present an invoice (e.g. because the invoice has been lost or the gold is in circulation);
- (c) cases in which the period of validity of the invoice, as determined by the Member State for refund purposes, has expired.

In all cases in which refund becomes impossible, it is obvious that a non-taxable reseller will transfer his input tax to the buyer by incorporating it into the selling price. In this situation, the latter would inevitably be subject to the normal VAT scheme (if he is taxable) when he sells the gold himself. This would start a new cycle of residual tax and double taxation.

It is consequently proposed that when a taxable persons resells gold in respect of which his non-taxable seller (or taxable seller without any right of deduction) has not claimed a refund, the margin scheme will apply (with a right of option for the normal scheme when the gold is supplied to another taxable person in order to ensure that the latter is able to make a total or partial deduction).

These arrangements would not be difficult to apply because

- under the definitive scheme (refund by the buyer), the buyer can easily assess whether the conditions have been met because he can make a refund only on the basis of the purchase invoice of the person selling him the gold;
- under the transitional scheme (refund by the State), the seller must hold a declaration by the buyer in order to receive a refund.

### III. ARTICLE 2

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#### (INSERTION OF TITLE XVIIb AND OF ARTICLE 28o)

##### 1. The reverse-charge mechanism

A mechanism under which the taxable buyer is designated as liable for the tax (the reverse-charge mechanism) is frequently used as a means of combating fraud in certain economic sectors. Given the characteristics of the gold market, particularly as far as the risks of fraud are concerned, a case can be made for allowing such a mechanism to be introduced. It would make it possible for the State to keep track of the gold's movements more easily and be reasonably certain that the buyer declares his purchase since this would be a condition for deduction.

Moreover, it must be remembered that, under the transitional scheme, intra-Community transactions between taxable persons relating to gold other than investment gold are subject to tax in the Member State of destination, the person acquiring the gold being liable to pay it. As a taxable person, the latter may immediately deduct the tax without any need to prefinance it and within the limits of his right of deduction. Under these circumstances, the domestic market might be placed in a less favourable position to the extent that taxable persons would do better to procure gold on the intra-Community market in order to avoid having to prefinance the tax. This risk, which obviously applies not only to gold, seems unacceptable in this area given the very high value of the metal. The reverse-charge mechanism would place domestic and intra-Community transactions on an equal footing, provided of course that no prefinancing is required. Member States are free to decide whether or not to introduce the mechanism on their territory and, if they do so, may determine its scope.

**2. Application of the mixed system (limited refund plus margin) during the transitional period**

During the transitional period, the refund system envisaged for gold which is supplied after having been taxed without any right of deduction is that of refund by the State. The reasons for this have been explained above in the chapter entitled "The system of limited refund", point (bb).

The reason for the second subparagraph is given in the same chapter (Member States choose the appropriate means to ensure that the refund is justified).

The provision of the third subparagraph is intended to prevent the person acquiring the gold from having to verify that the refund is justified or to wait and see whether the refund to his seller is duly made before deciding which scheme to apply (the normal or margin schemes) to his own sales. He is thus relieved of responsibility as soon as he has presented his declaration of purchase.

**PROPOSAL FOR A  
COUNCIL DIRECTIVE  
SUPPLEMENTING THE COMMON SYSTEM OF VALUE ADDED TAX  
AND AMENDING DIRECTIVE 77/388/EEC  
- SPECIAL SCHEME FOR GOLD**

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**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas, under the Sixth 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,<sup>1</sup> as last amended by Directive 91/680/EEC,<sup>2</sup> transactions concerning gold are in principle taxable although, on the basis of the transitional derogation provided for in Article 28(3)(b) in conjunction with point 26 of Annex F to the said Directive, Member States may continue to exempt transactions concerning gold other than gold for industrial use;

Whereas the Eighteenth Council Directive (89/465/EEC of 18 July 1989),<sup>3</sup> while abolishing certain other derogations allowed

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1 OJ No L 145, 13.6.1977, p. 1.

2 OJ No L 376, 31.12.1991, p. 1.

3 OJ NO L 226, 3.8.1989, p. 21.

under the same Article 28, maintained the one relating to gold other than gold for industrial use; whereas, in Article 3 of the said Directive, the Council undertook to review the situation with regard to the other derogations and, acting on a Commission proposal, to decide whether these derogations should be abolished, having regard to any distortions of competition which have resulted from their having been applied or which might arise from measures to complete the internal market; whereas the Commission, while providing for the abolition of most of the remaining derogations in its new proposal for a Directive of 22 July 1992, has preferred to draw up a specific proposal concerning gold.

Whereas application by some Member States of the transitional derogation provided for in the case of gold other than gold for industrial use is the cause of certain distortion of competition; whereas these distortions also arise with regard to industrial gold given the diversity of tax arrangements applied by the various Member States;

Whereas a special scheme capable of reconciling the goal of taxation with the need to combat fraud and avoid parallel markets should be established within the context of the completion of the internal market from 1 January 1993, whereas transactions of a financial nature should be afforded special treatment under this special scheme with a view to encouraging investment;

Whereas, given the nature and high price of gold, a mechanism should be introduced which minimizes the amount of tax included in the price where the seller has not been able to deduct it, in order to avoid double taxation,

**HAS ADOPTED THIS DIRECTIVE:**



**Article 1**

The following Article 26a shall be added to Directive 77/388/EEC.

**"Article 26a**

**Special scheme for gold**

**A. SCOPE**

Member States shall apply value added tax to the following transactions, in accordance with the provisions of this Article:

- the supply of gold and the supply of related services by intermediaries;
- the issue, transfer and negotiation of securities involving a right of ownership or claim in respect of gold;
- transactions concerning gold involving futures contracts or call or put options contracts, and the supply of related services by intermediaries.

**B. DEFINITIONS**

The following definitions shall apply for the purposes of this Article.

- (a) "Gold" means gold of a purity equal to or greater than 900 thousandths and pieces of gold of a purity equal to or greater than 900 thousandths and quoted on one of the markets of the Community. Gold objects as defined by the Member States are excluded from this definition.
- (b) "Investment gold" means gold as defined at point (a), whether or not represented by securities, provided the transaction does not give rise to the physical delivery of the goods and is carried

out by licensed professionals. Member States shall determine the characteristics of the goods, in particular as regards their form and the certification of their degree of purity, the conditions for the licensing of professionals and the circumstances in which physical delivery is deemed to have taken place. Physical delivery shall in any case be deemed to have occurred where the gold is deposited on behalf of the buyer or for his account with a third party or with the seller in the event of the latter no longer being considered responsible for the gold in question.

- (c) "Gold other than investment gold" means gold as defined at point (a) which does not meet one or other of the conditions or characteristics referred to at point (b).

**C. SCHEME APPLICABLE TO INVESTMENT GOLD**

1. Member States shall exempt the transactions referred to under A and concerning investment gold.
2. Member States shall grant every taxable person the right to the 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 the transactions referred to in paragraph 1.

**D. SCHEME APPLICABLE TO GOLD OTHER THAN INVESTMENT GOLD**

1. Subject to the following provisions, the scheme applicable to the transactions referred to under A and concerning gold other than investment gold shall be the normal scheme.

As far as supplies of gold referred to in the previous paragraph are concerned, the taxable purchaser must, in order to exercise his right of deduction, hold an invoice which shows, in addition to the information required under Article 22(3)(b), his VAT identification number.

2. The physical delivery of gold shall be treated as a supply of goods where the last transaction concerning that gold has been

exempted in accordance with the provisions under C above. The taxable amount shall be the price of the gold resulting from the selling rate obtaining on the most representative market or markets in the Member State concerned at the time when the tax falls due, or from a rate determined by reference to that or those markets, in accordance with the procedure laid down by the Member State in question. Such supply shall be deemed to have been carried out by the taxable person who carries out the physical delivery.

3. For the purposes of calculating the proportion deductible under Article 17, the amount of the turnover attributable to the delivery referred to in paragraph 2 shall be taken into account only within the limits of the difference between the taxable amounts of the two transactions referred to in the first sentence of that same paragraph.
4. Member States shall grant to any non-taxable person or to any taxable person not having had any right of deduction a refund of the value added tax charged on his purchase of gold, provided that the gold is supplied by that same person to a taxable person having a right of deduction and established in the Community, hereinafter referred to as the taxable purchaser.

For the purposes of the previous subparagraph, supply shall be considered to constitute the transfer for consideration of the right to dispose of the gold as owner.

5. The refund provided for in paragraph 4 shall be made by the taxable purchaser in accordance with the following conditions:
  - (a) the taxable purchaser shall draw up, on behalf of the person carrying out the supply, an invoice or other document serving as an invoice in accordance with the provisions of Article 22(3);
  - (b) the taxable purchaser shall procure and retain the original copy of the invoice or other document serving as the invoice, drawn up in accordance with Article 22(3), on which the tax

to be refunded shall be indicated. Member States shall determine the time-limit beyond which the refund shall no longer be permitted.

6. In the situation provided for in paragraph 5, the taxable purchaser shall be authorized, in accordance with the provisions of Article 17 and in line with the procedures laid down by the Member States, to deduct the amount he has refunded from the value added tax for which he is liable.
7. Where no refund is made, the taxable amount for the subsequent supply carried out by the taxable purchaser shall be the difference between the selling price exclusive of value added tax and the purchase price including tax.

However, Member States may, in order to simplify collection of the tax and subject to the consultation provided for in Article 29, adopt as the taxable amount the difference over each tax period between the total amount of supplies exclusive of tax and the total amount of purchases including tax. Application of this provisions may not lead to distortions of competition.

The tax attributable to the supplies referred to in the previous subparagraphs may not be separately indicated on the invoice or other document serving as the invoice. In any case, this tax may not be deducted at the subsequent stage.

The taxable purchaser, as referred to in this paragraph, may, for each of his supplies to taxable persons having a right of deduction, opt for the normal value added tax scheme.

8. Where the normal scheme and the special scheme are applied jointly, the taxable purchaser shall keep his accounts in such a way as to enter separately the transactions subject to each of these schemes, according to the procedures laid down by each Member State."

**Article 2**

The following Title XVIb and Article 28o shall be added to Directive 77/388/EEC.

**"TITLE XVIb**

**Transitional scheme for gold**

**Article 28o**

Without prejudice to other Community provisions, the following provisions shall apply during the transitional period referred to in Article 28l.

1. By way of derogation from Article 21(1)(a), as amended by Article 28g, where a supply is made to a taxable person having the right of deduction, Member States may, according to the procedures and conditions they lay down, designate the purchaser as liable for the value added tax. Where they take up this option, Member States shall take the measures necessary to ensure that the person designated as liable meets the obligations of submitting a return and paying the tax in accordance with Article 22.
2. By way of derogation from Article 26a(D)(5), the refund referred to in the said paragraph shall be made by the public authorities. This refund and any decisions relating to it shall be carried out in accordance with Article 7(4) of Directive 79/1072/EEC. In order to qualify for the refund, a non-taxable person or a taxable person having no right of deduction shall submit an application accompanied by:
  - the original copy of the invoice, made out in accordance with Article 22(3), on which the tax to be refunded shall be stated; Member States shall determine the time-limit beyond which the refund shall no longer be permitted;

- a declaration issued by the taxable purchaser certifying that the purchase has taken place.

Member States shall take the measures necessary to ensure that tax refunded is recovered where it has been unduly refunded or where a supply was cancelled.

For the purposes of the scheme applicable to a subsequent supply by the taxable purchaser, the refund shall be deemed to have been made as soon as the taxable purchaser has issued the declaration provided for in the second indent of the first subparagraph."

#### Article 3

Point 26 of Annex F to Directive 77/388/EEC shall be deleted.

#### Article 4

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

They shall bring into force such laws, regulations and administrative provisions as are necessary for their arrangements thus adapted 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 5**

**This Directive is addressed to the Member States.**

**Done at Brussels,**

***For the Council***

***The President***

### Financial statement

Under the present proposal, investment gold will be exempt from VAT with deduction of input tax. At the moment, some Member States tax such gold while others exempt it under a derogation from the sixth VAT Directive that permits exemption on a transitional basis for "gold other than gold for industrial use". Since this transitional derogation results in financial compensation being paid to the Communities by the beneficiary Member States, general application of the exemption will give rise to a fall in own resources owing to the fact that compensation will no longer be payable.

As regards gold not classed as investment gold, the present proposal provides for generalized taxation. For such gold, the scope of taxation will need to be extended (boosting own resources) since certain transactions which are exempt at the moment in some Member States as investment gold would, under the new scheme, have to be taxed (e.g. sales of ingots or pure gold with physical delivery of the metal).



### Assessment of impact on SMEs and employment

The purpose of the present proposal for a Directive is twofold:

- to abolish a transitional provision in Directive 77/388/EEC allowing some Member States to continue to exempt gold other than gold for industrial use;
- to lay down Community rules for a special VAT scheme applicable both to investment gold and to gold other than investment gold.

#### I. Administrative obligations on businesses arising from application of the present Directive

Obligation to submit a tax declaration also in cases where a Member State exercises the option provided for in Article 22(9) of the sixth VAT Directive, namely, exemption from all obligations for businesses carrying out only exempt transactions.

#### II. Advantages for businesses

- Arrangements for investment gold: a firm selling investment gold does not invoice VAT and can deduct VAT paid on its purchases; a firm buying investment gold does not prefinance VAT;
- Arrangements for gold other than investment gold: taxation of all transactions involving such gold allows businesses to deduct VAT paid on their purchases; moreover, for a transitional period, businesses buying such gold can be exempted from prefinancing VAT by the Member State concerned.

Residual tax will be abolished by virtue of taxation and, in the case of gold which is reintroduced into the economic circuit after being taxed without any right to deduct input tax, will be significantly reduced.

#### III. Are there any drawbacks for businesses in terms of additional costs?

None

#### IV. Impact on employment

None

#### V. The two sides of industry have not been consulted.

- VI. The present proposal is necessary in order to combat fraud and to avoid the distortions of competition that may result from divergences between Member States' laws.



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