EN

Consolidated TEXT

produced by the CONSLEG system

of the Office for Official Publications of the European Communities

CONSLEG: 1977L0388 — 01/05/2004

Number of pages: 100

Office for Official Publications of the European Communities

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

►**B**

SIXTH COUNCIL DIRECTIVE

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

(77/388/EEC)

(OJ L 145, 13.6.1977, p. 1)

Amended by:

	Official Journal		
	No	page	date
►**M1** Eleventh Council Directive of 26 March 1980 (80/368/EEC)	L 90	41	3.4.1980
►**M2** Tenth Council Directive of 31July 1984 (84/386/EEC)	L 208	58	3.8.1984
►**M3** Eighteenth Council Directive of 18 July 1989 (89/465/EEC)	L 226	21	3.8.1989
►**M4** Council Directive of 16 December 1991 (91/680/EEC)	L 376	1	31.12.1991
►**M5** Council Directive 92/77/EEC of 19 October 1992	L 316	1	31.10.1992
►**M6** Council Directive 92/111/EEC of 14 December 1992	L 384	47	30.12.1992
►**M7** Council Directive 94/4/EC of 14 February 1994	L 60	14	3.3.1994
►**M8** Council Directive 94/5/EC of 14 February 1994	L 60	16	3.3.1994
►**M9** Council Directive 94/76/EC of 22 December 1994	L 365	53	31.12.1994
►**M10** Council Directive 95/7/EC of 10 April 1995	L 102	18	5.5.1995
►**M11** Council Directive 96/42/EC of 25 June 1996	L 170	34	9.7.1996
►**M12** Council Directive 96/95/EC of 20 December 1996	L 338	89	28.12.1996
►**M13** Council Directive 98/80/EC of 12 October 1998	L 281	31	17.10.1998
►**M14** Council Directive 1999/49/EC of 25 May 1999	L 139	27	2.6.1999
►**M15** Council Directive 1999/59/EC of 17 June 1999	L 162	63	26.6.1999
►**M16** Council Directive 1999/85/EC of 22 October 1999	L 277	34	28.10.1999
►**M17** Council Directive 2000/17/EC of 30 March 2000	L 84	24	5.4.2000
►**M18** Council Directive 2000/65/EC of 17 October 2000	L 269	44	21.10.2000
►**M19** Council Directive ►**C3** 2001/4/EC ◄ of 19 January 2001	L 22	17	24.1.2001
►**M20** Council Directive 2001/115/EC of 20 December 2001	L 15	24	17.1.2002
►**M21** Council Directive 2002/38/EC of 7 May 2002	L 128	41	15.5.2002
►**M22** ►**C4** Council Directive 2002/93/EC ◄ of 3 December 2002	L 331	27	7.12.2002
►**M23** Council Directive 2003/92/EC of 7 October 2003	L 260	8	11.10.2003
►**M24** Council Directive 2004/7/EC of 20 January 2004	L 27	44	30.1.2004
►**M25** Council Directive 2004/15/EC of 10 February 2004	L 52	61	21.2.2004

Amended by:

►**A1** Act of Accession of Greece	L 291	17	19.11.1979
►**A2** Act of Accession of Spain and Portugal	L 302	23	15.11.1985

►**A3**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

►**C1** Corrigendum, OJ L 272, 17.9.1992, p. 72 (91/680/EEC)

►**C2** Corrigendum, OJ L 197, 6.8.1993, p. 57 (92/111/EEC)

►**C3** Corrigendum, OJ L 26, 27.1.2001, p. 40 (2001/4/EC)

►**C4** Corrigendum, OJ L 18, 23.1.2003, p. 55 (2002/93/EC)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

▼B

SIXTH COUNCIL DIRECTIVE

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

(77/388/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2];

Whereas all Member States have adopted a system of value added tax in accordance with the first and second Council Directives of 11 April 1967 on the harmonization of the laws of the Member States realting (SIC! relating) to turnover taxes [3];

Whereas the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources [4] provides that the budget of the Communities shall, irrespective of other revenue, be financed entirely from the Communities' own resources; whereas these resources are to include those accruing from value added tax and obtained by applying a common rate of tax on a basis of assessment determined in a uniform manner according to Community rules;

Whereas further progress should be made in the effective removal of restrictions on the movement of persons, goods, services and capital and the integration of national economies;

Whereas account should be taken of the objective of abolishing the imposition of tax on the importation and the remission of tax on exportation in trade between Member States; whereas it should be ensured that the common system of turnover taxes is non-discriminatory as regards the origin of goods and services, so that a common market permitting fair competition and resembling a real internal market may ultimately be achieved;

Whereas, to enhance the non-discriminatory nature of the tax, the term ‘taxable person’ must be clarified to enable the Member States to extend it to cover persons who occasionally carry out certain transactions;

Whereas the term ‘taxable transaction’ has led to difficulties, in particular as regards transactions treated as taxable transactions; whereas these concepts must be clarified;

Whereas the determination of the place where taxable transactions are effected has been the subject of conflicts concerning jurisdiction as between Member States, in particular as regards supplies of goods for assembly and the supply of services; whereas although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods;

---

(1) OJ No C 40, 8. 4. 1974, p. 25.
(2) OJ No C 139, 12. 11. 1974, p. 15.
(3) OJ No 71, 14. 4. 1967, p. 1301/67.
(4) OJ No L 94, 28. 4. 1970, p. 19.

▼B

Whereas the concepts of chargeable event and of the charge to tax must be harmonized if the introduction and any subsequent alterations of the Community rate are to become operative at the same time in all Member States;

Whereas the taxable base must be harmonized so that the application of the Community rate to taxable transactions leads to comparable results in all the Member States;

Whereas the rates applied by Member States must be such as to allow the normal deduction of the tax applied at the preceding stage;

Whereas a common list of exemptions should be drawn up so that the Communities own resources may be collected in a uniform manner in all the Member States;

Whereas the rules governing deductions should be harmonized to the extent that they affect the actual amounts collected; whereas the deductible proportion should be calculated in a similar manner in all the Member States;

Whereas it should be specified which persons are liable to pay tax, in particular as regards services supplied by a person established in another country;

Whereas the obligations of taxpayers must be harmonized as far as possible so as to ensure the necessary safeguards for the collection of taxes in a uniform manner in all the Member States; whereas taxpayers should, in particular, make a periodic aggregate return of their transactions, relating to both inputs and outputs where this appears necessary for establishing and monitoring the basis of assessment of own resources;

Whereas Member States should nevertheless be able to retain their special schemes for small undertakings, in accordance with common provisions, and with a view to closer harmonization; whereas Member States should remain free to apply a special scheme involving flat rate rebates of input value added tax to farmers not covered by normal schemes; whereas the basic principles of this scheme should be established and a common method adopted for calculating the value added of these farmers for the purposes of collecting own resources;

Whereas the uniform application of the provisions of this Directive should be ensured; whereas to this end a Community procedure for consultation should be laid down; whereas the setting up of a Value Added Tax Committee would enable the Member States and the Commission to cooperate closely;

Whereas Member States should be able, within certain limits and subject to certain conditions, to take or retain special measures derogating from this Directive in order to simplify the levying of tax or to avoid fraud or tax avoidance;

Whereas it might appear appropriate to authorize Member States to conclude with non-member countries or international organizations agreements containing derogations from this Directive;

Whereas it is vital to provide for a transitional period to allow national laws in specified fields to be gradually adapted,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

INTRODUCTORY PROVISIONS

Article 1

Member States shall modify their present value added tax systems in accordance with the following Articles.

They shall adopt the necessary laws, regulations and administrative provisions so that the systems as modified enter into force at the earliest opportunity and by 1 January 1978 at the latest.

▼B

TITLE II

SCOPE

Article 2

The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;
2. the importation of goods.

TITLE III

TERRITORIAL APPLICATION

▼M4

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 (SIC! waters) of Lake Lugano.

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
ΆγιονΌρος.

▼M6

(4) By way of derogation from paragraph 1, in view of the conventions and treaties which they have concluded respectively with the French Republic and the United Kingdom of Great Britain and Northern Ireland, the Principality of Monaco and the Isle of Man shall not be treated for the purposes of the application of this Directive as third territories.

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

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

▼M6

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

▼M4

(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.

▼B

TITLE IV

TAXABLE PERSONS

Article 4

1. 'Taxable person' shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

3. Member States may also treat as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in paragraph 2 and in particular one of the following:

(a) the supply before first occupation of buildings or parts of buildings and the land on which they stand; Member States may determine the conditions of application of this criterion to transformations of buildings and the land on which they stand.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply or the period elapsing between the date of first occupation and the date of subsequent supply, provided that these periods do not exceed five years and two years respectively.

'A building' shall be taken to mean any structure fixed to or in the ground;

(b) the supply of building land.

'Building land' shall mean any unimproved or improved land defined as such by the Member States.

4. The use of the word 'independently' in paragraph 1 shall exclude employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Subject to the consultations provided for in Article 29, each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organizational links.

5. States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where treatment as non-taxable persons would lead to significant distortions of competition.

▼B

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

Member States may consider activities of these bodies which are exempt under Article 13 or 28 as activities which they engage in as public authorities.

TITLE V

TAXABLE TRANSACTIONS

Article 5

Supply of goods

1. 'Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner.

2. Electric current, gas, heat, refrigeration and the like shall be considered tangible property.

3. Member States may consider the following to be tangible property:

(a) certain interest in immovable property;

(b) rights *in rem* giving the holder thereof a right of user over immovable property;

(c) shares or interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof.

4. The following shall also be considered supplies within the meaning of paragraph 1:

(a) the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;

(b) the actual handing over of goods, pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms, which provides that in the normal course of events ownership shall pass at the latest upon payment of the final instalment;

(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.

▼M10

5. Member States may consider the handing over of certain works of construction to be supplies within the meaning of paragraph 1.

▼B

6. The application by a taxable person of goods forming part of his business assets for his private use or that of his staff, or the disposal thereof free of charge or more generally their application for purposes other than those of his business, where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible, shall be treated as supplies made for consideration. However, applications for the giving of samples or the making of gifts of small value for the purposes of the taxable person's business shall not be so treated.

7. Member States may treat as supplies made for consideration:

(a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the value added tax on such goods, had they been acquired from another taxable person, would not be wholly deductible;

(b) the application of goods by a taxable person for the purposes of a non-taxable transaction, where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a);

▼B

(c) except in those cases mentioned in paragraph 8, the retention of goods by a taxable person or his successors when he ceases to carry out a taxable economic activity where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a).

8. In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and in that event the recipient shall be treated as the successor to the transferor. Where appropriate, Member States may take the necessary measures to prevent distortion of competition in cases where the recipient is not wholly liable to tax.

Article 6

Supply of services

1. 'Supply of services' shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

Such transactions may include *inter alia*:

— assignments of intangible property whether or not it is the subject of a document establishing title,

— obligations to refrain from an act or to tolerate an act or situation,

— the performances of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.

2. The following shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.

Member States may derogate from the provisions of this paragraph provided that such derogation does not lead to distortion of competition.

3. In order to prevent distortion of competition and subject to the consultations provided for in Article 29, Member States may treat as a supply of services for consideration the supply by a taxable person of a service for the purposes of his undertaking where the value added tax on such a service, had it been supplied by another taxable person, would not be wholly deductible.

4. Where a taxable person acting in his own name but on behalf of another takes part in a supply of services, he shall be considered to have received and supplied those services himself.

5. Article 5 (8) shall apply in like manner to the supply of services.

▼M4

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;

▼M6

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

▼M4

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) ►M6 (a), (b), (c) and (d) ◄, 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.

▼M6

Similarly, when goods referred to in paragraph 1 (b) are placed, on entry into the Community, under one of the procedures referred to in Article 33a (1) (b) or (c), the place of import shall be the Member State within whose territory this procedure ceases to apply.

▼B

TITLE VI

PLACE OF TAXABLE TRANSACTIONS

Article 8

Supply of goods

1. The place of supply of goods shall be deemed to be:

(a) in the case of goods dispatched or transported either by the supplier or by the person to whom they are supplied or by a third person: the place where the goods are at the time when dispatch or transport to the person to whom they are supplied begins. where the goods are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled. In cases where the installation or assembly is carried out ►M4 in a Member State other than, ◄ that of the supplier, ►M4 the Member State within the territory of which the installation or assembly is carried out ◄ shall take any necessary steps to avoid double taxation in that State;

(b) in the case of goods not dispatched or transported: the place where the goods are when the supply takes place.

▼M6

(c) in the case of goods supplied on board ships, aircraft or trains during the part of a transport of passengers effected in the Community: at the point of the departure of the transport of passengers.

For the purposes of applying this provision:

— 'part of a transport of passengers effected in the Community' shall mean the part of the transport effected, without a stop in a third territory, between the point of departure and the point of arrival of the transport of passengers,

— 'the point of departure of the transport of passengers' shall mean the first point of passenger embarkation foreseen within the Community, where relevant after a leg outside the Community,

— 'the point of arrival of the transport of passengers' shall mean the last point of disembarkation of passengers foreseen within the Community of passengers who embarked in the Community, where relevant before a leg outside the Community.

In the case of a return trip, the return leg shall be considered to be a separate transport.

The Commission shall, by 30 June 1993 at the latest, submit to the Council a report accompanied, if necessary, by appropriate proposals on the place of taxation of goods supplied for consumption and services, including restaurant services, provided for passengers on board ships, aircraft or trains.

▼M6

By 31 December 1993, after consulting the European Parliament, the Council shall take a unanimous decision on the Commission proposal.

Until 31 December 1993, Member States may exempt or continue to exempt goods supplied for consumption on board whose place of taxation is determined in accordance with the above provisions, with the right to deduct the value added tax paid at an earlier stage.

▼M23

(d) in the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer: the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

'Taxable dealer' for the purposes of this provision means a taxable person whose principal activity in respect of purchases of gas and electricity is reselling such products and whose own consumption of these products is negligible.

(e) in the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by point (d): the place where the customer has effective use and consumption of the goods. Where all or part of the goods are not in fact consumed by this customer, these non consumed goods are deemed to have been used and consumed at the place where he has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, he is deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.

▼M4

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 ►M18 Article 21(4) ◄ and the place of any subsequent supplies shall be deemed to be within the Member State of import of the goods.

▼B

Article 9

Supply of services

1. The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2. However:

(a) the place of the supply of services connected with immovable property, including the services of estate agents and experts, and of services for preparing and coordinating construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is situated;

(b) the place where transport services are supplied shall be the place where transport takes place, having regard to the distances covered;

(c) the place of the supply of services relating to:

— cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organizers of such activities, and where appropriate, the supply of ancillary services,

— ancillary transport activities such as loading, unloading, handling and similar activities,

— valuations of movable tangible property,

— work on movable tangible property,

shall be the place where those services are physically carried out;

▼M2

▼B

(e) the place where the following services are supplied: when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

— transfers and assignments of copyrights, patents, licences, trade marks and similar rights,

— advertising services,

— services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying of information,

— obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this point (e),

— banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes,

— the supply of staff,

— the services of agents who act in the name and for the account of another, when they procure for their principal the services referred to in this point (e).

▼M2

— the hiring out of movable tangible property, with the exception of all forms of transport ►M15 , ◄

▼M23

— the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services,

▼M15

— Telecommunications. Telecommunications services shall be deemed to be services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception. Telecommunications services within the meaning of this provision shall also include provision of access to global information networks ►M21 , ◄

▼M21

— radio and television broadcasting services,

— electronically supplied services, *inter alia*, those described in Annex L;

(f) the place where services referred to in the last indent of subparagraph (e) are supplied when performed for non-taxable persons who are established, have their permanent address or usually reside in a Member State, by a taxable person who has established his business or has a fixed establishment from which the service is supplied outside the Community or, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, has his permanent address or usually resides.

3. In order to avoid double taxation, non-taxation or the distortion of competition, the Member States may, with regard to the supply of services referred to in paragraph 2(e), except for the services referred to in the last indent when supplied to non-taxable persons, and also with regard to the hiring out of forms of transport consider:

▼B

(a) the place of supply of services, which under this Article would be situated within the territory of the country, as being situated outside the Community where the effective use and enjoyment of the services take place outside the Community;

▼B

(b) the place of supply of services, which under this Article would be situated outside the Community, as being within the territory of the country where the effective use and enjoyment of the services take place within the territory of the country.

▼M21

4. In the case of telecommunications services and radio and television broadcasting services referred to in paragraph 2(e) when performed for non-taxable persons who are established, have their permanent address or usually reside in a Member State, by a taxable person who has established his business or has a fixed establishment from which the service is supplied outside the Community, or in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, Member States shall make use of paragraph 3(b).

▼B

TITLE VII

CHARGEABLE EVENT AND CHARGEABILITY OF TAX

Article 10

1. (a) 'Chargeable event' shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled.

(b) The tax becomes 'chargeable' when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.

2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. Deliveries of goods other than those referred to in Article 5 (4) (b) and supplies of services which give rise to successive statements of account or payments shall be regarded as being completed at the time when the periods to which such statements of account or payments pertain expire. ►**M18** Member States may in certain cases provide that continuous supplies of goods and services which take place over a period of time shall be regarded as being completed at least at intervals of one year. ◄

However, where a payment is to be made on account before the goods are delivered or the services are performed, the tax shall become chargeable on receipt of the payment and on the amount received.

By way of derogation from the above provisions, Member States may provide that the tax shall become chargeable, for certain transactions or for certain categories of taxable person, either:

— no later than the issue of the invoice ►**M20** ———— ◄, or

— no later than receipt of the price, or

— where an invoice ►**M20** ———— ◄ is not issued, or is issued late, within a specified period from the date of the chargeable event.

▼M4

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

▼M4

customs duties as regards the occurrence of the chargeable event and the moment when the tax becomes chargeable.

▼B

TITLE VIII

TAXABLE AMOUNT

Article 11

A. *Within the territory of the country*

1. The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;

(b) in respect of supplies referred to in Article 5 (6) and (7), the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined as the time of supply;

(c) in respect of supplies referred to in Article 6 (2), the full cost to the taxable person of providing the services;

(d) in respect of supplies referred to in Article 6 (3), the open market value of the services supplied.

'Open market value' of services shall mean the amount which a customer at the marketing stage at which the supply takes place would have to pay to a supplier at arm's length within the territory of the country at the time of the supply under conditions of fair competition to obtain the services in question.

2. The taxable amount shall include:

(a) taxes, duties, levies and charges, excluding the value added tax itself;

(b) incidental expenses such as commission, packing, transport and insurance costs charged by the supplier to the purchaser or customer. Expenses covered by a separate agreement may be considered to be incidental expenses by the Member States.

3. The taxable amount shall not include:

(a) price reductions by way of discount for early payment;

(b) price discounts and rebates allowed to the customer and accounted for at the time of the supply;

(c) the amounts received by a taxable person from his purchaser or customer as repayment for expenses paid out in the name and for the account of the latter and which are entered in his books in a suspense account. The taxable person must furnish proof of the actual amount of this expenditure and may not deduct any tax which may have been charged on these transactions.

▼M8

4. By way of derogation from paragraphs 1, 2 and 3, Member States which, on 1 January 1993, did not avail themselves of the option provided for in the third subparagraph of Article 12 (3) (a) may, where they avail themselves of the option provided for in Title B (6), provide that, for the transactions referred to in the second subparagraph of Article 12 (3) (c), the taxable amount shall be equal to a fraction of the amount determined in accordance with paragraphs 1, 2 and 3.

That fraction shall be determined in such a way that the value added tax thus due is, in any event, equal to at least 5 % of the amount determined in accordance with paragraphs 1, 2 and 3.

▼B

B. *Importation of goods*

▼M6

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

▼M4

———————

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.

▼M10

The incidental expenses referred to above shall also be included in the taxable amount where they result from transport to another place of destination within the territory of the Community if that place is known when the chargeable event occurs.

▼B

4. The taxable amount shall not include those factors referred to in A (3) (a) and (b).

5. When goods have been temporarily exported ►M4 from the Community ◄ and are re-imported after having undergone ►M4 outside the Community ◄ repair, processing or adaptation, or after having been made up or reworked abroad, ►M4 ——————— ◄ Member States shall take steps to ensure that the treatment of the goods for value added tax purposes is the same as that which would have applied to the goods in question had the above operations been carried out within the territory of the country.

▼M8

6. By way of derogation from paragraphs 1 to 4, Member States which, on 1 January 1993, did not avail themselves of the option provided for in the third subparagraph of Article 12 (3) (a) may provide that for imports of the works of art, collectors' items and antiques defined in Article 26a (A) (a), (b) and (c), the taxable amount shall be equal to a fraction of the amount determined in accordance with paragraphs 1 to 4.

That fraction shall be determined in such a way that the value added tax thus due on the import is, in any event, equal to at least 5 % of the amount determined in accordance with paragraphs 1 to 4.

▼B

C. *Miscellaneous provisions*

1. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.

▼M4

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.

▼B

3. As regards returnable packing costs, Member States may:

— either exclude them from the taxable amount and take the necessary measures to see that this amount is adjusted if the packing is not returned,

— or include them in the taxable amount and take the necessary measures to see that this amount is adjusted where the packing is in fact returned.

TITLE IX

RATES

Article 12

1. The rate applicable to taxable transactions shall be that in force at the time of the chargeable event. However:

(a) in the cases provided for in the second and third subparagraphs of Article 10 (2), the rate to be used shall be that in force when the tax becomes chargeable;

▼M6

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

▼B

2. In the event of changes in the rates, Member States may:

— effect adjustments in the cases provided for in paragraph 1 (a) in order to take account of the rate applicable at the time when the goods or services were supplied,

— adopt all appropriate transitional measures.

▼M19

3. (a) The standard rate of value added tax shall be fixed by each Member State as a percentage of the taxable amount and shall be the same for the supply of goods and for the supply of services. From 1 January 2001 to 31 December 2005, this percentage may not be less than 15 %.

On a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, the Council shall decide unanimously on the level of the standard rate to be applied after 31 December 2005.

▼M14

Member States may also apply either one or two reduced rates. These rates shall be fixed as a percentage of the taxable amount, which may not be less than 5 %, and shall apply only to supplies of the categories of goods and services specified in Annex H.

▼M21

The third subparagraph shall not apply to the services referred to in the last indent of Article 9(2)(e).

▼M5

(b) Member States may apply a reduced rate to supplies of natural gas and electricity provided that no risk of distortion of competition exists. A Member State intending to apply such a rate must, before doing so, inform the Commission. The Commission shall give a decision on the existence of a risk of distortion of competition. If the Commission has not taken that decision within three months of the receipt of the information a risk of distortion of competition is deemed not to exist.

▼M8

(c) Member States may provide that the reduced rate, or one of the reduced rates, which they apply in accordance with the third paragraph of (a) shall also apply to imports of works of art, collectors' items and antiques as referred to in Article 26a (A) (a), (b) and (c).

Where they avail themselves of this option, Member States may also apply the reduced rate to supplies of works of art, within the meaning of Article 26a (A) (a):

— effected by their creator or his successors in title,

— effected on an occasional basis by a taxable person other than a taxable dealer, where these works of art have been imported by the taxable person himself or where they have been supplied to him by their creator or his successors in title or where they have entitled him to full deduction of value-added tax.

▼M11

———————

▼M13

———————

▼B

4. ►M5 ——————— ◄ Each reduced rate shall be so fixed that the amount of value added tax resulting from the application thereof shall be such as in the normal way to permit the deduction therefrom of the whole of the value added tax deductible under the provisions of Article 17.

▼M5

On the basis of a report from the Commission, the Council shall, starting in 1994, review the scope of the reduced rates every two years. The Council, acting unanimously on a proposal from the Commission, may decide to alter the list of goods and services in Annex H.

▼M8

5. Subject to paragraph 3 (c), the rate applicable on the importation of goods shall be that applied to the supply of like goods within the territory of the country.

▼A2

6. The Portuguese Republic may apply to transactions carried out in the autonomous regions of the Azores and Madeira and to direct imports to those regions, reduced rates in comparison to those applying on the mainland

▼B

TITLE X

EXEMPTIONS

Article 13

Exemptions within the territory of the country

A. *Exemptions for certain activities in the public interest*

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

(a) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognized establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

(d) supplies of human organs, blood and milk;

(e) services supplied by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians;

(f) services supplied by independent groups of persons whose activities are exempt from or are not subject to value added tax, for the purpose of rendering their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition;

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organizations recognized as charitable by the Member State concerned;

(h) the supply of services and of goods closely linked to the protection of children and young persons by bodies governedf by public law or by other organizations recognized as charitable by the Member State concerned;

(i) children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, provided by bodies governed by public law having such as their aim or by other organizations defined by the Member State concerned as having similar objects;

(j) tuition given privately by teachers and covering school or university education;

(k) certain supplies of staff by religious or philosophical institutions for the purpose of subparagraphs (b), (g), (h) and (i) of this Article and with a view to spiritual welfare;

(l) supply of services and goods closely linked thereto for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit-making organizations with aims of a political, tradeunion, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

▼B

(m) certain services closely linked to sport or physical education supplied by non-profit-making organizations to persons taking part in sport or physical education;

(n) certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by other cultural bodies recognized by the Member State concerned;

(o) the supply of services and goods by organizations whose activities are exempt under the provisions of subparagraphs (b), (g), (h), (i), (l), (m) and (n) above in connection with fund-raising events organized exclusively for their own benefit provided that exemption is not likely to cause distortion of competition. Member States may introduce any necessary restrictions in particular as regards the number of events or the amount of receipts which give entitlement to exemption;

(p) the supply of transport services for sick or injured persons in vehicles specially designed for the purpose by duly authorized bodies;

(q) activities of public radio and television bodies other than those of a commercial nature.

2. a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1) (b), (g), (h), (i), (1), (m) and (n) of this Article subject in each individual case to one or more of the following conditions:

— they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,

— they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,

— they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax,

— exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.

(b) The supply of services or goods shall not be granted exemption as provided for in (1) (b), (g), (h), (i), (l), (m) and (n) above if:

— it is not essential to the transactions exempted,

— its basic purpose is to obtain additional income for the organization by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax.

B. *Other exemptions*

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

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

(b) the leasing or letting of immovable property excluding:

1. the provision of accomodation (SIC! accommodation), as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accomodation (SIC! accommodation) in holiday camps or on sites developed for use as camping sites;

2. the letting of premises and sites for parking vehicles;

▼B

3. lettings of permanently installed equipment and machinery;

4. hire of safes.

Member States may apply further exclusions to the scope of this exemption;

(c) supplies of goods used wholly for an activity exempted under this Article or under Article 28 (3) (b) when these goods have not given rise to the right to deduction, or of goods on the acquisition or production of which, by virtue of Article 17 (6), value added tax did not become deductible;

(d) the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items; collectors' items' shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

5. transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding:

— documents establishing title to goods,

— the rights or securities referred to in Article 5 (3);

6. management of special investment funds as defined by Member States;

(e) the supply at face value of postage stamps valid for use for postal services within the territory of the country, fiscal stamps, and other similar stamps;

(f) betting, lotteries and other forms of gambling, subject to conditions and limitations laid down by each Member State;

(g) the supply of buildings or parts thereof, and of the land on which they stand, other than as described in Article 4 (3) (a);

(h) the supply of land which has not been built on other than building land as described in Article 4 (3) (b).

C. *Options*

Member States may allow taxpayers a right of option for taxation in cases of:

(a) letting and leasing of immovable property;

(b) the transactions covered in B (d) (g) and (h) above.

Member States may restrict the scope of this right of option and shall fix the details of its use.

Article 14

Exemptions on importation

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemption and of preventing any possible evasion, avoidance or abuse:

(a) final importation of goods of which the supply by a taxable person would in all circumstances be exempted within the country;

▼M4

———————

▼M6

———————

▼B

(d) final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff ►M4 ———————— ◄. However, Member States shall have the option of not granting exemption where this would be liable to have a serious effect on conditions of competition ►M4 ———————— ◄;

▼M6

This exemption shall also apply to the import of goods, within the meaning of Article 7 (1) (b), which would be capable of benefiting from the exemption set out above if they had been imported within the meaning of Article 7 (1) (a).

▼B

(e) reimportation by the person who exported them of goods in the state in which they were exported, where they qualify for exemption from customs duties ►M4 ———————— ◄;

▼M4

———————

▼B

(g) importations of goods:

— under diplomatic and consular arrangements, which qualify for exemption from customs duties ►M4 ———————— ◄

— by international organizations recognized as such by the public authorities of the host country, and by members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements,

— into the territory of Member States which are parties to the North Atlantic Treaty by the armed forces of other States which are parties to that Treaty for the use of such forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort:

(h) importation into ports by sea fishing undertakings of their catches, unprocessed or after undergoing preservation for marketing but before being supplied;

(i) the supply of services, in connection with the importation of goods where the value of such services is included in the taxable amount in accordance with Article 11 B (3) (b);

(j) importation of gold by Central Banks;

▼M23

(k) import of gas through the natural gas distribution system, or of electricity.

▼B

2. The Commission shall submit to the Council at the earliest opportunity proposals designed to lay down Community tax rules clarifying the scope of the exemptions referred to in paragraph 1 and detailed rules for their implementation.

Until the entry into force of these rules, Member States may:

— maintain their national provisions in force on matters related to the above provisions,

— adapt their national provisions to minimize distortion of competition and in particular the non-imposition or double imposition of value added tax within the Community,

— use whatever administrative procedures they consider most appropriate to achieve exemption.

▼B

Member States shall inform the Commission, which shall inform the other Member States, of the measures they have adopted and are adopting pursuant to the preceding provisions.

Article 15

▼M4

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

▼B

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

1. the supply of goods dispatched or transported to a destination ►M4 outside the Community ◄ by or on behalf of the vendor;

2. the supply of goods dispatched or transported to a destination ►M4 outside the Community ◄ by or on behalf of a purchaser not established within the territory of the country, with the exception of goods transported by the purchaser himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use;

▼M10

In the case of the supply of goods to be carried in the personal luggage of travellers, this exemption shall apply on condition that:

— the traveller is not established within the Community,

— the goods are transported to a destination outside the Community before the end of the third month following that in which the supply is effected,

— the total value of the supply, including value added tax, is more than the equivalent in national currency of ECU 175, fixed in accordance with Article 7 (2) of Directive 69/169/EEC [1]; however, Member States may exempt a supply with a total value of less than that amount.

For the purposes of applying the second subparagraph:

— a traveller not established within the Community shall be taken to mean a traveller whose domicile or habitual residence is not situated within the Community. For the purposes of this provision, 'domicile or habitual residence' shall mean the place entered as such in a passport, identity card or other identity documents which the Member State within whose territory the supply takes place recognizes as valid,

— proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office where the goods left the Community.

Each Member State shall transmit to the Commission specimens of the stamps it uses for the endorsement referred to in the second indent of the third subparagraph. The Commission shall transmit this information to the tax authorities in the other Member States.

▼M4

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 ►M6 not established within the territory of the country ◄ or on behalf of either of them;

[1] JO No L 133, 4. 6. 1969, p. 6. Directive as last amended by directive 94/4/EC (JO No L 60, 3. 3. 1994, p. 14).

▼B

4. the supply of goods for the fuelling and provisioning of vessels:

   (a) used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities;

   (b) used for rescue or assistance at sea, or for inshore fishing, with the exception, for the latter, of ships' provisions;

   (c) of war, as defined in subheading 89.01 A of the Common Customs Tariff, leaving the country and bound for foreign ports or anchorages.

▼M6

The Commission shall submit to the Council as soon as possible proposals to establish Community fiscal rules specifying the scope of and practical arrangements for implementing this exemption and the exemptions provided for in (5) to (9). Until these rules come into force, Member States may limit the extent of the exemption provided for in this paragraph.

▼B

5. the supply, modification, repair, maintenance, chartering and hiring of the sea-going vessels referred to in paragraph 4 (a) and (b) and the supply, hiring, repair and maintenance of equipment — including fishing equipment — incorporated or used therein;

6. the supply, modification, repair, maintenance, chartering and hiring of aircraft used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used therein;

7. the supply of goods for the fuelling and provisioning of aircraft referred to in paragraph 6;

8. the supply of services other than those referred to in paragraph 5, to meet the direct needs of the sea-going vessels referred to in that paragraph or of their cargoes;

9. the supply of services other than those referred to in paragraph 6, to meet the direct needs of aircraft referred to in that paragraph or of their cargoes;

10. supplies of goods and services:

   — under diplomatic and consular arrangements,

   — to international organizations recognized as such by the public authorities of the host country, and to members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements,

   — effected within a Member State which is a party to the North Atlantic Treaty and intended either for the use of the forces of other States which are parties to that Treaty or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort,

▼M4

   — 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.

▼B

This exemption shall be ►M4 subject to ►M6 limitations ◄ laid down by the host Member State ◄ until Community tax rules are adopted.

▼M6

In cases where the goods are not dispatched or transported out of the country, and in the case of services, the benefit of the exemption may be given by means of a refund of the tax.

▼B

11. supplies of gold to Central Banks;

12. goods supplied to approved bodies which export them ►M4 from the Community ◄ as part of their humanitarian, charitable or teaching activities ►M4 outside the Community ◄. This exemption may be implemented by means of a refund of the tax;

▼M6

13. The supply of services, including transport and ancillary operations, but excluding the supply of services exempted in accordance with Article 13, where these are directly connected with the export of goods or imports of goods covered by the provisions of Article 7 (3) or Article 16 (1), Title A;

▼B

14. services supplied by brokers and other intermediaries, acting in the name and for account of another person, where they form part of transactions specified in this Article, or of transactions carried out ►M4 outside the Community ◄.

This exemption does not apply to travel agents who supply in the name and for account of the traveller services which are supplied in other Member States.

▼A2

15. The Portuguese Republic may treat sea and air transport between the islands making up the autonomous regions of the Azores and Madeira and between those regions and the mainland in the same way as international transport.

▼B

Article 16

Special exemptions linked to international goods traffic

1. Without prejudice to other Community provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to relieve from value added tax all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of value added tax charged at entry for home use corresponds to the amount of the tax which should have been charged had each of these transactions been taxed on import or within the territory of the country:

▼M4

A. imports of goods which are intended to be placed under warehousing arrangements other than customs;

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. supplies of services relating to the supplies of goods referred to in B;

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;

▼M4

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.

▼B

2. Subject to the consultation provided for in Article 29, Member States may opt to exempt imports for and supplies of goods to a taxable person intending to export them as they are or after processing, as well as supplies of services linked with his export business, up to a maximum equal to the value of his exports during the preceding 12 months.

3. The Commission shall submit to the Council at the earliest opportunity proposals concerning common arrangements for applying value added tax to the transactions referred to in paragraphs 1 and 2.

TITLE XI

DEDUCTIONS

Article 17

Origin and scope of the right to deduct

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

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;

(b) value added tax due or paid in respect of imported goods;

(c) value added tax due under Articles 5 (7) (a) and 6 (3).

3. Member States shall also grant to every taxable person the right to a 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 as referred to in Article 4 (2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

(b) transactions which are exempt under Article 14 (1) (i) and under Articles 15 and 16 (1) (B), (C) and (D), and paragraph 2;

(c) any of the transactions exempted under Article 13 B (a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.

4. The Council shall endeavour to adopt before 31 December 1977, on a proposal from the Commission and acting unanimously, Community rules laying down the arrangements under which refunds are to be made in accordance with paragraph 3 to taxable persons not established in the territory of the country. Until such Community arrangements enter into force, Member States shall themselves determine the method by which the refund concerned shall be made. Where the taxable person is not resident in the territory of the Community, Member States may refuse the refund or impose supplementary conditions.

5. As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible, only such proportion of the value

▼B

added tax shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

However, Member States may:

(a) authorize the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) compel the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorize or compel the taxable person to make the deduction on the basis of the use of all or part of the goods and services;

(d) authorize or compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph, in respect of all goods and services used for all transactions referred to therein;

(e) provide that where the value added tax which is not deductible by the taxable person is insignificant it shall be treated as nil.

6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of value added tax. Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.

7. Subject to the consultation provided for in Article 29, each Member State may, for cyclical economic reasons, totally or partly exclude all or some capital goods or other goods from the system of deductions. To maintain identical conditions of competition, Member States may instead of refusing deduction, tax the goods manufactured by the taxable person himself or which he has purchased in the country or imported, in such a way that the tax does not exceed the value added tax which would have been charged on the acquisition of similar goods.

Article 18

Rules governing the exercise of the right to deduct

1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17 (2) (a), hold an invoice, drawn up in accordance with Article 22 (3);

(b) in respect of deductions under Article 17 (2) (b), hold an import document, specifying him as consignee or importer, and stating or permitting calculation of the amount of tax due;

(c) in respect of deductions under 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.

2. The taxable person shall effect the deduction by subtracting from the total amount of value added tax due for a given tax period the total amount of the tax in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1.

However, Member States may require that as regards taxable persons who carry out occasional transactions as defined in Article 4 (3), the right to deduct shall be exercised only at the time of the supply.

▼B

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorized to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2.

4. where for a given tax period the amount of authorized deductions exceeds the amount of tax due, the Member States may either make a refund or carry the excess forward to the following period according to conditions which they shall determine.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.

Article 19

Calculation of the deductible proportion

1. The proportion deductible under the first subparagraph of Article 17 (5) shall be made up of a fraction having:

— as numerator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions in respect of which value added tax is deductible under Article 17 (2) and (3),

— as denominator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible. The Member States may also include in the denominator the amount of subsidies, other than those specified in Article 11 A (1) (a).

The proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next unit.

2. By way of derogation from the provisions of paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business. Amounts of turnover attributable to transactions specified in Article 13 B (d), in so far as these are incidental transactions, and to incidental real estate and financial transactions shall also be excluded. where Member States exercise the option provided under Article 20 (5) not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

3. The provisional proportion for a year shall be that calculated on the basis of the preceding year's transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated provisionally, under supervision of the tax authorities, by the taxable person from his own forecasts. However, Member States may retain their current rules.

Deductions made on the basis of such provisional proportion shall be adjusted when the final proportion is fixed during the next year.

Article 20

Adjustments of deductions

1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

(a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be made in cases of transactions remaining totally or partially unpaid and of destruction, loss or theft of property duly proved or confirmed, nor in the case of applications for the purpose of making gifts of small value and giving samples specified in Article 5 (6). However, Member States may require

▼B

adjustment in cases of transactions remaining totally or partially unpaid and of theft.

2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one-fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

By way of derogation from the preceding subparagraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used.

▼M10

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

▼B

3. In the case of supply during the period of adjustment capital goods shall be regarded as if they had still been applied for business use by the taxable person until expiry of the period of adjustment. Such business activities are presumed to be fully taxed in cases where the delivery of the said goods is taxed; they are presumed to be fully exempt where the delivery is exempt. The adjustment shall be made only once for the whole period of adjustment still to be covered.

However, in the latter case, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which value added tax is deductible.

4. For the purposes of applying the provisions of paragraphs 2 and 3, Member States may:

— define the concept of capital goods,

— indicate the amount of the tax which is to be taken into consideration for adjustment,

— adopt any suitable measures with a view to ensuring that adjustment does not involve any unjustified advantage,

— permit administrative simplifications.

5. If in any Member State the practical effect of applying paragraphs 2 and 3 would be insignificant, that Member State may subject to the consultation provided for in Article 29 forego application of these paragraphs having regard to the need to avoid distortion of competition, the overall tax effect in the Member State concerned and the need for due economy of administration.

6. Where the taxable person transfers from being taxed in the normal way to a special scheme or *vice versa*, Member States may take all necessary measures to ensure that the taxable person neither benefits nor is prejudiced unjustifiably.

TITLE XII

PERSONS LIABLE FOR PAYMENT FOR TAX

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) taxable persons who carry out taxable transactions other than those referred to in Article 9 (2) (e) and carried out by a taxable person resident abroad. When the taxable transaction is effected by a taxable person resident abroad Member States may adopt arrangements whereby tax is payable by someone other than the taxable person residing abroad. *Inter alia* a tax representative or other person for whom the taxable transaction is carried

▼B

out may be designated as such other person. The Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;

▼M15

(b) taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out 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;

▼B

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

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

TITLE XIII

OBLIGATIONS OF PERSONS LIABLE FOR PAYMENT

Article 22

Obligations under the internal system

1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

2. Every taxable person shall keep accounts in sufficient detail to permit application of the value added tax and inspection by the tax authority.

3. (a) Every taxable person shall issue an invoice, or other document serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof.

Every taxable person shall likewise issue an invoice in respect of payments on account made to him by another taxable person before the supply of goods or services is effected or completed.

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

(c) The Member States shall determine the criteria for considering whether a document serves as an invoice.

4. Every taxable person shall submit a return within an interval to be determined by each Member State. This interval may not exceed two months following the end of each tax period. The tax period may be fixed by Member States as a month, two months, or a quarter. However, Member States may fix different periods provided that these do not exceed a year

The return must 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 tax basis, the total amount of the transactions relative to such tax and deductions, and the total amount of the exempted supplies.

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

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

▼B

7. Member States shall take the necessary measures 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 in another country or who are jointly and severally liable for the payment, shall comply with the above obligations relating to declaration and payment.

8. Without prejudice to the provisions to be adopted pursuant to Article 17 (4), Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

9. Member States may release taxable persons:

— from certain obligations,

— from all obligations where those taxable persons carry out only exempt transactions,

— from the payment of the tax due where the amount is insignificant.

▼M20

Article 22a

Right of access to invoices stored by electronic means in another Member State

When a taxable person stores invoices which he issues or receives by an electronic means guaranteeing on-line access to the data and when the place of storage is in a Member State other than that in which he is established, the competent authorities in the Member State in which he is established shall have a right, for the purpose of this directive, to access by electronic means, download and use these invoices within the limits set by the regulations of the Member State where the taxable person is established and as far as that State requires for control purposes.

▼B

Article 23

Obligations in respect of imports

As regards imported goods, Member States shall lay down the detailed rules for the making of the declarations and payments.

In particular, Member States may provide that the value added tax payable on importation of goods by taxable persons or persons liable to tax or certain categories of these two need not be paid at the time of importation, on condition that the tax is mentioned as such in a return to be submitted under Article 22 (4).

TITLE XIV

SPECIAL SCHEMES

Article 24

Special scheme for small undertakings

1. Member States which might encounter difficulties in applying the normal tax scheme to small undertakings by reason of their activities or structure shall have the option, under such conditions and within such limits as they may set but subject to the consultation provided for in Article 29, of applying simplified procedures such as flat-rate schemes for charging and collecting the tax provided they do not lead to a reduction thereof.

2. Until a date to be fixed by the Council acting unanimously on a proposal from the Commission, but which shall not be later than that on which the charging of tax on imports and the remission of tax on exports in trade between the Member States are abolished:

(a) Member States which have made use of the option under Article 14 of the second Council Directive of 11 April 1967 to introduce exemptions or graduated tax relief may retain them and the

▼B

arrangements for applying them if they conform with the value added tax system.

Those Member States which apply an exemption from tax to taxable persons whose annual turnover is less than the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted, may increase this exemption up to 5 00 European units of account.

Member States which apply graduated tax relief may neither increase the ceiling of the graduated tax reliefs nor render the conditions for the granting of it more favourable;

(b) Member States which have not made use of this option may grant an exemption from tax to taxable persons whose annual turnover is at the maximum equal to the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted; where appropriate, they may grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by the Member States for the application of exemption;

(c) Member States which apply an exemption from tax to taxable persons whose annual turnover is equal to or higher than the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted, may increase it in order to maintain its value in real terms.

3. The concepts of exemption and graduated tax relief shall apply to the supply of goods and services by small undertakings.

Member States may exclude certain transactions from the arrangements provided for in paragraph 2. The provisions of paragraph 2 shall not, in any case, apply to the transactions referred to in Article 4 (3).

4. The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount, exclusive of value added tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28 (2), and the amount of the transactions exempted pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13 B (d), and insurance services, unless these transactions are ancillary transactions.

However, disposals of tangible or intangible capital assets of an undertaking shall not be taken into account for the purposes of calculating turnover.

5. Taxable persons exempt from tax shall not be entitled to deduct tax in accordance with the provisions of Article 17, nor to show the tax on their invoices ►**M20** ———— ◄.

6. Taxable persons eligible for exemption from tax may opt either for the normal value added tax scheme or for the simplified procedures referred to in paragraph 1. In this case they shall be entitled to any graduated tax relief which may be laid down by national legislation.

7. Subject to the application of paragraph 1, taxable persons enjoying graduated relief shall be treated as taxable persons subject to the normal value added tax scheme.

8. At four-yearly intervals, and for the first time on 1 January 1982, and after consultation of the Member States, the Commission shall report to the Council on the application of the provisions of this Article. It shall as far as may be necessary, and taking into account the need to ensure the long-term convergence of national regulations, attach to this report proposals for:

(a) improvements to be made to the special scheme for small undertakings;

(b) the adaptation of national systems as regards exemptions and graduated value added tax relief;

▼B

(c) the adaptation of the limit of 5 000 European units of account mentioned in paragraph 2.

9. The Council will decide at the appropriate time whether the realization of the objective referred to in Article 4 of the first Council Directive of 11 April 1967 requires the introduction of a special scheme for small undertakings and will, if appropriate, decide on the limits and common implementing conditions of this scheme. Until the introduction of such a scheme, Member States may retain their own special schemes which they will apply in accordance with the provisions of this Article and of subsequent acts of the Council.

▼A3

Article 24 bis

In implementing Article 24(2) to (6), the following Member States may grant an exemption from value added tax to taxable persons whose annual turnover is less than the equivalent in national currency of:

— in the Czech Republic: EUR 35 000;

— in Estonia: EUR 16 000;

— in Cyprus: EUR 15 600;

— in Latvia: EUR 17 200;

— in Lithuania: EUR 29 000;

— in Hungary: EUR 35 000;

— in Malta: EUR 37 000 when the economic activity consists principally in the supply of goods, EUR 24 300 when the economic activity consists principally in the supply of services with a low value added (high inputs), and EUR 14 600 in other cases, namely service providers with a high value added (low inputs);

— in Poland: EUR 10 000;

— in Slovenia: EUR 25 000;

— in Slovakia: EUR 35 000.

Such exemptions shall not have any effect on own resources for which the basis of assessment will have to be re-established in accordance with Council Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax [1].

▼B

Article 25

Common flat-rate scheme for farmers

1. Where the application to farmers of the normal value added tax scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the value added tax charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

2. For the purposes of this Article the following definitions shall apply:

— 'farmer': a taxable person who carries on his activity in one of the undertakings defined below,

— 'agricultural, forestry or fisheries undertakings': an undertaking considered to be such by each Member State within the framework of the production activities listed in Annex A,

— 'flat-rate farmer': a farmer subject to the flat-rate scheme provided for in paragraphs 3 *et seq*.,

— 'agricultural products': goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex A,

[1] OJ L 155, 7.6.1989, p. 9. Regulation as last amended by Regulation (EC, Euratom) No 1026/1999 (OJ L 126, 20.5.1999, p. 1).

▼B

— ‘agricultural service’: any service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him,

— ‘value added tax charge on inputs’: the amount of the total value added tax attaching to the goods and services purchased by all agricultural, forestry and fisheries undertakings of each Member State subject to the flat-rate scheme where such tax would be deductible under Article 17 by a farmer subject to the normal value added tax scheme,

— ‘flat-rate compensation percentages’: the percentages fixed by Member States in accordance with paragraph 3 and applied by them in the cases specified in paragraph 5 to enable flat-rate farmers to offset at a fixed rate the value added tax charge on inputs,

— ‘flat-rate compensation’: the amount arrived at by applying the flat-rate compensation percentage provided for in paragraph 3 to the turnover of the flat-rate farmer in the cases referred to in paragraph 5.

3. Member States shall fix the flat-rate compensation percentages, where necessary, and shall notify the Commission before applying them. Such percentages shall be based on macro-economic statistics for flat-rate farmers alone for the preceding three years. They may not be used to obtain for flat-rate farmers refunds greater than the value added tax charges on inputs. Member States shall have the option of reducing such percentages to a nil rate. The percentage may be rounded up or down to the nearest half point.

Member States may fix varying flat-rate compensation percentages for forestry, for the different sub-divisions of agriculture and for fisheries.

4. Member States may release flat-rate farmers from the obligations imposed upon taxable persons by Article 22.

5. The flat-rate percentages provided for in paragraph 3 shall be applied to the price, exclusive of tax, of the agricultural products and agricultural services supplied by the flat-rate farmers to taxable persons other than a flat-rate farmer. This compensation shall exclude all other forms of deduction.

6. Member States may provide for the flat-rate compensation to be paid:

(a) either by the taxable person to whom the goods or services are supplied. In this case, the taxable person to whom the goods or services are supplied shall be authorized, following the procedure laid down by the Member States, to deduct from the value added tax for which he is liable, the amount of the flat-rate compensation he has paid to the flat-rate farmers;

(b) or by the public authorities.

7. Member States shall make all necessary provisions to check properly the payment of the flat-rate compensation to the flat-rate farmers.

8. As regards all supplies of agricultural products and agricultural services other than those covered by paragraph 5, the flat-rate compensation is deemed to be paid by the purchaser or customer.

9. Each Member State may exclude from the flat-rate scheme certain categories of farmers and farmers for whom the application of the normal value added tax scheme, or the simplified scheme provided for in Article 24 (1), would not give rise to administrative difficulties.

10. Every flat-rate farmer may opt, subject to the rules and conditions to be laid down by each Member State, for application of the normal value added tax scheme or, as the case may be, the simplified scheme provided for in Article 24 (1).

11. The Commission shall, before the end of the fifth year following the entry into force of this Directive, present to the Council new propo-

▼B

sals concerning the application of the value added tax to transactions in respect of agricultural products and services.

12. When they take up the option provided for in this Article the Member States shall fix the uniform basis of assessment of the value added tax in order to apply the scheme of own resources using the common method of calculation in Annex C.

Article 26

Special scheme for travel agents

1. Member States shall apply value added tax to the operations of travel agents in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies and services of other taxable persons in the provision of travel facilities. This Article shall not apply to travel agents who are acting only as intermediaries and accounting for tax in accordance with Article 11 A (3) (c). In this Article travel agents include tour operators.

2. All transactions performed by the travel agent in respect of a journey shall be treated as a single service supplied by the travel agent to the traveller. It shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has provided the services. The taxable amount and the price exclusive of tax, within the meaning of Article 22 (3) (b), in respect of this service shall be the travel agent's margin, that is to say, the difference between the total amount to be paid by the traveller, exclusive of value added tax, and the actual cost to the travel agent of supplies and services provided by other taxable persons where these transactions are for the direct benefit of the traveller.

3. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as an exempted intermediary activity under Article 15 (14). Where these transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

4. Tax charged to the travel agent by other taxable persons on the transactions described in paragraph 2 which are for the direct benefit of the traveller, shall not be eligible for deduction or refund in any Member State.

▼M8

Article 26a

Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques

A. *Definitions*

For the purposes of this Article, and without prejudice to other Community provisions:

(a) *works* of art shall mean the objects referred to in (a) of Annex I.

However, Member States shall have the option of not considering as ‘works of art’ the items mentioned in the final three indents in (a) in Annex I;

(b) *collector*s items shall mean the objects referred to in (b) of Annex I;

(c) *antiques* shall mean the objects referred to in (c) of Annex I;

(d) *second-hand goods* shall mean tangible movable property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones as defined by the Member States;

(e) *taxable dealer* shall mean a taxable person who, in the course of his economic activity, purchases or acquires for the purposes of

▼M8

his undertaking, or imports with a view to resale, second-hand goods and/or works of art, collectors' items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale;

(f) *organizer of a sale by public auction* shall mean any taxable person who, in the course of his economic activity, offers goods for sale by public auction with a view to handing them over to the highest bidder;

(g) *principal of an organizer of a sale by public auction* shall mean any person who transmits goods to an organizer of a sale by public auction under a contract under which commission is payable on a sale subject to the following provisions:

— the organizer of the sale by public auction offers the goods for sale in his own name but on behalf of his principal,

— the organizer of the sale by public auction hands over the goods, in his own name but on behalf of his principal, to the highest bidder at the public auction.

B. *Special arrangements for taxable dealers*

1. In respect of supplies of second-hand goods, works of art, collectors' items and antiques effected by taxable dealers, Member States shall apply special arrangements for taxing the profit margin made by the taxable dealer, in accordance with the following provisions.

2. The supplies of goods referred to in paragraph 1 shall be supplies, by a taxable dealer, of second-hand goods, works of art, collectors' items or antiques supplied to him within the Community:

— by a non-taxable person,

or

— by another taxable person, in so far as the supply of goods by that other taxable person is exempt in accordance with Article 13 (B) (c),

or

— by another taxable person in so far as the supply of goods by that other taxable person qualifies for the exemption provided for in Article 24 and involves capital assets,

or

— by another taxable dealer, in so far as the supply of goods by that other taxable dealer was subject to value added tax in accordance with these special arrangements.

3. The taxable amount of the supplies of goods referred to in paragraph 2 shall be the profit margin made by the taxable dealer, less the amount of value added tax relating to the profit margin. That profit margin shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.

For the purposes of this paragraph, the following definitions shall apply:

— *selling price* shall mean everything which constitutes the consideration, which has been, or is to be, obtained by the taxable dealer from the purchaser or a third party, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the purchaser but excluding the amounts referred to in Article 11 (A) (3),

— *purchase price* shall mean everything which constitutes the consideration defined in the first indent, obtained, or to be obtained, from the taxable dealer by his supplier.

4. Member States shall entitle taxable dealers to opt for application of the special arrangements to supplies of:

(a) works of art, collectors' items or antiques which they have imported themselves;

▼**M8**

(b) works of art supplied to them by their creators or their successors in title;

(c) works of art supplied to them by a taxable person other than a taxable dealer where the supply by that other taxable person was subject to the reduced rate pursuant to Article 12 (3) (c).

Member States shall determine the detailed rules for exercising this option which shall in any event cover a period at least equal to two calendar years.

If the option is taken up, the taxable amount shall be determined in accordance with paragraph 3. For supplies of works of art, collectors' items or antiques which the taxable dealer has imported himself, the purchase price to be taken into account in calculating the margin shall be equal to the taxable amount on importation, determined in accordance with Article 11 (B), plus the value added tax due or paid on importation.

5. Where they are effected in the conditions laid down in Article 15, the supplies of second-hand goods, works of art, collectors' item or antiques subject to the special arrangements for taxing the margin shall be exempt.

6. Taxable persons shall not be entitled to deduct from the tax for which they are liable the value added tax due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the special arrangements for taxing the margin.

7. In so far as goods are used for the purpose of supplies by him subject to the special arrangements for taxing the margin, the taxable dealer shall not be entitled to deduct from the tax for which he is liable:

(a) the value added tax due or paid in respect of works af (SIC! of) art, collectors' items or antiques which he has imported himself;

(b) the value added tax due or paid in respect of works of art which have been, or are to be, supplied to him by their creators or their successors in title;

(c) the value added tax due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a taxable dealer.

8. Where he is led to apply both the normal arrangements for value added tax and the special arrangements for taxing the margin, the taxable dealer must follow separately in his accounts the transactions falling under each of these arrangements, according to rules laid down by the Member States,

9. The taxable dealer may not indicate separately on the invoices which he issues, ►**M20** ——————— ◄ tax relating to supplies of goods which he makes subject to the special arrangements for taxing the margin.

10. In order to simplify the procedure for charging the tax and subject to the consultation provided for in Article 29, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount of supplies of goods subject to the special arrangements for taxing the margin shall be determined for each tax period during which the taxable dealer must submit the return referred to in Article 22 (4).

In that event, the taxable amount for supplies of goods to which the same rate of value added tax is applied shall be the total margin made by the taxable dealer less the amount of value added tax relating to that margin.

The total margin shall be equal to the difference between:

— the total amount of supplies of goods subject to the special arrangements for taxing the margin effected by the taxable dealer during the period; that amount shall be equal to the total selling prices determined in accordance with paragraph 3,

▼M8

and

— the total amount of purchases of goods as referred to in paragraph 2 effected, during that period, by the taxable dealer; that amount shall be equal to the total purchase prices determined in accordance with paragraph 3.

Member States shall take the necessary measures to ensure that the taxable persons concerned do not enjoy unjustfied (SIC! unjustified) advantages or sustain unjustified loss.

11. The taxable dealer may apply the normal value added tax arrangements to any supply covered by the special arrangements pursuant to paragraph 2 or 4.

Where the taxable dealer applies the normal value added tax arrangements to:

(a) the supply of a work of art, collectors' item or antique which he has imported himself, he shall be entitled to deduct from his tax liability the value added tax due or paid on the import of those goods;

(b) the supply of a work of art supplied to him by its creator or his successors in title, he shall be entitled to deduct from his tax liability the value added tax due or paid for the work of art supplied to him;

(c) the supply of a work of art supplied to him by a taxable person other than a taxable dealer, he shall be entitled to deduct from his tax liability the value added tax due or paid for the work of art supplied to him.

This right to deduct shall arise at the time when the tax due for the supply in respect of which the taxable dealer opts for application of the normal value added tax arrangements become chargeable.

C. *Special arrangements for sales by public auction*

1. By way of derogation from B, Member States may determine, in accordance with the following provisions, the taxable amount of supplies of second-hand goods, works of art, collectors' items or antiques effected by an organizer of sales by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of:

— a non-taxable person,

or

— another taxable person, in so far as the supply of goods, within the meaning of Article 5 (4) (c), by that other taxable person is exempt in accordance with Article 13 (B) (c),

or

— another taxable person, in so far as the supply of goods, within the meaning of Article 5 (4) (c), by that other taxable person qualifies for the exemption provided for in Article 24 and involves capital assets,

or

— a taxable dealer, in so far as the supply of goods, within the meaning of Article 5 (4) (c), by that other taxable dealer, is subject to tax in accordance with the special arrangements for taxing the margin provided for in B.

2. The taxable amount of each supply of goods referred to in paragraph 1 shall be the total amount invoiced in accordance with paragraph 4 to the purchaser by the organizer of the sale by public auction, less:

— the net amount paid or to be paid by the organizer of the sale by public auction to his principal, determined in accordance with paragraph 3,

and

— the amount of the tax due by the organizer of the sale by public auction in respect of his supply.

▼**M8**

3. The net amount paid or to be paid by the organizer of the sale by public auction to his principal shall be equal to the difference between:

— the price of the goods at public auction,

and

— the amount of the commission obtained or to be obtained by the organizer of the sale by public auction from his principal, under the contract whereby commission is payable on the sale.

4. The organizer of the sale by public auction must issue to the purchaser an invoice ►**M20** ——————— ◄ itemizing:

— the auction price of the goods,

— taxes, dues, levies and charges,

— incidental expenses such as commission, packing, transport and insurance costs charged by the organizer to the purchaser of the goods.

That invoice must not indicate any value added tax separately.

5. The organizer of the sale by public auction to whom the goods were transmitted under a contract whereby commission is payable on a public auction sale must issue a statement to his principal.

That statement must itemize the amount of the transaction, i.e. the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.

A statement so drawn up shall serve as the invoice which the principal, where he is a taxable person, must issue to the organizer of the sale by public auction in accordance with Article 22 (3).

6. Organizers of sales by public auction who supply goods under the conditions laid down in paragraph 1 must indicate in their accounts, in suspense accounts:

— the amounts obtained or to be obtained from the purchaser of the goods,

— the amount reimbursed or to be reimbursed to the vendor of the goods.

These amounts must be duly substantiated.

7. The supply of goods to a taxable person who is an organizer of sales by public auction shall be regarded as being effected when the sale of those goods by public auction is itself effected.

D. *Transitional arrangements for the taxation of trade between Member States*

During the period referred to in Article 28l, Member States shall apply the following provisions:

(a) supplies of new means of transport, within the meaning of Article 28a (2), effected within the conditions laid down in Article 28c (A) shall be excluded from the special arrangements provided for in B and C;

(b) by way of derogation from Article 28a (1) (a), intra-Community acquisitions of second-hand goods, works of art, collectors' items or antiques shall not be subject to value added tax where the vendor is a taxable dealer acting as such and the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport, in accordance with the special arrangements for taxing the margin provided for in B, or where the vendor is an organizer of sales by public auction acting as such and the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport, in accordance with the special arrangements provided for in C;

(c) Articles 28b (B) and 28c (A) (a), (c) and (d) shall not apply to supplies of goods subject to value added tax in accordance with either of the special arrangements laid down in B and C.

▼M13

Article 26b

Special scheme for investment gold

A. *Definition*

For the purposes of this Directive, and without prejudice to other Community provisions: 'investment gold' shall mean:

(i) gold, in the form of a bar or a wafer of weights accepted by the bullion markets, of a purity equal to or greater than 995 thousandths, whether or not represented by securities. Member States may exclude from the scheme small bars or wafers of a weight of 1 g or less;

(ii) gold coins which:

— are of a purity equal to or greater than 900 thousandths,

— are minted after 1800,

— are or have been legal tender in the country of origin, and

— are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80 %.

Such coins are not, for the purpose of this Directive, considered to be sold for numismatic interest.

Each Member State shall inform the Commission before 1 July each year, starting in 1999, of the coins meeting these criteria which are traded in that Member State. The Commission shall publish a comprehensive list of these coins in the 'C' series of the *Official Journal of the European Communities* before 1 December each year. Coins included in the published list shall be deemed to fulfil these criteria for the whole year for which the list is published.

B. *Special arrangements applicable to investment gold transactions*

Member States shall exempt from value added tax the supply, intra-Community acquisition and importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claim in respect of investment gold, as well as transactions concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold.

Member States shall also exempt services of agents who act in the name and for the account of another when they intervene in the supply of investment gold for their principal.

C. *Option to tax*

Member States shall allow taxable persons who produce investment gold or transform any gold into investment gold as defined in A a right of option for taxation of supplies of investment gold to another taxable person which would otherwise be exempt under B.

Member States may allow taxable persons, who in their trade normally supply gold for industrial purposes, a right of option for taxation of supplies of investment gold as defined in A(i) to another taxable person, which would otherwise be exempt under B. Member States may restrict the scope of this option.

Where the supplier has exercised a right of option for taxation pursuant to the first or second paragraph, Member States shall allow a right of option for taxation for the agent in respect of the services mentioned in the second paragraph of B.

Member States shall specify the details of the use of these options, and shall inform the Commission of the rules of application for the exercise of these options in that Member State.

▼**M13**

D. *Right of deduction*

1. Taxable persons shall be entitled to deduct

   (a) tax due or paid in respect of investment gold supplied to them by a person who has exercised the right of option under C or supplied to them pursuant to the procedure laid down in G;

   (b) tax due or paid in respect of supply to them, or intra-Community acquisition or importation by them, of gold other than investment gold which is subsequently transformed by them or on their behalf into investment gold;

   (c) tax due or paid in respect of services supplied to them consisting of change of form, weight or purity of gold including investment gold,

   if their subsequent supply of this gold is exempt under this Article.

2. Taxable persons who produce investment gold or transform any gold into investment gold, shall be entitled to deduct tax due or paid by them in respect of supplies, or intra-Community acquisition or importation of goods or services linked to the production or transformation of that gold as if their subsequent supply of the gold exempted under this Article were taxable.

E. *Special obligations for traders in investment gold*

Member States shall, as a minimum, ensure that traders in investment gold keep account of all substantial transactions in investment gold and keep the documentation to allow identification of the customer in such transactions.

Traders shall keep this information for a period of at least five years.

Member States may accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [1], to meet the requirements of the first paragraph.

Member States may lay down stricter obligations, in particular on special record keeping or special accounting requirements.

F. *Reverse charge procedure*

By way of derogation from Article 21(1)(a), as amended by Article 28g, in the case of supplies of gold material or semi-manufactured products of a purity of 325 thousandths or greater, or supplies of investment gold where an option referred to in C of this Article has been exercised, Member States may designate the purchaser as the person liable to pay the tax, according to the procedures and conditions which they shall lay down. When they exercise this option, Member States shall take the measures necessary to ensure that the person designated as liable for the tax due fulfils the obligations to submit a statement and to pay the tax in accordance with Article 22.

G. *Procedure for transactions on a regulated gold bullion market*

1. A Member State may, subject to consultation provided for under Article 29, disapply the exemption for investment gold provided for by this special scheme in respect of specific transactions, other than intra-Community supplies or exports, concerning investment gold taking place in that Member State:

   (a) between taxable persons who are members of a bullion market regulated by the Member State concerned, and

---

[1] OJ L 166, 28.6.1991, p. 77.

▼M13

(b) where the transaction is between a member of a bullion market regulated by the Member State concerned and another taxable person who is not a member of that market.

Under these circumstances, these transactions shall be taxable and the following shall apply.

2. (a) For transactions under 1(a), for the purpose of simplification, the Member State shall authorise suspension of the tax to be collected as well as dispense with the recording requirements of value added tax.

(b) For transactions under 1(b), the reverse charge procedure under F shall be applicable. Where a non-member of the bullion market would not, other than for these transactions, be liable for registration for VAT in the relevant Member State, the member shall fulfil the fiscal obligations on behalf of the non-member, according to the provisions of that Member State.

▼M21

Article 26c

Special scheme for non-established taxable persons supplying electronic services to non-taxable persons

A. *Definitions*

For the purposes of this Article, the following definitions shall apply without prejudice to other Community provisions:

(a) 'non-established taxable person' means a taxable person who has neither established his business nor has a fixed establishment within the territory of the Community and who is not otherwise required to be identified for tax purposes under Article 22;

(b) 'electronic services' and 'electronically supplied services' means those services referred to in the last indent of Article 9(2)(e);

(c) 'Member State of identification' means the Member State which the non-established taxable person chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Article;

(d) 'Member State of consumption' means the Member State in which the supply of the electronic services is deemed to take place according to Article 9(2)(f);

(e) 'value added tax return' means the statement containing the information necessary to establish the amount of tax that has become chargeable in each Member State.

B. *Special scheme for electronically supplied services*

1. Member States shall permit a non-established taxable person supplying electronic services to a non-taxable person who is established or has his permanent address or usually resides in a Member State to use a special scheme in accordance with the following provisions. The special scheme shall apply to all those supplies within the Community.

2. The non-established taxable person shall state to the Member State of identification when his activity as a taxable person commences, ceases or changes to the extent that he no longer qualifies for the special scheme. Such a statement shall be made electronically.

The information from the non-established taxable person to the Member State of identification when his taxable activities commence shall contain the following details for the identification: name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax purposes within the Community. The non-established taxable person shall notify the Member State of identification of any changes in the submitted information.

▼M21

3. The Member State of identification shall identify the non-established taxable person by means of an individual number. Based on the information used for this identification, Member States of consumption may keep their own identification systems.

The Member State of identification shall notify the non-established taxable person by electronic means of the identification number allocated to him.

4. The Member State of identification shall exclude the non-established taxable person from the identification register if:

(a) he notifies that he no longer supplies electronic services, or

(b) it otherwise can be assumed that his taxable activities have ended, or

(c) he no longer fulfils the requirements necessary to be allowed to use the special scheme, or

(d) he persistently fails to comply with the rules concerning the special scheme.

5. The non-established taxable person shall submit by electronic means to the Member State of identification a value added tax return for each calendar quarter whether or not electronic services have been supplied. The return shall be submitted within 20 days following the end of the reporting period to which the return refers.

The value added tax return shall set out the identification number and, for each Member State of consumption where tax has become due, the total value, less value added tax, of supplies of electronic services for the reporting period and total amount of the corresponding tax. The applicable tax rates and the total tax due shall also be indicated.

6. The value added tax return shall be made in euro. Member States which have not adopted the euro may require the tax return to be made in their national currencies. If the supplies have been made in other currencies, the exchange rate valid for the last date of the reporting period shall be used when completing the value added tax return. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

7. The non-established taxable person shall pay the value added tax when submitting the return. Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.

8. Notwithstanding Article 1(1) of Directive 86/560/EEC, the non-established taxable person making use of this special scheme shall, instead of making deductions under Article 17(2) of this Directive, be granted a refund according to Directive 86/560/EEC. Articles 2(2), 2(3) and 4(2) of Directive 86/560/EEC shall not apply to the refund related to electronic supplies covered by this special scheme.

9. The non-established taxable person shall keep records of the transactions covered by this special scheme in sufficient detail to enable the tax administration of the Member State of consumption to determine that the value added tax return referred to in paragraph 5 is correct. These records should be made available electronically on request to the Member State of identification and to the Member State of consumption. These records shall be maintained for a period of 10 years from the end of the year when the transaction was carried out.

10. Article 21(2)(b) shall not apply to a non-established taxable person who has opted for this special scheme.

▼B

TITLE XV

SIMPLIFICATION PROCEDURES

Article 27

▼M24

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.

2. A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required. Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.

3. Within three months of giving the notification referred to in the last sentence of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4. In any event, the procedure set out in paragraphs 2 and 3 shall be completed within eight months of receipt of the application by the Commission.

▼B

5. Those Member States which apply on 1 January 1977 special measures of the type referred to in paragraph 1 above may retain them providing they notify the Commission of them before 1 January 1978 and providing that where such derogations are designed to simplify the procedure for charging tax they conform with the requirement laid down in paragraph 1 above.

TITLE XVI

TRANSITIONAL PROVISIONS

Article 28

1. Any provisions brought into force by the Member States under the provisions of the first four indents of Article 17 of the second Council Directive of 11 April 1967 shall cease to apply, in each Member State, as from the respective dates on which the provisions referred to in the second paragraph of Article 1 of this Directive come into force.

▼M8

1a. Until a date which may not be later than 30 June 1999, the United Kingdom of Great Britain and Northern Ireland may, for imports of works of art, collectors' items or antiques which qualified for an exemption on 1 January 1993, apply Article 11 (B) (6) in such a way that the value added tax due on importation is, in any event, equal to 2,5% of the amount determined in accordance with Article 11 (B) (1) to (4).

▼M5

2. Notwithstanding Article 12 (3), the following provisions shall apply during the transitional period referred to in Article 281.

(a) Exemptions with refund of the tax paid at the preceding stage and reduced rates lower than the minimum rate laid down in Article 12 (3) in respect of the reduced rates, which were in force on 1

▼M5

January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained.

Member States shall adopt the measures necessary to ensure the determination of own resources relating to these operations.

In the event that the provisions of this paragraph create for Ireland distortions of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorized by the Commission to apply a reduced rate to such supplies, in accordance with Article 12 (3). In that case, Ireland shall submit its request to the Commission together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorized to apply the proposed reduced rates.

(b) Member States which, at 1 January 1991 in accordance with Community law, applied exemptions with refund of tax paid at the preceding stage, or reduced rates lower than the minimum laid down in Article 12 (3) in respect of the reduced rates, to goods and services other than those specified in Annex H, may apply the reduced rate or one of the two reduced rates provided for in Article 12 (3) to any such supplies.

(c) Member States which under the terms of Article 12 (3) will be obliged to increase their standard rate as applied at 1 January 1991 by more than 2 %, may apply a reduced rate lower than the minimum laid down in Article 12 (3) in respect of the reduced rate to supplies of categories of goods and services specified in Annex H. Furthermore, those Member States may apply such a rate to restaurant services, children's clothing, children's footwear and housing. Member States may not introduce exemptions with refund of the tax at the preceding stage on the bais (SIC! basis) of this paragraph.

(d) Member States which at 1 January 1991 applied a reduced rate to restaurant services, children's clothing, children's footwear and housing, may continue to apply such a rate to such supplies.

(e) Member States which at 1 January 1991 applied a reduced rate to supplies of goods and services other than those specified in Annex H may apply the reduced rate or one of the two reduced rates provided for in Article 12 (3) to such supplies, provided that the rate is not lower than 12 %.

▼M8

This provision may not apply to supplies of second-hand goods, works of art, collectors' items or antiques subject to value added tax in accordance with one of the special arrangements provided for an Article 26a (B) and (C).

▼M5

(f) The Hellenic Republic may apply VAT rates up to 30 % lower than the corresponding rates applied in mainland Greece in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the following islands in the Aegean: Thasos, Northern Sporades, Samothrace and Skiros.

(g) On the basis of a report from the Commission, the Council shall, before 31 December 1994, reexamine the provisions of subparagraphs (a) to (f) above in relation to the proper functioning of the internal market in particular. In the event of significant distortions of competition arising, the Council, acting unanimously on a proposal from the Commission, shall adopt appropriate measures.

▼M10

(h) Member States which, on 1 January 1993, were availing themselves of the option provided for in Article 5 (5) (a) as in force on that date, may apply to supplies under a contract to make up work the rate applicable to the goods after making up.

For the purposes of applying this provision, supplies under a contract to make up work shall be deemed to be delivery by a contractor to his customer of movable property made or assembled by the contractor from materials or objects entrusted to him by the

▼M10

customer for this purpose, whether or not the contractor has provided any part of the materials used.

▼M11

(i) Member States may apply a reduced rate to supplies of live plants (including bulbs, roots and the like, cut flowers and ornamental foliage) and wood for use as firewood.

▼M17

j) the Republic of Austria may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) to the letting of immovable property for residential use, provided that the rate is not lower than 10 %.

k) the Portuguese Republic may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) to restaurant services, provided that the rate is not lower than 12 %.

▼B

3. During the transitional period referred to in paragraph 4, Member States may:

(a) continue to subject to tax the transactions exempt under Article 13 or 15 set out in Annex E to this Directive;

(b) continue to exempt the activities set out in Annex F under conditions existing in the Member State concerned;

(c) grant to taxable persons the option for taxation of exempt transactions under the conditions set out in Annex G;

(d) continue to apply provisions derogating from the principle of immediate deduction laid down in the first paragraph of Article 18 (2);

(e) continue to apply measures derogating from the provisions of Articles ►M8 ——— ◄ 6 (4) and 11 A (3) (c);

(f) provide that for supplies of buildings and building land purchased for the purpose of resale by a taxable person for whom tax on the purchase was not deductible, the taxable amount shall be the difference between the selling price and the purchase price;

(g) by way of derogation from Articles 17 (3) and 26 (3), continue to exempt without repayment of input tax the services of travel agents referred to in Article 26 (3). This derogation shall also apply to travel agents acting in the name and on account of the traveller.

▼M4

3a. Pending a decision by the Council, which, under Article 3 of Directive 89/465/EEC [1], 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.

▼B

4. The transitional period shall last initially for five years as from 1 January 1978. At the latest six months before the end of this period, and subsequently as necessary, the Council shall review the situation with regard to the derogations set out in paragraph 3 on the basis of a report from the Commission and shall unanimously determine on a proposal from the Commission, whether any or all of these derogations shall be abolished.

5. At the end of the transitional period passenger transport shall be taxed in the country of departure for that part of the journey taking place within the Community according to the detailed rules of procedure to be laid down by the Council acting unanimously on a proposal from the Commission.

[1] JO No L 226, 3. 8. 1989, p. 21.

▼M16

6. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply for a maximum period of ►M25 six years between 1 January 2000 and 31 December 2005 ◄ the reduced rates provided for in the third subparagraph of Article 12(3)(a) to services listed in as maximum of two of the categories set out in Annex K. In exceptional cases a Member State may be authorised to apply the reduced rate to services in three of the abovementioned categories.

The services concerned must satisfy the following requirements:

(a) they must be labour-intensive;

(b) they must be largely provided direct to final consumers;

(c) they must be mainly local and not likely to create distortions of competition;

(d) there must be a close link between the lower prices resulting from the rate reduction and the foreseeable increase in demand and employment.

The application of a reduced rate must not prejudice the smooth functioning of the internal market.

Any Member State wishing to introduce the measure provided for in the first subparagraph shall inform the Commission before 1 November 1999 and shall provide it before that date with all relevant particulars, and in particular the following:

(a) scope of the measure and detailed description of the services concerned;

(b) particulars showing that the conditions laid down in the second and third subparagraphs have been met;

(c) particulars showing the budgetary cost of the measure envisaged.

Those Member States authorised to apply the reduced rate referred to in the first subparagraph shall, before 1 October 2002, draw up a detailed report containing an overall assessment of the measure's effectiveness in terms notably of job creation and efficiency.

Before 31 December 2002 the Commission shall forward a global evaluation report to the Council and Parliament accompanied, if necessary, by a proposal for appropriate measures for a final decision on the VAT rate applicable to labour-intensive services.

▼M4

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).

▼M6

By way of derogation from the first subparagraph, intra-Community acquisitions of goods made under ther (SIC! the) conditions set out in paragraph 1a by a taxable person or non-taxable legal person shall not be subject to value added tax.

▼M4

Member States shall grant taxable persons and non-taxable legal persons eligible under the second subparagraph the right to opt for

▼M4

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.

▼M6

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

1a. The following shall benefit from the derogation set out in the second subparagraph of paragraph 1 (a):

(a) intra-Community acquisitions of goods whose supply within the territory of the country would be exempt pursuant to Article 15 (4) to (10);

(b) intra-Community acquisitions of goods other than those at (a), made:

— by a taxable person for the purpose of his agricultural, forestry or fisheries undertaking, subject to the flat-rate scheme set out in Article 25, by a taxable person who carries out only supplies of goods or services in respect of which value added tax is not deductible, or by a non-taxable legal person,

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

and

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

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

▼M4

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 1550 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);

▼M8

(b) the means of transport referred to in (a) shall not be considered to be ‘new’ where both of the following conditions are simultaneously fulfilled:

— they were supplied more than three months after the date of first entry into service. However, this period shall be increased to six months for the motorized land vehicles defined in (a),

[1] JO No L 76, 23. 3. 1992, p. 1.

▼M8

— they have travelled more than 6 000 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.

▼M4

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 ►M18 Article 21(4) ◄ 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. ►M10 The following shall be treated as supplies of goods effected for consideration: ◄

▼M10

▼M4

(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),

▼M10

— the supply of a service performed for the taxable person and involving work on the goods in question physically carried out

▼M10

in the Member State in which the dispatch or transport of the goods ends, provided that the goods, after being worked upon, are re-dispatched to that taxable person in the Member State from which they had initially been dispatched or transported,

▼M4

— 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,

▼M23

— the supply of gas through the natural gas distribution system, or of electricity, under the conditions set out in Article 8(1)(d) or (e).

▼M4

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.

▼M6

The following shall also be deemed to be an intra-Community acquisition of goods effected for consideration: the appropriation of goods by the forces of a State party to the North Atlantic Treaty, for their use or for the use of the civilian staff accompanying them, which they have not acquired subject to the general rules governing taxation on the domestic market of one of the Member States, when the importation of these goods could not benefit from the exemption set out in Article 14 (1) (g).

▼M4

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

▼M4

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

▼M6

For the purposes of applying the first subparagraph, the intra-Community acquisition of goods shall be deemed to have been subject to tax in accordance with paragraph 1 when the following conditions have been met:

— the acquirer establishes that he has effected this intra-Community acquisition for the needs of a subsequent supply effected in the Member State referred to in paragraph 1 and for which the consignee has been designated as the person liable for the tax due in accordance with Article 28c (E) (3),

— the obligations for declaration set out in the last subparagraph of Article 22 (6) (b) have been satisfied by the acquirer.

▼M4

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.

▼**M4**

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 ►**M10** . ◄

▼**M10**

The transport of goods where the place of departure and the place of arrival are situated within the territory of the country shall be treated as intra-Community transport of goods where such transport is directly linked to transport of goods where the place of departure and the place of arrival are situated within the territories of two different Member States;

▼**M4**

— '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.

▼M4

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.

▼M10

F. *Place of the supply of services in the case of valuations of or work on movable tangible property*

By way of derogation from Article 9 (2) (c), the place of the supply of services involving valuations or work on movable tangible property, provided to customers identified for value added tax purposes in a Member State other than the one where those services are physically carried out, shall be deemed to be in the territory of the Member State which issued the customer with the value added tax identification number under which the service was carried out for him.

This derogation shall not apply where the goods are not dispatched or transported out of the Member State where the services were physically carried out.

▼M4

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, ►M10 as defined in Article 5 ◄, 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-

▼M4

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;

▼M6

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

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

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

▼M4

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 ►M18 Article 21(4) ◄ 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.

▼**M6**

E. *Other exemptions*

▼**M10**

1. In Article 16:

— paragraph 1 shall be replaced by the following:

‘1. Without prejudice to other Community tax provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to exempt all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of value added tax due on cessation of the arrangements on situations referred to at A to E corresponds to the amount of tax which would have been due had each of these transactions been taxed within the territory of the country:

A. imports of goods which are intended to be placed under warehousing arrangements other than customs;

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, within the territory of the country, under warehousing arrangements other than customs warehousing.

For the purposes of this Article, warehouses other than customs warehouses shall be taken to be:

— for products subject to excise duty, the places defined as tax warehouses for the purposes of Article 4 (b) of Directive 92/12/EEC,

— for goods other than those subject to excise duty, the places defined as such by the Member States. However, Member States may not provide for warehousing arrangements other than customs warehousing where the goods in question are intended to be supplied at the retail stage.

Nevertheless, Member States may provide for such arrangements for goods intended for:

— taxable persons for the purposes of supplies effected under the conditions laid down in Article 28k,

— tax-free shops within the meaning of Article 28k, for the purposes of supplies to travellers taking flights or sea crossings to third countries, where those supplies are exempt pursuant to Article 15,

— taxable persons for the purposes of supplies to travellers on board aircraft or vessels during a flight or sea crossing where the place of arrival is situated outside the Community,

— taxable persons for the purposes of supplies effected free of tax pursuant to Article 15, point 10.

The places referred to in (a), (b), (c) and (d) shall be as defined by the Community customs provisions in force;

C. supplies of services relating to the supplies of goods referred to in B;

▼**M10**

D. supplies of goods and of services carried out:

(a) in the places listed in B (a), (b), (c) and (d) and still subject to one of the situations specified therein;

(b) in the places listed in B (e) and still subject, within the territory of the country, to the situation specified therein.

Where they exercise the option provided for in (a) for transactions effected in customs warehouses, Member States shall take the measures necessary to ensure that they have defined warehousing arrangements other than customs warehousing which permit the provisions in (b) to be applied to the same transactions concerning goods listed in Annex J which are efected (SIC! effected) in such warehouses other than customs warehouses;

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.

By way of derogation from the first subparagraph of Article 21 (1) (a), the person liable to pay the tax due in accordance with the first subparagraph shall be the person who causes the goods to cease to be covered by the arrangements or situations listed in this paragraph.

When the removal of goods from the arrangements or situations referred to in this paragraph gives rise to importation within the meaning of Article 7 (3), the Member State of import shall take the measures necessary to avoid double taxation within the country.',

— the following paragraph shall be added:

'1a. Where they exercise the option provided for in paragraph 1, Member States shall take the measures necessary to ensure that intra-Community acquisitions of goods intended to be placed under one of the arrangements or in one of the situations referred to in paragraph 1 (B) benefit from the same provisions as supplies of goods effected within the country under the same conditions.'

▼**M6**

2. In Article 16 (2):

— 'intra-Community acquisitions of goods made by a taxable person and' shall be added after 'may opt to exempt' and 'outside the Community' shall be added after 'export them',

— the following subparagraphs shall be added:

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

Member States may set a common maximum amount for transactions which they exempt under the first and second subparagraphs.'

3. Member States shall take specific measures to ensure that value added tax is not charged on the intra-Community acquisition of

▼M6

goods effected, within the meaning of Article 28b (A) (1), within its territory when the following conditions are met:

— the intra-Community acquisition of goods is effected by a taxable person who is not established in the territory of the country but who is identified for value added tax purposes in another Member State,

— the intra-Community acquisition of goods is effected for the purpose of a subsequent supply of goods made by a taxable person in the territory of the country,

— the goods so acquired by this taxable person are directly dispatched or transported from another Member State than that in which he is identified for value added tax purposes and destined for the person for whom he effects the subsequent supply,

— the person to whom the subsequent supply is made is a taxable person or a non-taxable legal person who is identified for value added tax purposes within the territory of the country,

— the person to whom the subsequent supply is made has been designated in accordance with ►M18 Article 21(1)(c) ◄ as the person liable for the tax due on the supplies effected by the taxable person not established within the territory of the country.

▼M4

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.

▼M6

3. By way of derogation from paragraph 2, tax shall become chargeable on the issue of the invoice ►M20 ——— ◄ provided for in the first subparagraph of Article 22 (3) (a) where that invoice ►M20 ——— ◄ is issued to the person acquiring the goods before the fifteenth day of the month following that during which the taxable event occurs.

▼M4

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.

▼M6

However, tax shall become chargeable on the issue of the invoice provided for in the first subparagraph of Article 22 (3) (a) ►M20 ——— ◄ where that invoice ►M20 ——— ◄ is issued before the fifteenth day of the month following that during which the taxable event occurs.

▼M4

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. ►M6 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) and paragraphs 2 and 3. ◄

▼M4

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). ►M6 When, after the moment the intra-Community acquisition of goods was effected, the acquirer obtains the refund of excise duties paid in the Member State from which the goods were dispatched or transported, the taxable amount shall be reduced accordingly in the Member State where the intra-Community acquisition took place. ◄

▼M6

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

▼M4

►M6 3. ◄ The tax rate applicable to the intra-Community acquisition of goods shall be that in force when the tax becomes chargeable.

►M6 4. ◄ 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:

▼M10

(a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

▼M4

(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 ►M6 28c (A) and (C) ◄;

(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 (**).'

(*) JO No L 331, 27. 12. 1979, p. 11.
(**) JO No L 326, 21. 11. 1986, p. 40.

▼M6

For the purposes of applying the above:

(a) the taxable persons referred to in Article 1 of Directive 79/1072/EEC shall also be considered for the purposes of applying the said Directive as taxable persons who are not established in the country when, inside the territory of the country, they have only carried out supplies of goods and services to a person who has been designated as the person liable to pay the tax in accordance with ►M18 Article 21 (1)(a) and (c) ◄;

(b) the taxable persons referred to in Article 1 of Directive 86/560/EEC shall also be considered for the purposes of applying the said Directive as taxable persons who are not established in the Community when, inside the territory of the country, they have only carried out supplies of goods and services to a person who has been designated as the person liable to pay the tax in accordance with Article 21 (1) (a);

(c) Directives 79/1072/EEC and 86/560/EEC shall not apply to supplies of goods which are, or may be, exempted under Article 28c (A) when the goods supplied are dispatched or transported by the acquirer or for his account.

▼M4

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:

'►M18 *Article 21*

Persons liable for payment for tax

1. Under the internal system, the following shall be liable to pay value added tax:

►M23 (a) the taxable person carrying out the taxable supply of goods or of services, except for the cases referred to in (b), (c) and (f). Where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may, under the conditions determined by them, lay down that the person liable to pay tax is the person for whom the taxable supply of goods or of services is carried out; ◄

▼M4

(b) taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person not established within the territory of the country;

(c) the person to whom the supply of goods is made when the following conditions are met:

— the taxable operation is a supply of goods made under the conditions laid down in Article 28c(E)(3),

— the person to whom the supply of goods is made is another taxable person or a non-taxable legal person identified for the purposes of value added tax within the territory of the country,

— the invoice issued by the taxable person not established within the territory of the country conforms to Article 22(3).

However, Member States may provide a derogation from this obligation, where the taxable person who is not established within the territory of the country has appointed a tax representative in that country;

(d) any person who mentions the value added tax on an invoice ►M20 ———— ◄;

(e) any person effecting a taxable intra-Community acquisition of goods;

►M23 (f) persons who are identified for value added tax purposes within the territory of the country and to whom goods are supplied under the conditions set out in Article 8(1)(d) or (e), if the supplies are carried out by a taxable person not established within the territory of the country. ◄

2. By way of derogation from the provisions of paragraph 1:

(a) where the person liable to pay tax in accordance with the provisions of paragraph 1 is a taxable person who is not established within the territory of the country, Member States may allow him to appoint a tax representative as the person liable to pay tax. This option shall be subject to conditions and procedures laid down by each Member State;

(b) where the taxable transaction is effected by a taxable person who is not established within the territory of the country and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC (*) and 77/799/EEC (**) and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (***), Member States may take steps to provide that the person liable for payment of the tax shall be a tax representative appointed by the non-established taxable person.

3. In the situations referred to in paragraphs 1 and 2, Member States may provide that someone other than the person liable for payment of the tax shall be held jointly and severally liable for payment of the tax.

4. On importation, value added tax shall be payable by the person or persons designated or accepted as being liable by the Member State into which the goods are imported. ◄

(*) OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 1994 Act of Accession.

(**) OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.

(***) OJ L 24, 1.2.1992, p. 1.'

▼M4

Article 28h

Obligations of persons liable for payment

Article 22 shall be replaced by the following:

'Article 22

Obligations under the internal system:

1. ►M21 (a) Every taxable person shall state when his activity as a taxable person commences, changes or ceases. Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that electronic means are used. ◄

(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:

►M23 — 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 supplies of goods or of services for which tax is payable solely by the customer or the recipient in accordance with Article 21(1)(a), (b), (c) or (f). 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).

▼M6

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

▼M4

(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. ►M20 Nevertheless, the Hellenic Republic shall be authorised to use the prefix "EL". ◄

(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.

▼M10

(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 fifth, sixth and seventh indents of Article 28a (5) (b).

Every taxable person shall keep sufficiently detailed accounts to permit the identification of goods 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, in connection with which a service has

▼M10

been provided pursuant to the third or fourth indent of Article 9 (2) (c);

▼M20

3. (a) Every taxable person shall ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of goods or services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, 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).

Every taxable person shall likewise ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of any payment on account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment on account made to him by another taxable person or non-taxable legal person before the provision of services is completed.

Member States may impose on taxable persons an obligation to issue an invoice in respect of goods or services other than those referred to in the preceding subparagraphs which they have supplied or rendered on their territory. When they do so, Member States may impose fewer obligations in respect of these invoices than those listed under points (b), (c) and (d).

The Member States may release taxable persons from the obligation to issue an invoice in respect of goods or services which they have supplied or rendered in their territory and which are exempt, with or without refund of the tax paid at the preceding stage, pursuant to Article 13, Article 28(2)(a) and Article 28(3)(b).

Any document or message that amends and refers specifically and unambiguously to the initial invoice is to be treated as an invoice. Member States in whose territory goods or services are supplied or rendered may allow some of the obligatory details to be left out of such documents or messages.

Member States may impose time limits for the issue of invoices on taxable persons supplying goods and services in their territory.

Under conditions to be laid down by the Member States in whose territory goods or services are supplied or rendered, a summary invoice may be drawn up for several separate supplies of goods or services.

Invoices may be drawn up by the customer of a taxable person in respect of goods or services supplied or rendered to him by that taxable person, on condition that there is at the outset an agreement between the two parties, and on condition that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services. The Member States in whose territory the goods or services are supplied or rendered shall determine the terms and conditions of the agreement and of the acceptance procedures between the taxable person and his customer.

Member States may impose further conditions on the issue of invoices by the customers of taxable persons supplying goods or services on their territory. For example, they may require that such invoices be issued in the name and on behalf of the taxable person. Such conditions must always be the same wherever the customer is established.

Member States may also lay down specific conditions for taxable persons supplying goods or services in their territory

▼M20

in cases where the third party, or the customer, who issues invoices is established in a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (*), Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation (**) and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (***).

(b) Without prejudice to the specific arrangements laid down by this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a):

— the date of issue;

— a sequential number, based on one or more series, which uniquely identifies the invoice,

— the VAT identification number referred to in paragraph 1(c) under which the taxable person supplied the goods or services;

— where the customer is liable to pay tax on goods supplied or services rendered or has been supplied with goods as referred to in Article 28c(A), the VAT identification number as referred to in paragraph 1(c) under which the goods were supplied or the services rendered to him;

— the full name and address of the taxable person and of his customer;

— the quantity and nature of the goods supplied or the extent and nature of the services rendered;

— the date on which the supply of goods or of services was made or completed or the date on which the payment on account referred to in the second subparagraph of point (a) was made, insofar as that a date can be determined and differs from the date of issue of the invoice;

— the taxable amount per rate or exemption, the unit price exclusive of tax and any discounts or rebates if they are not included in the unit price;

— the VAT rate applied;

— the VAT amount payable, except where a specific arrangement is applied for which this Directive excludes such a detail;

— where an exemption is involved or where the customer is liable to pay the tax, reference to the appropriate provision of this directive, to the corresponding national provision, or to any indication that the supply is exempt or subject to the reverse charge procedure;

— where the intra-Community supply of a new means of transport is involved, the particulars specified in Article 28a(2);

— where the margin scheme is applied, reference to Article 26 or 26a, to the corresponding national provisions, or to any other indication that the margin scheme has been applied;

— where the person liable to pay the tax is a tax representative within the meaning of Article 21(2), the VAT identification number referred to in paragraph 1(c) of that tax representative, together with his full name and address.

Member States may require taxable persons established on their territory and supplying goods or services on their territory to indicate the VAT identification number referred to in paragraph 1(c) of their customer in cases other than those referred to in the fourth indent of the first subparagraph.

▼M20

Member States shall not require invoices to be signed.

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of tax to be paid is expressed in the national currency of the Member State where the supply of goods or services takes place, using the conversion mechanism laid down in Article 11 C(2).

Where necessary for control purposes, Member States may require invoices in respect of goods supplied or services rendered in their territory and invoices received by taxable persons in their territory to be translated into their national languages.

(c) Invoices issued pursuant to point (a) may be sent either on paper or, subject to an acceptance by the customer, by electronic means.

Invoices sent by electronic means shall be accepted by Member States provided that the authenticity of the origin and integrity of the contents are guaranteed:

— by means of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (****); Member States may however ask for the advanced electronic signature to be based on a qualified certificate and created by a secure-signature-creation device, within the meaning of Article 2(6) and (10) of the aforementioned Directive;

— or by means of electronic data interchange (EDI) as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange (*****) when the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data; however Member States may, subject to conditions which they lay down, require that an additional summary document on paper is necessary.

Invoices may, however, be sent by other electronic means subject to acceptance by the Member State(s) concerned. The Commission will present, at the latest on 31 December 2008, a report, together with a proposal, if appropriate, amending the conditions on electronic invoicing in order to take account of possible future technological developments in this field.

Member States may not impose on taxable persons supplying goods or services in their territory any other obligations or formalities relating to the transmission of invoices by electronic means. However, they may provide, until 31 December 2005, that the use of such a system is to be subject to prior notification.

Member States may lay down specific conditions for invoices issued by electronic means for goods or services supplied in their territory from a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC and 77/799/EEC and by Regulation (EEC) No 218/92.

When batches containing several invoices are sent to the same recipient by electronic means, the details that are common to the individual invoices may be mentioned only once if, for each invoice, all the information is accessible.

(d) Every taxable person shall ensure that copies of invoices issued by himself, by his customer or, in his name and on his behalf, by a third party, and all the invoices which he has received are stored.

▼M20

For the purposes of this Directive, the taxable person may decide the place of storage provided that he makes the invoices or information stored there available without undue delay to the competent authorities whenever they so request. Member States may, however, require taxable persons established in their territory to notify them of the place of storage, if it is outside their territory. Member States may, in addition, require taxable persons established in their territory to store within the country invoices issued by themselves or by their customers or, in their name and on their behalf, by a third party, as well as all the invoices which they have received, when the storage is not by electronic means guaranteeing full on-line access to the data concerned.

The authenticity of the origin and integrity of the content of the invoices, as well as their readability, must be guaranteed throughout the storage period. As regards the invoices referred to in the third subparagraph of point (c), the information they contain may not be altered; it must remain legible throughout the aforementioned period.

The Member States shall determine the period for which taxable persons must store invoices relating to goods or services supplied in their territory and invoices received by taxable persons established in their territory.

In order to ensure that the conditions laid down in the third subparagraph are met, Member States referred to in the fourth subparagraph may require that invoices be stored in the original form in which they were sent, whether paper or electronic. They may also require that when invoices are stored by electronic means, the data guaranteeing the authenticity of the origin and integrity of the content also be stored.

Member States referred to in the fourth subparagraph may impose specific conditions prohibiting or restricting the storage of invoices in a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC, 77/799/EEC and by Regulation (EEC) No 218/92 and to the right of access by electronic means, download and use referred to in Article 22a.

Member States may, subject to conditions which they lay down, require the storage of invoices received by non-taxable persons.

(e) For the purposes of points (c) and (d), transmission and storage of invoices "by electronic means" shall mean transmission or making available to the recipient and storage using electronic equipment for processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means.

For the purposes of this Directive, Member States shall accept documents or messages in paper or electronic form as invoices if they meet the conditions laid down in this paragraph.

(*) OJ L 73, 19.3.1976, p. 18. Directive as last amended by Directive 2001/44/EC (OJ L 175, 28.6.2001, p. 17).
(**) OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.
(***) OJ L 24, 1.2.1992, p. 1.
(****) OJ L 13, 19.1.2000, p. 12.
(*****) OJ L 338, 28.12.1994, p. 98.

▼M4

4. ►M21 (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

▼M4

may, however, set different periods provided that they do not exceed one year. Member States shall, subject to conditions which they lay down, allow the taxable person to make such returns by electronic means, and may also require that electronic means are used. ◄

(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,

▼M6

— on the other hand, the total amount, less value-added tax of the intra-Community acquisitions of goods referred to in Article 28a (1) and (6) effected within the territory of the country 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 28 (b) (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, and the total amount, less value-added tax, of the supplies of goods made within the territory of the country for which the taxable person has been designated as the person liable for the tax in accordance with Article 28c (E) (3) and under which the tax has become payable in the course of the period covered by the declaration.

▼M4

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. ►M21 (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. Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that electronic means are used. ◄

▼M10

(SIC! (b)) Every taxable person identified for value added tax purposes shall also submit a recapitulative statement of the acquirers identified for value added tax purposes to whom he has supplied goods under the conditions provided for in Article 28c (A) (a) and (d), and of consignees identified for value added tax purposes in the transactions referred to in the fifth subparagraph.

▼M21

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. Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that electronic means are used.

▼M4

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 ►M6 Article 28c (A) (a) ◄,

▼M10

— 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,

▼M4

— 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 ►M6 Article 28c (A) (d) ◄, 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 ►M6 and the total amount of the supplies, determined in accordance with Article 28e (2) ◄,

— 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.

▼M10

▼M6

In the cases set out in the third subparagraph of Article 28b (A) (2), the taxable person identified for value added tax purposes within the territory of the country shall mention in a clear way on the recapitulative statement:

— the number by which he is identified for value added tax purposes within the territory of the country and under which he carried out the intra-Community acquisition and the subsequent supply of goods,

— the number by which, within the territory of the Member State of arrival of the dispatch or transport of the goods, the consignee of the subsequent supply by the taxable person is identified,

— and, for each consignee, the total amount, less value added tax, of the supplies made by the

▼M6

taxable person within the territory of the Member State of arrival of the dispatch or transport of the goods. These amounts shall be declared for the calendar quarter during which the tax became chargeable.

▼M4

(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.

▼M18

7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21(1) and (2), are considered to be liable to pay the tax instead of a taxable person not established within the territory of the country comply with the obligations relating to declaration and payment set out in this Article; they shall also take the measures necessary to ensure that those persons who, in accordance with Article 21(3), are held to be jointly and severally liable for payment of the tax comply with the obligations relating to payment set out in this Article.

▼M4

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.

▼M20

The option provided for in the first subparagraph cannot be used to impose additional obligations over and above those laid down in paragraph 3.

▼M4

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,

▼M4

— 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).

▼M20

Without prejudice to the provisions laid down in point (d), Member States may not, however, release the taxable persons referred to in the third indent from the obligations referred to in Article 22(3).

▼M4

(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.

▼M20

(d) Subject to consultation of the Committee provided for in Article 29 and under the conditions which they may lay down, Member States may provide that invoices in respect of goods supplied or services rendered in their territory do not have to fulfil some of the conditions laid down in paragraph 3(b) in the following cases:

— when the amount of the invoice is minor, or

— when commercial or administrative practice in the business sector concerned or the technical conditions under which the invoices are issued make it difficult to comply with all the requirements referred to in paragraph 3(b).

In any case, these invoices must contain the following:

— the date of issue,

— identification of the taxable person,

— identification of the type of goods supplied or services rendered,

— the tax due or the information needed to calculate it.

The simplified arrangements provided for in this point may not be applied to transactions referred to in paragraph 4(c).

(e) In cases where Member States make use of the option provided for in the third indent of point (a) to refrain from allocating a number as referred to in paragraph 1(c) to taxable persons who do not carry out any of the transactions referred to in paragraph 4(c), and where the supplier or the customer have not been allocated an identification number of this type, the invoice should feature instead another number called the tax reference number, as defined by the Member States concerned.

When the taxable person has been allocated an identification number as referred to in paragraph 1(c), the Member States referred to in the first subparagraph may also require the invoice to show:

— for services rendered referred to in Article 28b(C), (D), (E) and (F) and for supplies of goods referred to in Article 28c(A) and (E) point 3, the number referred to in paragraph 1(c) and the tax reference number of the supplier;

— for other supplies of goods and services, only the tax reference number of the supplier or only the number referred to in paragraph 1(c).

▼M4

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

▼M4

identified by an individual number as defined in paragraph 1 (c), (d) and (e).

11. ►M6 In the case of intra-Community acquisitions of products subject to excise duty referred to in Article 28a (1) (c) as well as ◄ 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.'

▼M6

Article 28i

Special scheme for small undertakings

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

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

▼M4

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 28 c (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;

▼C1

(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.

▼M4

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.'

▼M4

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:

▼M7

   (a) the total value of which per person per journey does not exceed ECU 90.

   By way of derogation from Article 28m, Member States shall determine the equivalent in national currency of the above amount in accordance with Article 7 (2) of Directive 69/169/EEC.

▼M4

   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-

▼M4

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 ([1]).

▼M6

Article 28n

Transitional measures

1. When goods:

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

and

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

and

— have not left that regime before 1 Jannuary (SIC! January) 1993, the provisions in force at the moment the goods were placed under that regime shall continue to apply for the period, as determined by those provisions, the goods remain under that regime.

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

(a) the removal, including irregular removal, of goods from the regime referred to in Article 14 (1) (c) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;

([1]) JO No C 328, 17. 12. 1991, p. 4.

▼M6

(b) the removal, including irregular removal, of goods from the regime referred to in Article 16 (1) (A) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;

(c) the termination of a Community internal transit operation started before 1 January 1993 in the Community for the purpose of supply of goods for consideration made before 1 January 1993 in the Community by a taxable person acting as such;

(d) the termination of an external transit operation started before 1 January 1993;

(e) any irregularity or offence committed during an external transit operation started under the conditions set out in (c) or any Community external transit operation referred to in (d);

(f) the use within the country, by a taxable or non-taxable person, of goods which have been supplied to him, before 1 January 1993, within another Member State, where the following conditions are met:

— the supply of these goods has been exempted, or was likely to be exempted, pursuant to Article 15 (1) and (2),

— the goods were not imported within the country before 1 January 1993.

For the purpose of the application of (c), the expression 'Community internal transit operation' shall mean the dispatch or transport of goods under the cover of the internal Community transit arrangement or under the cover of a T2 L document or the intra-Community movement carnet, or the sending of goods by post.

3. In the cases referred to in paragraph 2 (a) to (e), the place of import, within the meaning of Article 7 (2), shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before 1 January 1993.

4. By way of derogation from Article 10 (3), the import of the goods within the meaning of paragraph 2 of this Article shall terminate without the occurrence of a chargeable event when:

(a) the imported goods are dispatched or transported outside the Community within the meaning of Article 3;

or

(b) the imported goods, within the meaning of paragraph 2 (a), are other than a means of transport and are dispatched or transported to the Member State from which they were exported and to the person who exported them;

or

▼C2

(c) the imported goods, within the meaning of paragraph 2 (a), are means of transport which were acquired or imported before 1 January 1993, in accordance with the general conditions of taxation in force on the domestic market of a Member State, within the meaning of Article 3, and/or have not been subject by reason of their exportation to any exemption from or refund of value added tax.

This condition shall be deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1985 or when the amount of tax due because of the importation is insignificant.

▼M8

TITLE XVIb

TRANSITIONAL PROVISIONS APPLICABLE IN THE FIELD OF SECOND-HAND GOODS, WORKS OF ART, COLLECTORS' ITEMS AND ANTIQUES

Article 28o

1. Member States which at 31 December 1992 were applying special tax arrangements other than those provided for in Article 26a (B) to supplies of second-hand means of transport effected by taxable dealers my continue to apply those arrangements during the period referred to in Article 28l (SIC! 281) in so far as they comply with, or are adjusted to comply with, the following conditions:

(a) the special arrangements shall apply only to supplies of the means of transport referred to in Article 28a (2) (a) and regarded as second-hand goods within the meaning of Article 26a (A) (d), effected by taxable dealers within the meaning of Article 26a (A) (e), and subject to the special tax arrangements for taxing the margin pursuant to Article 26a (B) (1) and (2). Supplies of new means of transport within the meaning of Article 28a (2) (b) that are carried out under the conditions specified in Article 28c (A) shall be excluded from these special arrangements;

(b) the tax due in respect of each supply referred to in (a) is equal to the amount of tax that would be due if that supply had been subject to the normal arrangements for value added tax, less the amount of value added tax regarded as being incorporated in the purchase price of the means of transport by the taxable dealer;

(c) the tax regarded as being incorporated in the purchase price of the means of transport by the taxable dealer shall be calculated according to the following method:

— the purchase price to be taken into account shall be the purchase price within the meaning of Article 26a (B) (3),

— that purchase price paid by the taxable dealer shall be deemed to include the tax that would have been due if the taxable dealer's supplier had subjected the supply to the normal value added tax arrangements,

— the rate to be taken into account shall be the rate applicable within the meaning of Article 12 (1), in the Member State within which the place of the supply to the taxable dealer, determined in accordance with Article 8, is deemed to be situated;

(d) the tax due in respect of each supply as referred to in (a), determined in accordance with the provisions of (b), may not be less than the amount of tax that would be due if that supply had been subject to the special arrangements for taxing the margin in accordance with Article 26a (B) (3).

For the application of the above provisions, the Member States have the option of providing that if the supply had been subject to the special arrangements for taxation of the margin, that margin would not have been less than 10 % of the selling price, within the meaning of B (3);

(e) the taxable dealer shall not be entitled to indicate separately on the invoices he issues ►M20 ———— ◄, tax relating to supplies which he is subjecting to the special arrangements;

(f) taxable persons shall not be entitled to deduct from the tax for which they are liable tax due or paid in respect of second-hand means of transport supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the tax arrangements in accordance with (a);

(g) by way of derogation from Article 28a (1) (a), intra-Community acquisitions of means of transport are not subject to value added tax where the vendor is a taxable dealer acting as such and the second-hand means of transport acquired has been subject to the tax, in the Member State of departure of the dispatch or transport, in accordance with (a);

▼M8

(h) Articles 28b (B) and 28c (A) (a) and (d) shall not apply to supplies of second-hand means of transport subject to tax in accordance with (a).

2. By way of derogation from the first sentence of paragraph 1, the Kingdom of Denmark shall be entitled to apply the special tax arrangements laid down in paragraph 1 (a) to (h) during the period referred to in Article 28l (SIC! 281).

3. Where they apply the special arrangements for sales by public auction provided for in Article 26a (C), Member States shall also apply these special arrangements to supplies of second-hand means of transport effected by an organizer of sales by public auction acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of a taxable dealer, in so far as the supply of the second-hand means of transport, within the meaning of Article 5 (4) (c), by that other taxable dealer, is subject to tax in accordance with paragraphs 1 and 2.

4. For supplies by a taxable dealer of works of art, collectors' items or antiques that have been supplied to him under the conditions provided for in Article 26a (B) (2), the Federal Republic of Germany shall be entitled, until 30 June 1999, to provide for the possibility for taxable dealers to apply either the special arrangements for taxable dealers, or the normal VAT arrangements according to the following rules:

(a) for the application of the special arrangements for taxable dealers to these supplies of goods, the taxable amount shall be determined in accordance with Article 11 (A) (1), (2) and (3);

(b) in so far as the goods are used for the needs of his operations which are taxed in accordance with (a), the taxable dealer shall be authorized to deduct from the tax for which he is liable:

— the value added tax due or paid for works of art, collectors' items or antiques which are or will be supplied to him by another taxable dealer, where the supply by that other taxable dealer has been taxed in accordance with (a),

— the value added tax deemed to be included in the purchase price of the works of art, collectors' items or antiques which are or will be supplied to him by another taxable dealer, where the supply by that other taxable dealer has been subject to value added tax in accordance with the special arrangements for the taxation of the margin provided for in Article 26a (B), in the Member State within whose territory the place of that supply, determined in accordance with Article 8, is deemed to be situated.

This right to deduct shall arise at the time when the tax due for te (SIC! the) supply taxed in accordance with (a) becomes chargeable;

(c) for the application of the provisions laid down in the second indent of (b), the purchase price of the works of art, collectors' items or antiques the supply of which by a taxable dealer is taxed in accordance with (a) shall be determined in accordance with Article 26a (B) (3) and the tax deemed to be included in this purchase price shall be calculated according to the following method:

— the purchase price shall be deemed to include the value added tax that would have been due if the taxable margin made by the supplier had been equal to 20 % of the purchase price,

— the rate to be taken into account shall be the rate applicable, within the meaning of Article 12 (1), in the Member State within whose territory the place of the supply that is subject to the special arrangements for taxation of the profit margin, determined in accordance with Article 8, is deemed to be situated;

(d) where he applies the normal arrangements for value added tax to the supply of a work of art, collectors' item or antique which has been supplied to him by another taxable dealer and where the goods have been taxed in accordance with (a), the taxable dealer

▼M8

shall be authorized to deduct from his tax liability the value added tax referred to in (b);

(e) the category of rates applicable to these supplies of goods shall be that which was applicable on 1 January 1993;

(f) for the application of the fourth indent of Article 26a (B) (2), the fourth indent of Article 26a (C) (1) and Article 26a (D) (b) and (c), the supplies of works of art, collectors' items or antiques, taxed in accordance with (a), shall be deemed by Member States to be supplies subject to value added tax in accordance with the special arrangements for taxation of the profit margin provided for in Article 26a (B);

(g) where the supplies of works of art, collectors' items or antiques taxed in accordance with (a) are effected under the conditions provided for in Article 28c (A), the invoice issued in accordance with Article 22 (3) shall contain an endorsement indicating that the special taxation arrangements for taxing the margin provided for in Article 28o (4) have been applied.

▼A3

TITLE XVIc

Transitional measures applicable in the context of the accession to the European Union of Austria, Finland and Sweden on 1 January 1995 and of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia on 1 May 2004

▼M9

Article 28p

1. For the purpose of applying this Article:

— 'Community' shall mean the territory of the Community as defined in Article 3 before accession,

▼A3

— 'new Member States' shall mean the territory of the Member States acceding to the European Union on 1 January 1995 and on 1 May 2004, as defined for each of those Member States in Article 3 of this Directive,

▼M9

— 'enlarged Community' shall mean the territory of the Community as defined in Article 3, after accession.

2. When goods:

— entered the territory of the Community or of one of the new Member States before the date of accession,

and

— were placed, on entry into the territory of the Community or of one of the new Member States, under a temporary admission procedure with full exemption from import duties, under one of the regimes referred to in Article 16 (1) (B) (a) to (d) or under a similar regime in one of the new Member States,

and

— have not left that regime before the date of accession,

the provisions in force at the moment the goods were placed under that regime shall continue to apply until the goods leave this regime, after the date of accession.

3. When goods:

— were placed, before the date of accession, under the common transit procedure or under another customs transit procedure,

and

— have not left that procedure before the date of accession,

the provisions in force at the moment the goods were placed under that procedure shall continue to apply until the goods leave this procedure, after the date of accession.

▼M9

For the purposes of the first indent, 'common transit procedure' shall mean the measures for the transport of goods in transit between the Community and the countries of the European Free Trade Association (EFTA) and between the EFTA countries themselves, as provided for in the Convention of 20 May 1987 on a common transit procedure [1].

4. The following shall be deemed to be an importation of goods within the meaning of Article 7 (1) where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

(a) the removal, including irregular removal, of goods from a temporary admission procedure under which they were placed before the date of accession under the conditions set out in paragraph 2;

(b) the removal, including irregular removal, of goods either from one of the regimes referred to in Article 16 (1) (B) (a) to (d) or from a similar regime under which they were placed before the date of accession under the conditions set out in paragraph 2;

(c) the termination of one of the procedures referred to in paragraph 3 which was started before the date of accession in one of new Member States for the purposes of a supply of goods for consideration effected before that date in that Member State by a taxable person acting as such;

(d) any irregularity or offence committed during one of the procedures referred to in paragraph 3 under the conditions set out at (c).

5. The use after the date of accession within a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the Community or one of the new Member States shall also be deemed to be an importation of goods within the meaning of Article 7 (1) where the following conditions are met:

— the supply of those goods has been exempted, or was likely to be exempted, either under Article 15 (1) and (2) or under a similar provision in the new Member States,

— the goods were not imported into one of the new Member States or into the Community before the date of accession.

6. In the cases referred to in paragraph 4, the place of import within the meaning of Article 7 (3) shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before the date of accession.

7. By way of derogation from Article 10 (3), the importation of goods within the meaning of paragraphs 4 and 5 of this Article shall terminate without the occurrence of a chargeable event when:

(a) the imported goods are dispatched or transported outside the enlarged Community;

or

(b) the imported goods within the meaning of paragraph 4 (a) are other than means of transport and are redispatched or transported to the Member State from which they were exported and to the person who exported them;

or

(c) the imported goods within the meaning of paragraph 4 (a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Community and/or have not been subject, by reason of their exportation, to any exemption from, or refund of, value added tax.

[1] JO No L 226, 13. 8. 1987, p. 2.

▼A3

This condition shall be deemed to be fulfilled in the following cases:

— when, in respect of Austria, Finland and Sweden, the date of the first use of the means of transport was before 1 January 1987;

— when, in respect of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the date of the first use of the means of transport was before 1 May 1996;

— when the amount of tax due by reason of the importation is insignificant.

▼B

TITLE XVII

VALUE ADDED TAX COMMITTEE

Article 29

1. An Advisory Committee on value added tax, hereinafter called 'the Committee', is hereby set up.

2. The Committee shall consist of representatives of the Member States and of the Commission.

The chairman of the Committee shall be a representative of the Commission.

Secretarial services for the Committee shall be provided by the Commission.

3. The Committee shall adopt its own rules of procedure.

4. In addition to points subject to the consultation provided for under this Directive, the Committee shall examine questions raised by its chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of the Community provisions on value added tax.

▼M24

Article 29a

Implementing measures

The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.

▼B

TITLE XVIII

MISCELLANEOUS

▼M24

Article 30

International agreements

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country or an international organisation an agreement which may contain derogations from this Directive.

2. A Member State wishing to conclude such an agreement shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required. Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.

3. Within three months of giving the notification referred to in the last sentence of paragraph 2, the Commission shall present to the

▼M24

Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4. In any event, the procedure set out in paragraphs 2 and 3 shall be completed within eight months of receipt of the application by the Commission.

▼B

Article 31

Unit of account

1. The unit of account used in the Directive shall be the European unit of account (EUA) defined by Decision 75/250/EEC [1].

2. When converting this unit of account into national currencies, Member States shall have the option of rounding the amounts resulting from this conversion either upwards or downwards by up to 10%.

▼M8

▼M4

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.

Article 33a

▼M6

1. Goods referred to in Article 7 (1) (b) entering the Community from a territory which forms part of the customs territory of the Community but which is considered as a third territory for the purposes of applying this Directive shall be subject to the following provisions:

(a) the formalities relating to the entry of such goods into the Community shall be the same as those laid down by the Community customs provisions in force for the import of goods into the customs territory of the Community;

(b) when the place of arrival of the dispatch or transport of these goods is situated outside the Member State where they enter the Community, they shall circulate in the Community under the internal Community transit procedure laid down by the Community customs provisions in force, insofar as they have been the subject of a declaration placing them under this regime when the goods entered the Community;

(c) when at the moment of their entry into the Community the goods are found to be in one of the situations which would qualify them, if they were imported within the meaning of Article 7 (1) (a), to benefit from one of the arrangements referred to in Article 16 (1) (B) (a), (b), (c) and (d), or under a temporary arrangement in full exemption from import duties, the Member States shall take

---

[1] JO No L 104, 24. 4. 1975, p. 35.

▼M6

measures ensuring that the goods may remain in the Community under the same conditions as those laid down for the application of such arrangements.

2. Goods not referred to in Article 7 (1) (a) dispatched or transported from a Member State to a destination in a territory that forms parts of the customs territory of the Community but which is considered as a third territory for the purposes of applying this Directive shall be subject to the following provisions:

(a) the formalities relating to the export of those goods outside the territory of the Community shall be the same as the Community customs provisions in force in relation to export of goods outside the customs territory of the Community;

(b) for goods which are temporarily exported outside the Community, in order to be reimported, the Member States shall take the measures necessary to ensure that, on reimportation into the Community, such goods may benefit from the same provisions as if they had been temporarily exported outside the customs territory of the Community.

▼B

TITLE XIX

FINAL PROVISIONS

Article 34

For the first time on 1 January 1982 and thereafter every two years, the Commission shall, after consulting the Member States, send the Council a report on the application of the common system of value added tax in the Member States. This report shall be transmitted by the Council to the European Parliament.

Article 35

At the appropriate time the Council acting unanimously on a proposal from the Commission, after receiving the opinion of the European Parliament and of the Economic and Social Committee, and in accordance with the interests of the common market, shall adopt further Directives on the common system of value added tax, in particular to restrict progressively or to repeal measures taken by the Member States by way of derogation from the system, in order to achieve complete parallelism of the national value added tax systems and thus permit the attainment of the objective stated in Article 4 of the first Council Directive of 11 April 1967.

Article 36

The fourth paragraph of Article 2 and Article 5 of the first Council Directive of 11 April 1967 are repealed.

Article 37

Second Council Directive 67/228/EEC of 11 April 1967 on value added tax shall cease to have effect in each Member State as from the respective dates on which the provisions of this Directive are brought into application.

Article 38

This Directive is addressed to the Member States.

▼B

ANNEX A

LIST OF AGRICULTURAL PRODUCTION ACTIVITIES

I. CROP PRODUCTION

1. General agriculture, including viticulture
2. Growing of fruit (including olives) and of vegetables, flowers and ornamental plants, both in the open and under glass
3. Production of mushrooms, spices, seeds and propagating materials; nurseries

II. STOCK FARMING TOGETHER WITH CULTIVATION

1. General stock farming
2. Poultry farming
3. Rabbit farming
4. Beekeeping
5. Silkworm farming
6. Snail farming

III. FORESTRY

IV. FISHERIES

1. Fresh-water fishing
2. Fish farming
3. Breeding of mussels, oysters and other molluscs and crustaceans
4. Frog farming

V. Where a farmer processes, using means normally employed in an agricultural, forestry or fisheries undertaking, products deriving essentially from his agricultural production, such processing shall also be regarded as agricultural production

▼B

ANNEX B

LIST OF AGRICULTURAL SERVICES

Supplies of agricultural services which normally play a part in agricultural production shall be considered the supply of agricultural services, and include the following in particular:

— field work, reaping and mowing, threshing, baling, collecting, harvesting, sowing and planting

— packing and preparation for market, for example drying, cleaning, grinding, disinfecting and ensilage of agricultural products

— storage of agricultural products

— stock minding, rearing and fattening

— hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings

— technical assistance

— destruction of weeds and pests, dusting and spraying of crops and land

— operation of irrigation and drainage equipment

— lopping, tree felling and other forestry services

▼B

ANNEX C [1]

COMMON METHOD OF CALCULATION

I. For the purposes of calculating the value added for all agricultural, forestry and fisheries undertakings, the following shall be taken into account exclusive of value added tax:

1. the value of the total final production including farmers own consumption of the classes 'agricultural products and game' and 'wood in the rough' as set out in points IV and V below, plus the output of the processing activities referred to in point V of Annex A;
2. the value of the total inputs required to achieve the production referred to in (1);
3. the value of the gross fixed-asset formation in connection with the activities listed in Annexes A and B.

II. To determine the deductible taxable inputs and outputs of flat-rate farmers, the inputs and outputs of farmers taxed under the normal value added tax scheme shall be deducted from the national accounts, taking into account the same factors as those in paragraph I.

III. The value added for flat-rate farmers is equal to the difference between the value of total final production, exclusive of value added tax, as referred to in point I (1), and the total value of inputs as referred to in point I (2) together with gross fixed-asset formation as referred to in point I (3). All these factors relate to flat-rate farmers only.

IV. AGRICULTURAL PRODUCTS AND GAME

	SOEC code number	
Cereals (excluding rice)		
Wheat and spelt	10.01.11 10.01.19	1 1
Winter vheat and spelt	—	
Spring wheat	—	
Durum wheat	10.01.51 10.01.59	
Winter wheat	—	
Spring wheat	—	
Rye and meslin		
Rye	10.02.00	
Winter rye	—	
Spring rye	—	
Meslin	10.01.11 10.01.19	2 2
Barley	10.03.10 10.03.90	
Spring barley	—	
Winter barley	—	
Oats and summer meslin		
Oats	10.04.10 10.04.90	
Summer meslin	—	
Maize	10.05.10 10.05.92	
Other cereals (excluding rice)		
Buckwheat	10.07.10	

[1] The classification used in this Annex is that used in the Economic Accounts for Agriculture of the Statistical Office of the European communities (SOEC).

▼B

	SOEC code number	
Millet	10.07.91	
Grain sorghum	10.07.95	
Canary seed	10.07.96	
Cereals, not elsewhere specified (excluding rice)	10.07.99	
Rice (in the husk or paddy)	10.06.11	
Pulses		
Dried peas and fodder peas	07.05.11	
Dried peas (other than for fodder)	—	
Dried peas (excluding chick peas)	—	
Chick peas	—	
Fodder peas	—	
Haricot beans, broad and field beans		
Haricot beans	07.05.15	
Broad and field beans	07.05.95	
Other pulses		
Lentils	07.05.91	
Vetches	12.03.31	2
Lupins	12.03.49	2
Dried pulses not elsewhere specified, pulse mixtures and cereal and pulse mixtures	07.05.97	
Roots (brassicas group for fodder)		
Potatoes		
Potatoes (excluding seed potatoes)		
New potatoes	07.01.13 07.01.15	
Main crop potatoes	07.01.17 07.01.19	
Seed potatoes	07.01.11	
Sugar beet	12.04.11	
Mangolds and fodder beet; swedes, fodder carrots and fodder turnips; other roots and fodder brassicas		
Mangolds and fodder beet	12.10.10	
Swedes, fodder carrots, fodder turnips		
Swedes		
Fodder carrots, fodder turnips		
Fodder cabbages and kales	12.10.99	2
Other roots and fodder brassicas		
Jerusalem artichokes	07.06.10	
Sweet potatoes	07.06.50	
Roots and fodder brassicas not elsewhere specified	07.06.30 12.10.99	3
Industrial crops		
Oil seeds and oleaginous fruit (excluding olives)		
Colza and rape seed	12.01.91	
Winter colza	—	
Summer colza	—	
Rape	—	

▼B

	SOEC code number	
Sunflower seed	12.01.95	
Soya beans	12.01.40	
Castor seed	12.01.50	
Linseed	12.01.61 12.01.69	
Sesame, hemp, mustard and poppy seed		
Sesame seed	12.01.97	
Hemp seed	12.01.94	
Mustard seed	12.01.92	
Oil poppy and poppy seed	12.01.93	
Fibre plants		
Flax	54.01.10	
Hemp	57.01.10	
Unmanufactured tobacco (including dried tobacco)	24.01.10 24.01.90	
Hops	12.06.00	
Other industrial crops		
Chicory roots	12.05.00	
Medicinal plants, aromatics, spices and plants for perfume extraction		
Saffron	09.10.31	
Caraway	07.01.82	
Medicinal plants, aromatics, spices and plants for perfume extraction not elsewhere specified	09.09 (11-13-15-17-18) 09.10 (11-20-51-55-71) 12.07 (10-20-30-40-50-60-70-80-91-99)	
Fresh vegetables		
Cabbages for human consumption		
Cauliflowers	07.01.21 07.01.22	
Other cabbages		
Brussels sprouts	07.01.26	
White cabbages	07.01.23	
Red cabbages		
Savoy cabbages		
Green cabbages	07.01.27	1
Cabbages not elsewhere specified		
Leaf and stalk vegetables other than cabbages		
Celery and celeriac	07.01.51 07.01.53 07.01.97	2
Leeks	07.01.68	
Cabbage lettuces	07.01.31 07.01.33	
Endives	07.01.36	1
Spinach	07.01.29	
Asparagus	07.01.71	
Witloof chicory	07.01.34	
Artichokes	07.01.73	
Other leaf and stalk vegetables		

▼B

	SOEC code number	
Corn salad	07.01.36	2
Cardoons and edible thistle	07.01.37	
Fennel	07.01.91	
Rhubarb	07.01.97	1
Cress		
Parsley		
Broccoli		
Leaf and stalk vegetables not elsewhere specified		
Vegetables grown for fruit		
Tomatoes	07.01.75 07.01.77	
Cucumbers and gherkins	07.01.83 07.01.85	
Melons	08.09.10	
Aubergines, marrows and pumpkins, courgettes	07.01.95	
Sweet capsicum	07.01.93	
Other vegetables grown for fruit	07.01.97	3
Root and tuber crops		
Kohlrabi	07.01.27	2
Turnips	07.01.54	
Carrots		
Garlic	07.01.67	
Onions and shallots	07.01 (62-63-66)	
Beetroot (red beet)	07.01.56 07.01.59	
Salsify and scorzonera		
Other root and tuber crops (chives, radishes, French turnips, horse radishes)		
Pod vegetables		
Green peas	07.01.41 07.01.43	
Beans	07.01.45 07.01.47	
Other pod vegetables	07.01.49	
Cultivated mushrooms	07.01.87	
Fresh fruit, including citrus fruit (excluding grapes andolives)		
Dessert apples and pears		
Dessert apples	08.06 (13-15-17)	
Dessert pears	08.06 (36-38)	
Cider apples and perry pears		
Cider apples	08.06.11	
Perry pears	08.06.32	
Stone fruit		
Peaches	08.07.32	
Apricots	08.07.10	
Cherries	08.07 (51-55)	

▼B

	SOEC code number	
Plums (including greengages, mirabelles and quetsches)	08.07 (71-75)	
Other stone fruit	08.07.90	
Nuts		
Walnuts	08.05.31	
Hazelnuts	08.05.91	
Almonds	08.05.11 08.05.19	
Chestnuts	08.05.50	
Other nuts (excluding tropical nuts)		
Pistaches	08.05.70	
Nuts not elsewhere specified	08.05.97	1
Other tree fruits		
Figs	08.03.10	
Quinces	08.06.50	
Other tree fruits, not elsewhere specified (excluding tropical fruit)	08.09.90	1
Strawberries	08.08 (11-15)	
Berries		
Blackcurrants and red currants		
Blackcurrants	08.08.41	
Red currants	08.08.49	1
Raspberries		
Gooseberries	08.08.90	1
Other berries (e.g. cultivated blackberries)	08.09.90	2
Citrus fruit		
Oranges	08.02 (21-22-24-27)	
Mandarins and clementines	08.02 (32-36)	
Lemons	08.02.50	
Grapefruit	08.02.70	
Other citrus fruit	08.02.90	
Citrons	—	
Limes	—	
Bergamots	—	
Citrus fruit not elsewhere specified	—	
Grapes and olives		
Grapes		
Table grapes	08.04 (21-23)	
Other grapes (for wine-making, fruit juice production and processing into raisins)	08.04 (25-27)	
Olives		
Table olives	07.01.78	
Other olives (for olive oil production)	07.01.79 07.03.13	
Other crop products		
Fodder crops ([1])	12.10.99	1
Nursery products		

▼B

	SOEC code number	
Fruit trees and bushes	06.02 (19-40-51-55)	
Vine slips	06.02 (10-30)	
Ornamental trees and shrubs	06.02 (71-75-79-98)	
Forest seedlings and cuttings	06.02.60	
Vegetable materials used primarily for plaiting		
Osier, rushes, rattans	14.01 (11-19-51-59)	
Reeds, bamboos	14.01 (31-39)	
Other vegetable materials used primarily for plaiting	14.01.90	
Flowers, ornamental plants and Christmas trees		
Flower bulbs, corms and tubers	06.01.10	
Ornamental plants	06.01 (31-39)	
Cut flowers, branches and foliage	06.03 (11-15-90)	
	06.04 (20-40-0)	
Christmas trees	06.04.90	
Perennial plants	06.02.92	
Seeds		
Agricultural seeds (1)	06.02.95	
	12.03 (11-19-35-39-44-46-84-86-89)	
	12.03.31	1
	12.03.49	1
Flower seeds	12.03.81	
Products gathered in the wild ([3])	07.01 (88 — 89)	
	08.05.97	2
	08.08.31	
	08.08.35	
	08.08.49	2
	08.08.90	2
	23.06.10	1
By-products from cultivation of: ([4])		
Cereals (excluding rice)	12.08 (10 — 31)	
Rice	12.08.90	
Pulses	12.09.00	
Root crops	13.03.12	
Industrial crops	14.02 (10-21-23-25-29)	
Fresh vegetables	14.03.00	
Fruit and citrus fruit	14.04.00	
Grapes and olives	14.05 (11 — 19)	
Other crops	15.16.10	
	23.06.10	
	23.06.30	2
	13.01.00	
Crop products not elsewhere specified		
Grape must and wine		
Grape must	22.04.00	
Wine	22.05 (21-25-31-35-41-44-45-47-51-57-59-61-69)	

▼B

	SOEC code number
By-products of wine production ([5])	23.05.00
Olive oil	
Pure olive oil ([6])	15.07.06
Olive oil, unrefined ([6])	15.07 (07 — 08)
By-products of olive oil extraction ([7])	23.04.05
Cattle	
Domestic cattle	01.02 (11-13-14-15-17)
Calves	—
Other cattle, less than one year old	—
Heifers	—
Cows	—
Male breeding animals	
One to two years old	—
More than two years old	—
Cattle for slaughtering and fattening	
One to two years old	—
More than two years old	—
Pigs	
Domestic pigs	01.03 (11 — 15 — 17)
Piglets	—
Young pigs	—
Pigs for fattening	—
Sows and gilts for breeding	—
Breeding boars	—
Equines	
Horses	01.01 (11 — 15 — 19)
Donkeys	01.01.31
Mules and hinnies	01.01.50
Sheep and goats	
Domestic sheep	01.04 (11 — 13)
Domestic goats	01.04.15
Poultry, rabbits, pigeons and other animals	
Hens, cocks, cockerels, pullets, chicks	01.05 (10 — 91)
Ducks	01.05.93
Geese	01.05.95
Turkeys	01.05.97
Guinea fowl	01.05.98
Domestic rabbits	01.06.10

▼B

	SOEC code number	
Domestic pigeons	01.06.30	
Other animals		
Bees	—	
Silkworms	—	
Animals reared for fur	—	
Snails (excluding sea-snails)	03.03.66	
Animals not elsewhere specified	01.06.99 02.04.99	1
Game and game meat		
Game ([8])	01.01.39 01.02.90 01.03.90 01.04.90 01.06.91	
Game meat	02.04.30	
Milk, untreated		
Cows' milk	—	
Ewes' milk	—	
Goats' milk	—	
Buffalo milk	—	
Eggs		
Hens' eggs		
Hatching eggs	04.05.12	1
Other	04.05.14	
Other eggs		
Hatching eggs	04.05.12	2
Other	04.05.16 04.05.18	
Other livestock products		
Raw wool (including animal hair ([9])	53.01 (10 — 20) 53.02 (93 — 95)	
Honey	04.06.00	
Silkworm cocoons	50.01.00	
By-products of livestock production ([10])	15.15.10 43.01. (10 — 20 — 30 — 90) 53.02.97	
Livestock products not elsewhere specified		
Agricultural services ([11])		
Agricultural products almost exclusively imported		
Tropical oil seeds and oleaginous fruit		
Groundnuts	12.01.11 12.01.15	

▼B

	SOEC code number
Copra	12.01.20
Palm nuts and kernels	12.01.30
Cotton seed	12.01.96
Oil seeds and oleaginous fruit not elsewhere specified	12.01.99
Tropical fibre plants	
Cotton	55.01.00
Other fibre plants	
Manila hemp	57.02.00
Jute	57.03.10
Sisal	57.04.10
Coir	57.04.30
Ramie	54.02.00
Fibre plants, not elsewhere specified	57.04.50
Other tropical plants for industrial use	
Coffee	09.01.11
Cocoa	18.01.00
Sugar cane	12.04.30
Tropical fruit	
Tropical nuts	
Coconuts	08.01.75
Cashew nuts	08.01.77
Brazil nuts	08.01.80
Pecans	08.05.80
Other tropical fruit	
Dates	08.01.10
Bananas	08.01 (31 — 35)
Pineapples	08.01.50
Papaws	08.08.50
Tropical fruit, not elsewhere specified	08.01 (60 — 99)
Ivory, unpolished	05.10.00

(1) E.g. hay, clover (excluding brassicas).
(2) Excluding cereal seeds, rice seeds and seed potatoes.
(3) E.g. wild mushrooms, cranberries, bilberries, blackberries, wild raspberries, etc.
(4) E.g. straw, beet and cabbage tops, pea and bean husks.
(5) E.g. wine lees, argol, etc.
(6) The distinction between these two products is based on the method of processing rather than on different production stages.
(7) E.g. olive oil cakes and other residual products of olive oil extraction.
(8) Live game includes only specially reared game and other game kept in captivity.
(9) If it is a principal product.
(10) E.g. skins and animal hair and pelts of slaughtered game, wax, manure, liquid manure.
(11) I.e. services which are normally provided by agricultural holdings themselves, e.g. ploughing, mowing and reaping threshing, tobacco drying, sheep-shearing, care of animals.

V. WOOD IN THE ROUGH

Coniferous timber for industrial uses

Coniferous long timber

— 1. logs

(1) fir, spruce, douglas

(2) pine, larch

— 2. mine timber

(1) fir, spruce, douglas

(2) pine, larch

▼B

— 3. other long timber

(1) fir, spruce, douglas

(2) pine, larch

Coniferous plywood

— 1 fir, spruce, douglas

— 2 pine, larch

Coniferous firewood

Fir, spruce, douglas

Pine, larch

Leaf-wood for industrial uses

Long timber (leaf-wood)

— 1. logs

(1) oak

(2) beech

(3) poplar

(4) other

— 2. mine timber

(1) oak

(2) other

— 3. other long timber

(1) oak

(2) beech

(3) poplar

(4) other

Plywood (leaf)

— 1. oak

— 2. beech

— 3. poplar

— 4. other

Firewood (leaf)

oak

beech

poplar

other

Forestry services [1]

Other products (e.g. bark, cork, resin)

[1] I.e. services which are usually performed by forestry undertakings themselves (e.g. felling of timber).

▼B

ANNEX D

LIST OF THE ACTIVITIES REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 4 (5)

1. Telecommunications
2. The supply of water, gas, electricity and steam
3. The transport of goods
4. Port and airport services
5. Passenger transport
6. Supply of new goods manufactured for sale
7. The transactions of agricultural intervention agencies in respect of agricultural products carried out pursuant to Regulations on the common organization of the market in these products
8. The running of trade fairs and exhibitions
9. Warehousing
10. The activities of commercial publicity bodies
11. The activities of travel agencies
12. The running of staff shops, cooperatives and industrial canteens and similar institutions
13. Transactions other than those specified in Article 13 A (1) (q), of radio and television bodies

▼B

ANNEX E

TRANSACTIONS REFERRED TO IN ARTICLE 28 (3) (A)

1. ►M3 ——————— ◄
2. Transactions referred to in Article 13 A (1) (e)
3. ►M3 ——————— ◄
4. ►M3 ——————— ◄
5. ►M3 ——————— ◄
6. ►M3 ——————— ◄
7. Transactions referred to in Article 13 A (1) (q)
8. ►M3 ——————— ◄
9. ►M3 ——————— ◄
10. ►M3 ——————— ◄
11. Supplies covered by Article 13 B (g) in so far as they are made by taxable persons who were entitled to deduction of input tax on the building concerned
12. ►M3 ——————— ◄
13. ►M3 ——————— ◄
14. ►M3 ——————— ◄
15. The services of travel agents referred to in Article 26, and those of travel agents acting in the name and on account of the traveller, for journeys outside the Community

▼B

ANNEX F

TRANSACTIONS REFERRED TO IN ARTICLE 28 (3) (B)

1. Admission to sporting events
2. Services supplied by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the second Council Directive of 11 April 1967
3. ►M3 ——————— ◄
4. ►M3 ——————— ◄
5. Telecommunications services supplied by public postal services and supplies of goods incidental thereto
6. Services supplied by undertakers and cremation services, together with goods related thereto
7. Transactions carried out by blind persons or workshops for the blind provided these exemptions do not give rise to significant distortion of competition
8. The supply of goods and services to official bodies responsible for the construction, setting out and maintenance of cemeteries, graves and monuments commemorating war dead
9. ►M3 ——————— ◄
10. Transactions of hospitals not covered by Article 13 A (1) (b)
11. ►M3 ——————— ◄
12. The supply of water by public authorities
13. ►M3 ——————— ◄
14. ►M3 ——————— ◄
15. ►M3 ——————— ◄
16. Supplies of those buildings and land described in Article 4 (3)
17. Passenger transport

    The transport of goods such as luggage or motor vehicles accompanying passengers and the supply of services related to the transport of passengers, shall only be exempted in so far as the transport of the passengers themselves is exempt
18. ►M3 ——————— ◄
19. ►M3 ——————— ◄
20. ►M3 ——————— ◄
21. ►M3 ——————— ◄
22. ►M3 ——————— ◄
23. The supply, modification, repair, maintenance, chartering and hiring of aircraft, including equipment incorporated or used therein, used by State institutions
24. ►M3 ——————— ◄
25. The supply, modification, repair, maintenance, chartering and hiring of warships

▼M13

———————

▼B

27. The services of travel agents referred to in Article 26, and those of travel agents acting in the name and on account of the traveller, for journeys within the Community

▼B

ANNEX G

RIGHT OF OPTION

1. The right of option referred to in Article 28 (3) (c) may be granted in the following circumstances:

   (a) in the case of transactions specified in Annex E:

   Member States which already exempt these supplies but also give right of option for taxation, may maintain this right of option

   (b) in the case of transactions specified in Annex F:

   Member States which provisionally maintain the right to exempt such supplies may grant taxable persons the right to opt for taxation.

2. Member States already granting a right of option for taxation not covered by the provisions of paragraph 1 above may allow taxpayers exercising it to maintain it until at the latest the end of three years from the date the Directive comes into force.

▼M5

ANNEX H

LIST OF SUPPLIES OF GOODS AND SERVICES WHICH MAY BE SUBJECT TO REDUCED RATES OF VAT

In transposing the categories below which refer to goods into national legislation, Member States may use the combined nomenclature to establish the precise coverage of the category concerned.

Category	Description
1	Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in preparation of foodstuffs; products normally intended to be used to supplement or substitute foodstuffs
2	Water supplies
3	Pharmaceutical products of a kind normally used for health care, prevention of diseases and treatment for medical and veterinary purposes, including products used for contraception and sanitary protection
4	Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and children's car seats
5	Transport of passengers and their accompanying luggage
6	Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or substantially devoted to advertising matter
7	Admissions to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities
	Reception of broadcasting services
8	Services supplied by or royalties due to writers, composers and performing artists
9	Supply, construction, renovation and alteration of housing provided as part of a social policy
10	Supplies of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings
11	Accommodation provided by hotels and similar establishments including the provision of holiday accomodation (SCI! accommodation) and the letting of camping sites and caravan parks
12	Admission to sporting events
13	Use of sporting facilities
14	Supply of goods and services by organizations recognized as charities by Member States and engaged in welfare or social security work, insofar as these supplies are not exempt under Article 13
15	Services supplied by undertakers and cremation services, together with the supply of goods related thereto
16	Provision of medical and dental care as well as thermal treatment in so far as these services are not exempt under Article 13
17	Services supplied in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Article 4 (5)

▼M8

ANNEX I

WORKS OF ART, COLLECTORS' ITEMS AND ANTIQUES

For the purposes of this Directive:

(a) 'works of art' shall mean:

— pictures, collages and similar decorative plaques, paintings and drawings, executed entirely by hand by the artist, other than plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas (CN code 9701),

— original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed entirely by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process (CN code 9702 00 00),

— original sculptures and statuary, in any material, provided that they are executed entirely by the artist; sculpture casts the production of which is limited to eight copies and supervised by the artist or his successors in title (CN code 9703 00 00); on an exceptional basis, in cases determined by the Member States, the limit of eight copies may be exceeded for statuary casts produced before 1 January 1989,

— tapestries (CN code 5805 00 00) and wall textiles (CN code 6304 00 00) made by hand from original designs provided by artists, provided that there are not more than eight copies of each,

— individual pieces of ceramics executed entirely by the artist and signed by him,

— enamels on copper, executed entirely by hand, limited to eight numbered copies bearing the signature of the artist or the studio, excluding articles of jewellery and goldsmiths' and silversmiths' wares,

— photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included;

(b) 'collectors' items' shall mean:

— postage or revenue stamps, postmarks, first-day covers, pre-stamped stationary and the like, franked, or if unfranked not being of legal tender and not being intended for use as legal tender (CN code 9704 00 00),

— collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaetological, ethnographic or numismatic interest (CN code 9705 00 00);

(c) 'antiques' shall mean objects other than works of art or collectors' items, which are more than 100 years old (CN code 9706 00 00).

▼**M10**

ANNEX J

Description of goods	CN code
Tin	8001
Copper	7402 7403 7405 7408
Zinc	7901
Nickel	7502
Aluminium	7601
Lead	7801
Indium	ex 8112 91 ex 8112 99
Cereals	1001 to 1005
	1006: unprocessed rice only
	1007 to 1008
Oil seeds and oleaginous fruit	1201 to 1207
Coconuts, Brazil nuts and cashew nuts	0801
Other nuts	0802
Olives	0711 20
Grains and seeds (including soya beans	1201 to 1207
Coffee, not roasted	0901 11 00 0901 12 00
Tea	0902
Cocoa beans, whole or broken, raw or roasted	1801
Raw sugar	1701 11 1701 12
Rubber, in primary forms or in plates, sheets or strip	4001 4002
Wool	5101
Chemicals in bulk	*Chapters 28 and 29*
Mineral oils (including propane and butane; also including crude petroleum oils)	2709 2710 2711 12 2711 13
Silver	7106
Platinum (palladium, rhodium)	7110 11 00 7110 21 00 7110 31 00

▼**M10**

Description of goods	CN code
Potatoes	0701
Vegetable oils and fats and their fractions, whether or not refined, but not chemically modified	1507 to 1515

▼**M16**

ANNEX K

List of supplies of services referred to in Article 28(6)

1. Small services of repairing:
   — bicycles,
   — shoes and leather goods,
   — clothing and household linen (including mending and alteration).
2. Renovation and repairing of private dwellings, excluding materials which form a significant part of the value of the supply.
3. Window cleaning and cleaning in private households.
4. Domestic care services (e.g. home help and care of the young, elderly, sick or disabled).
5. Hairdressing.