

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE 92/111/EEC

of 14 December 1992

amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas Article 3 of Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers<sup>(3)</sup> sets 1 January 1993 as the date for the entry into force of these provisions in all the Member States;

Whereas in order to facilitate the application of these provisions and to introduce the simplifications needed, it is necessary to supplement the common system of value added tax, as applicable on 1 January 1993, so as to clarify how the tax shall apply to certain operations carried out with third territories and certain operations carried out inside the Community, as well to define the transitional measures between the provisions in force on 31 December 1992 and those which will enter into force as from 1 January 1993;

Whereas in order to guarantee the neutrality of the common system of turnover tax in respect of the origin of

goods, the concept of a third territory and the definition of an import must be supplemented;

Whereas certain territories forming part of the Community customs territory are regarded as third territories for the purposes of applying the common system of value added tax; whereas value added tax is therefore applied to trade between the Member States and those territories according to the same principles as apply to any operation between the Community and third countries; whereas it is necessary to ensure that such trade is subject to fiscal provisions equivalent to those which would be applied to operations carried out under the same conditions with territories which are not part of the Community customs territory; whereas as a result of these provisions the Seventeenth Council Directive 85/362/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value added tax on the temporary importation of goods other than means of transport<sup>(4)</sup>, becomes null and void;

Whereas it is necessary to state exactly how the exemptions relating to certain export operations or equivalent operations will be implemented; whereas it is necessary to adapt the other Directives concerned accordingly;

Whereas it is necessary to clarify the definition of the place of taxation of certain operations carried out on board ships, aircraft or trains transporting passengers inside the Community;

<sup>(1)</sup> OJ No C 337, 21. 12. 1992.

<sup>(2)</sup> Opinion delivered on 24 November 1992 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 376, 31. 12. 1991, p. 1.

<sup>(4)</sup> OJ No L 192, 24. 7. 1985, p. 20. Directive as last amended by Directive 90/237/EEC (OJ No L 133, 24. 5. 1990, p. 91).

Whereas the transitional arrangements for taxation of trade between the Member States must be supplemented to take account both of the Community provisions relating to excise duties and the need to clarify and simplify the detailed rules for the application of the tax of certain operations which will be carried out between the Member States as from 1 January 1993;

Whereas Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products<sup>(1)</sup> lays down particular procedures and obligations in relation to declarations in the case of shipments of such products to another Member State; whereas as a result the methods of applying tax to certain supplies and intra-Community acquisitions of products liable to excise duties can be simplified to the benefit both of the persons liable to pay tax and the competent administrations;

Whereas it is necessary to define the scope of the exemptions referred to in Article 28c of Directive 77/388/EEC<sup>(2)</sup>; whereas it is also necessary to supplement the provisions concerning the chargeability of the tax and the methods of determining the taxable amount of certain intra-Community operations;

Whereas, for taxable operations in the domestic market linked to intra-Community trade in goods which are carried out during the period laid down in Article 28l of Directive 77/388/EEC by taxable persons not established in the Member State referred to in Article 28b (A) (1) of the said Directive, it is necessary to take simplification measures guaranteeing equivalent treatment in all the Member States; whereas to achieve this, the provisions concerning the taxation system and the person liable to tax in respect of such operations must be harmonized;

Whereas in order to take account of the provisions relating to the person liable to pay tax in the domestic market and to avoid certain forms of tax evasion or avoidance, it is necessary to clarify the Community provisions concerning the repayment to taxable persons not established in the country of the value added tax referred to in Article 17 (3) of Directive 77/388/EEC as amended by Article 28f of the said Directive;

Whereas the abolition as from 1 January 1993 of tax on imports and tax relief on exports for trade between the Member States makes it necessary to have transitional

measures in order to ensure the neutrality of the common system of valued added tax and to avoid situations of double-taxation or non-taxation;

Whereas it is therefore necessary to lay down special provisions for cases where a Community procedure, started before 1 January 1993 for the purposes of a supply effected before that date by a taxable person acting as such in respect of goods dispatched or transported to another Member State, is not completed until after 31 December 1992;

Whereas such provisions should also apply to taxable operations carried out before 1 January 1993 to which particular exemptions were applied which as a result delayed the taxable event;

Whereas it is also necessary to lay down special measures for means of transport which, not having been acquired or imported subject to the general domestic tax conditions of a Member State, have benefited, by the application of national measures, from an exemption from tax because of their temporary import from another Member State;

Whereas the application of these transitional measures, both in relation trade between the Member States and to operations with third territories, presupposes supplementing the definition of the operations to be made subject to taxation as from 1 January 1993 and the clarification for such cases of the concepts of the place of taxation, the taxable event and the chargeability of the tax;

Whereas, on account of the current economic situation, the Kingdom of Spain and the Italian Republic have requested that, as a transitional measure, provisions derogating from the principle of immediate deduction laid down in the first subparagraph of Article 18 (2) of Directive 77/388/EEC be applied; whereas this request should be granted for a period of two years which may not be extended;

Whereas this Directive lays down common provisions for simplifying the treatment of certain intra-Community operations; whereas, in a number of cases, it is for the Member States to determine the conditions for implementing these provisions; whereas certain Member States will not be able to complete the legislative procedure necessary to adapt their legislation on valued added tax within the period laid down; whereas an additional period should therefore be allowed for the implementation of this Directive; whereas a maximum period of twelve months is sufficient for this purpose;

<sup>(1)</sup> OJ No L 76, 23. 3. 1992, p. 1.

<sup>(2)</sup> OJ No L 145, 13. 6. 1977, p. 1. Directive as amended by Directive 92/77/EEC (OJ No L 316, 31. 10. 1992, p. 1.)

Whereas it is accordingly necessary to amend Directive 77/388/EEC,

HAS ADOPTED THIS DIRECTIVE :

### Article 1

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

1. Article 3 (4) shall be replaced by the following :

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

2. Article 7 (1) (b) shall be replaced by the following :

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

3. in Article 7 (3) :

- in the first subparagraph '(a), (b), (c) and (d)' shall be added after 'Article 16 (1) (B)',
- the second subparagraph shall be replaced by the following :

'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.';

4. Article 8 (1) (c) shall be replaced by the following :

'(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.

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.';

5. Article 11 (B) (1) shall be replaced by the following :

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

6. Article 12 (1) (b) shall be replaced by the following :

'(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.';

7. Article 12 (3) (a) shall be replaced by the following :

'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 1993 until 31 December 1996, this percentage may not be less than 15 %.

On the basis of the report on the operation of the transitional arrangements and proposals on the definitive arrangements to be submitted by the Commission pursuant to Article 281, the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate to be applied after 31 December 1996 with regard to the standard rate.

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.;

8. in Article 14 (1):

- (c) shall be deleted,
- the following shall be added to (d):

'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).';

9. in Article 15:

- the following subparagraphs shall be added to (2):

'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 for supplies made at the retail stage of goods to be carried in the personal luggage of travellers. Until these provisions come into force:

- the benefit of the exemption shall be subject to the production of a copy of the invoice or other documents in lieu thereof, endorsed by the customs office where the goods left the Community,
- Member States may set limits in relation to the application of this exemption, may exclude from the benefit of the exemption supplies to travellers whose domicile or habitual residence is situated in the Community and may extend the benefit of the exemption to their residents.

For the purposes of applying the second subparagraph "domicile or habitual residence" means the place entered as such in a passport, identity card or, failing those, other identity documents which the Member State in whose territory the supply takes place recognizes as valid.;

- in (3) the words 'established in a third country' shall be replaced by 'not established within the territory of the country',

- in (4), the second subparagraph shall be replaced by the following:

'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.;

- in the second subparagraph of (10) the words 'conditions and limitations' shall be replaced by 'limitations',
- in (10) the third subparagraph shall be replaced by the following:

'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.;

- Point 13 shall be replaced by the following:

'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.;

10. in Article 28a:

- the second subparagraph of paragraph 1 (a) shall be replaced by the following:

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

- a new point shall be added as follows to paragraph 1;

'(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).

(1) OJ No L 76, 23. 3. 1992, p. 1.;

- the following paragraph shall be inserted:

'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.

- the following subparagraph shall be added to paragraph 5 (b):

'However, when one of the conditions to which the benefit of the above is subordinated is no longer met, the goods shall be considered as having been transferred to a destination in another Member State. In this case, the transfer is carried out at the moment that the conditions is no longer met.'

- the following subparagraph shall be added to paragraph 6:

'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).';

11. in Article 28b (A) (2), the following subparagraph shall be added:

'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.'

12. in Article 28c (A):

- point (c) shall be replaced by the following:

'(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.;

- the following shall be added:

'(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.'

13. Article 28c (E) shall be replaced by the following:

#### *E. Other exemptions*

1. The following paragraph shall be added to Article 16:

"1a. When they take up the option provided for in paragraph 1, Member States shall take the measures necessary in order to ensure that the intra-Community acquisitions of goods intended to be placed under one of the regimes or in one of the situations referred to in Article 16 (1) (B) benefit from the same provisions as supplies of goods carried out within the territory of the country under the same conditions."

## 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 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 the third subparagraph of Article 21 (1) (a) as

the person liable for the tax due on the supplies effected by the taxable person not established within the territory of the country.’;

## 14. Article 28d (3) shall be replaced by the following:

‘3. By way of derogation from paragraph 2, tax shall become chargeable on the issue of the invoice or other document serving as invoice provided for in the first subparagraph of Article 22 (3) (a) where that invoice or document is issued to the person acquiring the goods before the fifteenth day of the month following that during which the taxable event occurs.’;

## 15. the second subparagraph of Article 28d (4) shall be replaced by the following:

‘However, tax shall become chargeable on the issue of the invoice provided for in the first subparagraph of Article 22 (3) (a) or other document serving as invoice where that invoice or document is issued before the fifteenth day of the month following that during which the taxable event occurs.’;

## 16. in Article 28e (1):

- in the first subparagraph, the second sentence shall be replaced by:

‘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.’;

- in the second subparagraph, the following sentence shall be added:

‘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.’;

## 17. in Article 28e, paragraphs 2 and 3 shall be renumbered 3 and 4 and a new paragraph 2 shall be inserted as follows:

‘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.’;

## 18. in Article 28f:

- in Article 17 (3) (b), ‘28c (A)’ shall be replaced by ‘28c(A) and (C)’;

- the following subparagraph shall be added to Article 17 (4):

'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 Article 21 (1) (a);
- (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';

#### 19. in Article 28g:

- Article 21 (1) (a) shall be replaced by the following:

- '(a) the taxable person carrying out the taxable supply of goods or of services, other than one of the supplies of services referred to in (b).

Where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may adopt arrangements whereby tax is payable by another person. *Inter alios* a tax representative or the person for whom the taxable supply of goods or of services is carried out may be designated as that other person.

However, the tax is payable by 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 paragraph 3 of Title E of Article 28c,
- 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 in the case where the taxable person who is not established within the territory of the country has appointed a tax representative in that country.

Member States may provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax';

- Article 21 (1) (b) shall be replaced by the following:

- '(b) persons to whom services covered by Article 9 (2) (e) are supplied, or persons, identified for value added tax purposes within the territory of the country, to whom services referred to in Article 28b (C), (D) or (E) are supplied, when the service is carried out by a taxable person established abroad; however, Member States may require that the supplier of the service shall be held jointly and severally liable for payment of the tax';

#### 20. in Article 28h:

- in the first indent of Article 22 (1) (c) 'and other than a supply of goods or services to a person who has been designated as the person liable for the tax in accordance with Article 21 (1) (a), third paragraph', shall be added after 'in accordance with Article 21 (1) (b)',

- in Article 22 (1) (c) the following indent shall be inserted after the second indent:

- '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,';

- the following indent shall be added to Article 22 (3) (b):

- 'where the provisions of Article 28c (E) (3) are applied, an explicit reference to that provision as well as the identification number for value added tax purposes under which the taxable person has carried out the intra-Community acquisition and the subsequent supply of goods and the number by which the person to whom this supply is made is identified for value added tax purposes,'.

- the second indent of Article 22 (4) (c) shall be replaced by the following:

- '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.’
- the first subparagraph of Article 22 (6) (b) shall be replaced by the following :
 

(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 and sixth subparagraphs.’
  - in the first indent of the third subparagraph of Article 22 (6) (b), ‘Article 28c (A)’ shall be replaced by ‘Article 28c (A) (a)’,
  - in the first indent of the fourth subparagraph of Article 22 (6) (b) ‘Article 28c (A) (c)’ shall be replaced by ‘Article 28c (A) (d)’ and ‘and the value of the goods supplied determined in accordance with Article 28e (1)’ shall be replaced by ‘and the total amount of the supplies, determined in accordance with Article 28e (2)’,
  - in Article 22 (6) (b), add the following subparagraph :
 

‘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 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.’
  - in Article 22 (11), the following shall be inserted at the start of the paragraph : ‘11. In the case of intra-Community acquisitions of products subject to excise duty referred to in Article 28a (1) (c) as well as’;
21. Article 28i shall be replaced by the following :
- ‘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.’;
22. the following Article shall be added :
- ‘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 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;
- (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

- (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;

23. Article 33a (1) and (2) shall be replaced by the following:

'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 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.<sup>1</sup>

24. Directive 85/362/EEC<sup>(1)</sup> shall cease to have effect on 31 December 1992;

25. Article 6 of Directive 69/169/EEC<sup>(2)</sup> shall be repealed as from 1 January 1993.

### Article 2

1. As from 1 January 1993 and for a period of two years, which may not be extended, the Kingdom of Spain and the Italian Republic shall be authorized to apply provisions derogating from the principle of immediate deduction provided for in the first subparagraph of Article 18 (2). These provisions may not have the effect of delaying by more than one month the time when the right to deduction, having arisen, may be exercised under Article 18 (1).

However, for taxable persons who file the returns provided for in Article 22 (4) for quarterly tax periods, the Kingdom of Spain and the Italian Republic shall be authorized to provide that the right to deduction which

has come into being which could, under Article 18 (1), be exercised in a given quarter, may not be exercised until the following quarter. This provision shall only apply where the Kingdom of Spain or the Italian Republic authorizes such taxable persons to opt for the filing of monthly returns.

2. By way of derogation from the third subparagraph of Article 15 (10), the Portuguese Republic, the French Republic, the Kingdom of the Netherlands and the Federal Republic of Germany shall be authorized, in regard to contracts concluded after 31 December 1992, to abolish the repayment procedure, where it is prohibited by this Directive by 1 October 1993 at the latest.

### Article 3

The Council, acting unanimously on a Commission proposal, shall adopt before 30 June 1993, detailed rules for the taxation of chain transactions between taxable persons, so that such rules may enter into force on 1 January 1994.

### Article 4

1. The Member States shall adapt their present value added tax system to the provisions of this Directive.

They shall adopt the necessary laws, regulations and administrative provisions for their adapted systems to enter into force 1 January 1993.

Member States may, however, provide that information relating to transactions referred to in the last subparagraph of Article 22 (6) (b) for which the tax becomes payable during the first three calendar months of 1993 must appear at the latest on the summary statement signed for the second calendar quarter of 1993.

2. By way of derogation from the second subparagraph of paragraph 1, Member States shall be authorized to adopt the necessary laws, regulations and administrative provisions in order to implement by 1 January 1984 at the latest the provisions laid down in the following paragraphs of Article 1:

- paragraph 11,
- paragraph 13, insofar as it relates to Article 28c (E) (3);
- paragraph 19, insofar as it relates to the third subparagraph of Article 21 (1) (a),
- paragraph 20, insofar as it relates to obligations in respect of the transactions referred to in the preceding indents.

Member States which, on 1 January 1993, apply measures equivalent to those mentioned above shall adopt the necessary measures to ensure that the principles laid down in Article 22 (6) and in current Community provisions on administrative cooperation in the area of indirect taxation are complied with as from 1 January 1993 without fail.

<sup>(1)</sup> OJ No L 192, 24. 7. 1985, p. 20. Directive as last amended by Directive 90/237/EEC (OJ No L 133, 24. 5. 1990, p. 91).

<sup>(2)</sup> OJ No L 133, 4. 6. 1969, p. 6. Directive as last amended by Directive 91/680/EEC (OJ No L 376, 31. 12. 1991, p. 1).

3. By way of derogation from the second subparagraph of paragraph 1, the Federal Republic of Germany shall be authorized to adopt the necessary laws, regulations and administrative provisions in order to implement by 1 October 1993 at the latest the provisions laid down in Article 1 (10) with regard to Article 28 a (1a) (a).

4. Member States shall inform the Commission of the provisions which they adopt to apply this Directive.

5. Member States shall communicate the provisions of domestic law which they adopt in the field covered by this Directive to the Commission.

6. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their

official publication. The methods of making such a reference shall be laid down by the Member States.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1992.

*For the Council*

*The President*

N. LAMONT

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