

Council Directive 2006/112/EC of 28 November
2006 on the common system of value added tax

TITLE X

DEDUCTIONS

CHAPTER 1

Origin and scope of right of deduction

Article 167

A right of deduction shall arise at the time the deductible tax becomes chargeable.

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

- (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;
- (b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;
- (c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);
- (d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;
- (e) the VAT due or paid in respect of the importation of goods into that Member State.

Article 169

In addition to the deduction referred to in Article 168, the taxable person shall be entitled to deduct the VAT referred to therein in so far as the goods and services are used for the purposes of the following:

- (a) transactions relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;
- (b) transactions which are exempt pursuant to Articles 138, 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, Article 157(1)(b), Articles 158 to 161 or Article 164;
- (c) transactions which are exempt pursuant to points (a) to (f) of Article 135(1), where the customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community.

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Article 170

All taxable persons who, within the meaning of Article 1 of Directive 79/1072/EEC⁽¹⁾, Article 1 of Directive 86/560/EEC⁽²⁾ and Article 171 of this Directive, are not established in the Member State in which they purchase goods and services or import goods subject to VAT shall be entitled to obtain a refund of that VAT in so far as the goods and services are used for the purposes of the following:

- (a) transactions referred to in Article 169;
- (b) transactions for which the tax is solely payable by the customer in accordance with Articles 194 to 197 or Article 199.

Article 171

1 VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed implementing rules laid down in Directive 79/1072/EEC.

The taxable persons referred to in Article 1 of Directive 79/1072/EEC shall also, for the purposes of applying that Directive, be regarded as taxable persons who are not established in the Member State concerned where, in the Member State in which they purchase goods and services or import goods subject to VAT, they have only carried out the supply of goods or services to a person designated in accordance with Articles 194 to 197 or Article 199 as liable for payment of VAT.

2 VAT shall be refunded 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.

The taxable persons referred to in Article 1 of Directive 86/560/EEC shall also, for the purposes of applying that Directive, be regarded as taxable persons who are not established in the Community where, in the Member State in which they purchase goods and services or import goods subject to VAT, they have only carried out the supply of goods or services to a person designated in accordance with Articles 194 to 197 or Article 199 as liable for payment of VAT.

3 Directives 79/1072/EEC and 86/560/EEC shall not apply to the supply of goods which is, or may be, exempted pursuant to Article 138 where the goods thus supplied are dispatched or transported by or on behalf of the person acquiring the goods.

Article 172

1 Any person who is regarded as a taxable person by reason of the fact that he supplies, on an occasional basis, a new means of transport in accordance with the conditions specified in Article 138(1) and (2)(a) shall, in the Member State in which the supply takes place, be entitled to deduct the VAT included in the purchase price or paid in respect of the importation or the intra-Community acquisition of this means of transport, up to an amount not exceeding the amount of VAT for which he would be liable if the supply were not exempt.

A right of deduction shall arise and may be exercised only at the time of supply of the new means of transport.

2 Member States shall lay down detailed rules for the implementation of paragraph 1.

CHAPTER 2

Proportional deduction

Article 173

1 In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

- 2 Member States may take the following measures:
- a authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;
 - b require the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;
 - c authorise or require the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;
 - d authorise or require the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, in respect of all goods and services used for all transactions referred to therein;
 - e provide that, where the VAT which is not deductible by the taxable person is insignificant, it is to be treated as nil.

Article 174

1 The deductible proportion shall be made up of a fraction comprising the following amounts:

- a as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions in respect of which VAT is deductible pursuant to Articles 168 and 169;
- b as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which VAT is not deductible.

Member States may include in the denominator the amount of subsidies, other than those directly linked to the price of supplies of goods or services referred to in Article 73.

2 By way of derogation from paragraph 1, the following amounts shall be excluded from the calculation of the deductible proportion:

- a the amount of turnover attributable to supplies of capital goods used by the taxable person for the purposes of his business;
- b the amount of turnover attributable to incidental real estate and financial transactions;
- c the amount of turnover attributable to the transactions specified in points (b) to (g) of Article 135(1) in so far as those transactions are incidental.

3 Where Member States exercise the option under Article 191 not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

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Article 175

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

2 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 the supervision of the tax authorities, by the taxable person on the basis of his own forecasts.

However, Member States may retain the rules in force at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

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

CHAPTER 3

Restrictions on the right of deduction

Article 176

The Council, acting unanimously on a proposal from the Commission, shall determine the expenditure in respect of which VAT shall not be deductible. VAT shall in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

Article 177

After consulting the VAT Committee, 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.

In order to maintain identical conditions of competition, Member States may, instead of refusing deduction, tax goods manufactured by the taxable person himself or goods which he has purchased within the Community, or imported, in such a way that the tax does not exceed the amount of VAT which would be charged on the acquisition of similar goods.

CHAPTER 4

Rules governing exercise of the right of deduction

Article 178

In order to exercise the right of deduction, a taxable person must meet the following conditions:

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- (a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;
- (b) for the purposes of deductions pursuant to Article 168(b), in respect of transactions treated as the supply of goods or services, he must comply with the formalities as laid down by each Member State;
- (c) for the purposes of deductions pursuant to Article 168(c), in respect of the intra-Community acquisition of goods, he must set out in the VAT return provided for in Article 250 all the information needed for the amount of the VAT due on his intra-Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Articles 220 to 236;
- (d) for the purposes of deductions pursuant to Article 168(d), in respect of transactions treated as intra-Community acquisitions of goods, he must complete the formalities as laid down by each Member State;
- (e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated;
- (f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.

Article 179

The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.

Article 180

Member States may authorise a taxable person to make a deduction which he has not made in accordance with Articles 178 and 179.

Article 181

Member States may authorise a taxable person who does not hold an invoice drawn up in accordance with Articles 220 to 236 to make the deduction referred to in Article 168(c) in respect of his intra-Community acquisitions of goods.

Article 182

Member States shall determine the conditions and detailed rules for applying Articles 180 and 181.

Article 183

Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period.

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

CHAPTER 5

Adjustment of deductions

Article 184

The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.

Article 185

1 Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

2 By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.

Article 186

Member States shall lay down the detailed rules for applying Articles 184 and 185.

Article 187

1 In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

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

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

2 The annual adjustment shall be made only in respect of one-fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph 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, manufactured or, where applicable, used for the first time.

Article 188

1 If supplied during the adjustment period, capital goods shall be treated as if they had been applied to an economic activity of the taxable person up until expiry of the adjustment period.

The economic activity shall be presumed to be fully taxed in cases where the supply of the capital goods is taxed.

The economic activity shall be presumed to be fully exempt in cases where the supply of the capital goods is exempt.

2 The adjustment provided for in paragraph 1 shall be made only once in respect of all the time covered by the adjustment period that remains to run. However, where the supply of capital goods is exempt, 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 VAT is deductible.

Article 189

For the purposes of applying Articles 187 and 188, Member States may take the following measures:

- (a) define the concept of capital goods;
- (b) specify the amount of the VAT which is to be taken into consideration for adjustment;
- (c) adopt any measures needed to ensure that adjustment does not give rise to any unjustified advantage;
- (d) permit administrative simplifications.

Article 190

For the purposes of Articles 187, 188, 189 and 191, Member States may regard as capital goods those services which have characteristics similar to those normally attributed to capital goods.

Article 191

If, in any Member State, the practical effect of applying Articles 187 and 188 is negligible, that Member State may, after consulting the VAT Committee, refrain from applying those provisions, having regard to the overall impact of VAT in the Member State concerned and the need for administrative simplification, and provided that no distortion of competition thereby arises.

Article 192

Where a taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all measures necessary to ensure that the taxable person does not enjoy unjustified advantage or sustain unjustified harm.

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- (1) Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country ([OJ L 331, 27.12.1979, p. 11](#)). Directive as last amended by the 2003 Act of Accession.
- (2) Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory ([OJ L 326, 21.11.1986, p. 40](#)).