

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

TITLE XII

SPECIAL SCHEMES

CHAPTER 4

**Special arrangements for second-hand goods,
works of art, collectors' items and antiques**

Section 1

Definitions

Article 311

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

- (1) 'second-hand goods' means movable tangible 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;
- (2) 'works of art' means the objects listed in Annex IX, Part A;
- (3) 'collectors' items' means the objects listed in Annex IX, Part B;
- (4) 'antiques' means the objects listed in Annex IX, Part C;
- (5) 'taxable dealer' means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, 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;
- (6) 'organiser of a sale by public auction' means 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;
- (7) 'principal of an organiser of a sale by public auction' means any person who transmits goods to an organiser of a sale by public auction pursuant to a contract under which commission is payable on a sale.

2 Member States need not regard as works of art the objects listed in points (5), (6) or (7) of Annex IX, Part A.

3 The contract under which commission is payable on a sale, referred to in point (7) of paragraph 1, must provide that the organiser of the sale is to put up the goods for public auction in his own name but on behalf of his principal and that he is to hand over the goods, in his own name but on behalf of his principal, to the highest bidder at the public auction.

Section 2

Special arrangements for taxable dealers

Subsection 1

Margin scheme

Article 312

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

- (1) ‘selling price’ means everything which constitutes the consideration obtained or to be obtained by the taxable dealer from the customer or from a third party, including subsidies directly linked to the transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the customer, but excluding the amounts referred to in Article 79;
- (2) ‘purchase price’ means everything which constitutes the consideration, for the purposes of point (1), obtained or to be obtained from the taxable dealer by his supplier.

Article 313

1 In respect of the supply of second-hand goods, works of art, collectors' items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.

2 Pending introduction of the definitive arrangements referred to in Article 402, the scheme referred to in paragraph 1 of this Article shall not apply to the supply of new means of transport, carried out in accordance with the conditions specified in Article 138(1) and (2)(a).

Article 314

The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where those goods have been supplied to him within the Community by one of the following persons:

- (a) a non-taxable person;
- (b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;
- (c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;
- (d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.

Article 315

The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

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The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.

Article 316

1 Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions:

- a the supply of works of art, collectors' items or antiques, which the taxable dealer has imported himself;
- b the supply of works of art supplied to the taxable dealer by their creators or their successors in title;
- c the supply of works of art supplied to the taxable dealer by a taxable person other than a taxable dealer where the reduced rate has been applied to that supply pursuant to Article 103.

2 Member States shall lay down the detailed rules for exercise of the option provided for in paragraph 1, which shall in any event cover a period of at least two calendar years.

Article 317

If a taxable dealer exercises the option under Article 316, the taxable amount shall be determined in accordance with Article 315.

In respect of the supply 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 profit margin shall be equal to the taxable amount on importation, determined in accordance with Articles 85 to 89, plus the VAT due or paid on importation.

Article 318

1 In order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 250.

In the event that such provision is made in accordance with the first subparagraph, the taxable amount in respect of supplies of goods to which the same rate of VAT is applied shall be the total profit margin made by the taxable dealer less the amount of VAT relating to that margin.

2 The total profit margin shall be equal to the difference between the following two amounts:

- a the total value of supplies of goods subject to the margin scheme and carried out by the taxable dealer during the tax period covered by the return, that is to say, the total of the selling prices;
- b the total value of purchases of goods, as referred to in Article 314, effected by the taxable dealer during the tax period covered by the return, that is to say, the total of the purchase prices.

3 Member States shall take the measures necessary to ensure that the taxable dealers referred to in paragraph 1 do not enjoy unjustified advantage or sustain unjustified harm.

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Article 319

The taxable dealer may apply the normal VAT arrangements to any supply covered by the margin scheme.

Article 320

1 Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art, a collectors' item or an antique which he has imported himself, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid on the import.

Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art supplied to him by its creator, or the creator's successors in title, or by a taxable person other than a taxable dealer, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid in respect of the work of art supplied to him.

2 A right of deduction shall arise at the time when the VAT due on the supply in respect of which the taxable dealer opts for application of the normal VAT arrangements becomes chargeable.

Article 321

If carried out in accordance with the conditions specified in Articles 146, 147, 148 or 151, the supply of second-hand goods, works of art, collectors' items or antiques subject to the margin scheme shall be exempt.

Article 322

In so far as goods are used for the purpose of supplies carried out by him and subject to the margin scheme, the taxable dealer may not deduct the following from the VAT for which he is liable:

- (a) the VAT due or paid in respect of works of art, collectors' items or antiques which he has imported himself;
- (b) the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by their creator or by the creator's successors in title;
- (c) the VAT 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.

Article 323

Taxable persons may not deduct from the VAT for which they are liable the VAT 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 margin scheme.

Article 324

Where the taxable dealer applies both the normal VAT arrangements and the margin scheme, he must show separately in his accounts the transactions falling under each of those arrangements, in accordance with the rules laid down by the Member States.

Article 325

The taxable dealer may not enter separately on the invoices which he issues the VAT relating to supplies of goods to which he applies the margin scheme.

Subsection 2

Transitional arrangements for second-hand means of transport

Article 326

Member States which, at 31 December 1992, were applying special tax arrangements other than the margin scheme to the supply by taxable dealers of second-hand means of transport may, pending introduction of the definitive arrangements referred to in Article 402, continue to apply those arrangements in so far as they comply with, or are adjusted to comply with, the conditions laid down in this Subsection.

Denmark is authorised to introduce tax arrangements as referred to in the first paragraph.

Article 327

1 These transitional arrangements shall apply to supplies of second-hand means of transport carried out by taxable dealers, and subject to the margin scheme.

2 These transitional arrangements shall not apply to the supply of new means of transport carried out in accordance with the conditions specified in Article 138(1) and (2)(a).

3 For the purposes of paragraph 1, the land vehicles, vessels and aircraft referred to in point (a) of Article 2(2) shall be regarded as 'second-hand means of transport' where they are second-hand goods which do not meet the conditions necessary to be regarded as new means of transport.

Article 328

The VAT due in respect of each supply referred to in Article 327 shall be equal to the amount of VAT that would have been due if that supply had been subject to the normal VAT arrangements, less the amount of VAT regarded as being incorporated by the taxable dealer in the purchase price of the means of transport.

Article 329

The VAT regarded as being incorporated by the taxable dealer in the purchase price of the means of transport shall be calculated in accordance with the following method:

- (a) the purchase price to be taken into account shall be the purchase price within the meaning of point (2) of Article 312;
- (b) that purchase price paid by the taxable dealer shall be deemed to include the VAT that would have been due if the taxable dealer's supplier had applied the normal VAT arrangements to the supply;
- (c) the rate to be taken into account shall be the rate applicable, pursuant to Article 93, in the Member State in the territory of which the place of the supply to the taxable dealer, as determined in accordance with Articles 31 and 32, is deemed to be situated.

Article 330

The VAT due in respect of each supply of means of transport as referred to in Article 327(1), determined in accordance with Article 328, may not be less than the amount of VAT that would be due if that supply were subject to the margin scheme.

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Member States may provide that, if the supply is subject to the margin scheme, the margin may not be less than 10 % of the selling price within the meaning of point (1) of Article 312.

Article 331

Taxable persons may not deduct from the VAT for which they are liable the VAT 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 VAT in accordance with these transitional arrangements.

Article 332

The taxable dealer may not enter separately on the invoices he issues the VAT relating to supplies to which he applies these transitional arrangements.

Section 3

Special arrangements for sales by public auction

Article 333

1 Member States may, in accordance with the provisions of this Section, apply special arrangements for taxation of the profit margin made by an organiser of a sale by public auction in respect of the supply of second-hand goods, works of art, collectors' items or antiques by that organiser, acting in his own name and on behalf of the persons referred to in Article 334, pursuant to a contract under which commission is payable on the sale of those goods by public auction.

2 The arrangements referred to in paragraph 1 shall not apply to the supply of new means of transport, carried out in accordance with the conditions specified in Article 138(1) and (2)(a).

Article 334

These special arrangements shall apply to supplies carried out by an organiser of a sale by public auction, acting in his own name, on behalf of one of the following persons:

- (a) a non-taxable person;
- (b) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is exempt pursuant to Article 136;
- (c) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;
- (d) a taxable dealer, in so far as the supply of goods, carried out by that taxable dealer in accordance with a contract under which commission is payable on a sale, is subject to VAT in accordance with the margin scheme.

Article 335

The supply of goods to a taxable person who is an organiser of sales by public auction shall be regarded as taking place when the sale of those goods by public auction takes place.

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Article 336

The taxable amount in respect of each supply of goods referred to in this Section shall be the total amount invoiced in accordance with Article 339 to the purchaser by the organiser of the sale by public auction, less the following:

- (a) the net amount paid or to be paid by the organiser of the sale by public auction to his principal, as determined in accordance with Article 337;
- (b) the amount of the VAT payable by the organiser of the sale by public auction in respect of his supply.

Article 337

The net amount paid or to be paid by the organiser of the sale by public auction to his principal shall be equal to the difference between the auction price of the goods and the amount of the commission obtained or to be obtained by the organiser of the sale by public auction from his principal pursuant to the contract under which commission is payable on the sale.

Article 338

Organisers of sales by public auction who supply goods in accordance with the conditions laid down in Articles 333 and 334 must indicate the following in their accounts, in suspense accounts:

- (a) the amounts obtained or to be obtained from the purchaser of the goods;
- (b) the amounts reimbursed or to be reimbursed to the vendor of the goods.

The amounts referred to in the first paragraph must be duly substantiated.

Article 339

The organiser of the sale by public auction must issue to the purchaser an invoice itemising the following:

- (a) the auction price of the goods;
- (b) taxes, duties, levies and charges;
- (c) incidental expenses, such as commission, packing, transport and insurance costs, charged by the organiser to the purchaser of the goods.

The invoice issued by the organiser of the sale by public auction must not indicate any VAT separately.

Article 340

1 The organiser of the sale by public auction to whom the goods have been transmitted pursuant to a contract under which commission is payable on a public auction sale must issue a statement to his principal.

The statement issued by the organiser of the sale by public auction must specify separately the amount of the transaction, that is to say, the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.

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2 The statement drawn up in accordance with paragraph 1 shall serve as the invoice which the principal, where he is a taxable person, must issue to the organiser of the sale by public auction in accordance with Article 220.

Article 341

Member States which apply the arrangements provided for in this Section shall also apply these arrangements to supplies of second-hand means of transport, as defined in Article 327(3), carried out by an organiser 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 those supplies by that taxable dealer would be subject to VAT in accordance with the transitional arrangements for second-hand means of transport.

Section 4

Measures to prevent distortion of competition and tax evasion

Article 342

Member States may take measures concerning the right of deduction in order to ensure that the taxable dealers covered by special arrangements as provided for in Section 2 do not enjoy unjustified advantage or sustain unjustified harm.

Article 343

Acting unanimously on a proposal from the Commission, the Council may authorise any Member State to introduce special measures to combat tax evasion, pursuant to which the VAT due under the margin scheme may not be less than the amount of VAT which would be due if the profit margin were equal to a certain percentage of the selling price.

The percentage of the selling price shall be fixed in the light of the normal profit margins made by economic operators in the sector concerned.