

SECOND COUNCIL DIRECTIVE

of 11 April 1967

on the harmonisation of legislation of Member States concerning turnover taxes
Structure and procedures for application of the common system of value added tax

(67/228/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

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

Having regard to the First Council Directive of 11 April 1967¹ on the harmonisation of legislation of Member States concerning turnover taxes;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the replacement of the turnover taxes in force in Member States by a common system of value added tax is intended as a means of attaining the objectives set out in the First Directive;

Whereas, until the abolition of the imposition of tax on importation and the remission of tax on exportation, it is possible to grant Member States substantial autonomy in determining the rate or differential rates of tax;

Whereas it is also possible to accept on a transitional basis certain differences in the procedure for applying the tax in Member States; whereas it is, however, necessary to make provision for appropriate procedures to ensure neutrality in competition between Member States and to restrict progressively or to abolish the differences in question, so that national systems of value added tax may be brought into

alignment, thereby preparing the way for the attainment of the objective set out in Article 4 of the First Directive;

Whereas, in order to enable the system to be applied in a simple and neutral manner, and to keep the standard rate of tax within reasonable limits, it is necessary to limit special systems and exceptional measures;

Whereas the system of value added tax makes it possible, where appropriate, for social and economic reasons, to effect reductions or increases in the tax burden on certain goods and services by means of a differentiation in the rates, but the introduction of zero rates gives rise to difficulties, so that it is highly desirable to limit strictly the number of exemptions and to make the reductions considered necessary by applying reduced rates which are high enough to permit in normal circumstances the deduction of the tax paid at the preceding stage, which moreover achieves in general the same result as that at present obtained by the application of exemptions in cumulative multi-stage systems;

Whereas it has proved possible to leave Member States themselves to make rules concerning the numerous services whose cost has no influence on the prices of goods, and the systems to be applied in the case of small undertakings, subject, as regards the latter, to prior consultation;

Whereas it has proved necessary to provide for special systems for the application of the value added tax to the agricultural sector and to request the Commission to submit to the Council, as soon as possible proposals to this effect;

Whereas it is necessary to provide for a rather large number of special provisions covering interpretation, derogations and certain detailed application procedures, and to establish a list of the services com-

¹ OJ No 71, 14.4.1967, p. 1301.

pulsorily subject to the common system; and whereas these provisions and this list should appear in the Annexes forming an integral part of this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall introduce, in accordance with a common system, a tax on turnover (hereinafter called 'value added tax').

The structure of, and procedures for applying this tax shall be established by Member States in accordance with the provisions of the following Articles and of Annexes A and B.

Article 2

The following shall be subject to the value added tax:

- (a) The supply of goods and the provision of services within the territory of the country by a taxable person against payment;
- (b) the importation of goods.

Article 3

'Territory of the country' means the territory in which the State concerned applies the value added tax; this territory shall, as a general rule, include the whole of the national territory, including territorial waters.

Article 4

'Taxable person' means any person who independently and habitually engages in transactions pertaining to the activities of producers, traders or persons providing services, whether or not for gain.

Article 5

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

2. The following shall also be considered as supply within the meaning of paragraph 1:

- (a) the actual handing over of goods, under a contract which provides for the hiring of goods for a certain period, or the sale on deferred terms of goods, in both cases subject to a clause to the ef-

fect that ownership shall pass at the latest upon payment of the final instalment due;

- (b) the transfer, by order of a public authority, of ownership in goods against payment of compensation;
- (c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale;
- (d) the delivery of moveable property produced under a contract for work, that is to say the handing over by a contractor to his customer of moveable property which he has made from materials and objects entrusted to him by the customer for this purpose, whether or not the contractor has provided a part of the products used;
- (e) the delivery up of works of construction, including those in which moveable property is incorporated in immoveable property.

3. The following shall be treated as supply against payment:

- (a) the appropriation by a taxable person, from his undertaking, of goods which he applies to his own private use or transfers free of charge;
- (b) the use for the needs of his undertaking, by a taxable person, of goods produced or extracted by him or by another person on his behalf.

4. The place of supply shall be deemed as being:

- (a) in cases where the goods are dispatched or transported either by the supplier or by the consignee, or by a third person: the place where the goods were at the time when the dispatch or transport to the consignee began;
- (b) in cases where the goods are not dispatched or transported: the place where the goods were at the time of supply.

5. The chargeable event shall occur at the moment when delivery is effected. In the case, however, of supply involving payments on account before delivery, it may be provided that the chargeable event shall already have occurred at the moment of issue of the invoice or, at the latest, at the moment of receipt of the payment, in respect of the whole of the amount invoiced or received.

Article 6

1. 'Provision of services' means any transaction which does not constitute a supply of goods within the meaning of Article 5.

2. The rules laid down in this Directive as regards the taxation of the provision of services shall be compulsorily applicable only to services listed in Annex B.

3. The place of the provision of service shall, as a general rule, be regarded as being the place where the services provided, the right transferred or granted, or the object hired, is used or enjoyed.

4. The chargeable event shall occur at the moment when the service is provided. In the case, however, of the provision of services of indeterminate length or exceeding a certain period or involving payments on account, it may be provided that the chargeable event shall already have occurred at the moment of issue of the invoice or, at the latest, at the moment of the receipt of the payment on account, in respect of the whole of the amount invoiced or received.

Article 7

1. 'Importation of goods' means the entry of such goods into the 'territory of the country' within the meaning of Article 3.

2. At importation, the chargeable event shall occur at the time of such entry. Member States may, however, link the chargeable event and the date when payment of value added tax falls due with the chargeable event and the date when payment of customs duties or other import taxes, charges and levies falls due.

The same link may be established, as regards the chargeable event and the date when payment of value added tax falls due, in respect of the supply of imported goods placed under a system of suspension of customs duties or other taxes, charges or levies.

Article 8

The basis of assessment shall be:

- (a) in the case of supply of goods and of the provision of services, everything which makes up the consideration for the supply of the goods or the provision of services, including all expenses and taxes except the value added tax itself;
- (b) in the case of the transactions referred to in Article 5 (3) (a) and (b), the purchase price of the goods or of like goods or, if there is no purchase price, the cost price;
- (c) in the case of importation of goods, the customs value, plus all duties, taxes, charges and levies due by reason of importation, except the value added tax itself. The same basis of assessment

shall apply when the goods are exempt from customs duties or are not subject to *ad valorem* customs duties.

In the case of importation of goods, each Member State may add to the basis of assessment the incidental expenses (packing, transport, insurance, etc.) arising up to the place of destination which have not been included in that basis.

Article 9

1. The standard rate of value added tax shall be fixed by each Member State at a percentage of the basis of assessment which shall be the same for the supply of goods and for the provision of services.

2. In certain cases, the supply of goods and the provision of services may, however, be subject to increased rates or to reduced rates. Each reduced rate shall be determined in such a manner that the amount of value added tax resulting from the application of this rate shall normally permit the deduction of the whole of the value added tax which is deductible under Article 11.

3. The rate applicable to importation of goods shall be that which is applied in the territory of the country to the supply of like goods.

Article 10

1. The following shall be exempted from value added tax on conditions laid down by each Member State:

- (a) the supply of goods consigned or transported to places outside the territory in which the State concerned applies value added tax;
- (b) the provision of services relating to goods covered by (a) or in transit.

2. The provision of services relating to importations of goods may, subject to the consultations mentioned in Article 16, be exempted from value added tax.

3. Each Member State may, subject to the consultations mentioned in Article 16, determine the other exemptions which it considers necessary.

Article 11

1. Where goods and services are used for the purposes of his undertaking, the taxable person shall be authorised to deduct from the tax for which he is liable:

- (a) the value added tax invoiced to him in respect of goods supplied to him or in respect of services rendered to him;
- (b) the value added tax paid in respect of imported goods;
- (c) the value added tax which he has paid in respect of the use of goods referred to in Article 5 (3) (b).

2. Value added tax on goods and services used in non-taxable or exempt transactions shall not be deductible.

The taxable person shall however be authorised to make the deduction if the supply of goods or the provision of services takes place abroad or is exempt under Article 10 (1) or (2).

As regards goods and services which are used both in transactions giving entitlement to deduction and in transactions which do not give entitlement to deduction, deduction shall only be allowed for that part of the value added tax which is proportional to the amount relating to the transactions giving entitlement to deduction (*pro rata rule*).

3. The deduction shall be made from the value added tax due for the period during which deductible tax is invoiced in the case of paragraph 1 (a) or paid in the case of paragraph 1 (b) and (c) (immediate deductions).

In the case of a partial deduction under paragraph 2 the amount of the deduction shall be provisionally determined in accordance with criteria established by each Member State and finally adjusted after the end of the year when the *pro rata* figure for the year of acquisition has been calculated.

As regards capital goods, the adjustment shall be effected on the basis of the variations of the *pro rata* figure which have occurred during a period of five years including the year during which the goods were acquired; the adjustment shall apply each year to only one-fifth of the tax borne by capital goods.

4. Certain goods and services may be excluded from the deduction system, in particular those capable of being exclusively or partially used for the private needs of the taxable person or of his staff.

Article 12

1. Every taxable person shall keep sufficiently detailed accounts to permit application of the value added tax and inspection by the tax authorities.

2. Every taxable person shall issue an invoice in respect of goods supplied and services provided by him to another taxable person.

3. Every taxable person shall each month lodge a declaration showing, in respect of transactions carried out during the preceding month, all the information required to calculate the tax and the deductions to be made. Every taxable person shall pay the amount of the value added tax when lodging the declaration.

Article 13

Should a Member State consider that, in exceptional cases, special measures should be adopted in order to simplify the charging procedure in respect of the tax or to prevent certain frauds, it shall so inform the Commission and the other Member States.

Should there, within one month, be objections from one or more States or from the Commission, the request for derogation shall be brought before the Council, which shall act on a proposal from the Commission within three months.

Should it appear from the conclusion of the Commission that only a simplification of the charging procedure or a measure designed to prevent fraud is involved, the Council shall act by a qualified majority on the derogation requested.

Should it appear, on the contrary, from those conclusions that the proposed measure might be prejudicial to the very principles of the system introduced by this Directive, and in particular to neutrality in competition between Member States, the Council shall act unanimously.

In either case, the Council shall act in accordance with the same procedure as regards the period of application of such measures.

The State concerned may not apply the proposed measures until the period for entering objections has expired or, where there have been objections, until after the Council's decision, if such decision is favourable.

These provisions shall cease to be applicable when the imposition of tax on importation and the remission of tax on exportation are abolished in trade between Member States.

Article 14

Each Member State may, subject to the consultations mentioned in Article 16, apply to small undertakings

whose subjection to the normal system of value added tax would meet with difficulties the special system best suited to national requirements and possibilities.

Article 15

1. The Commission shall submit to the Council, as soon as possible, proposals for Directives on common procedures for applying value added tax to transactions relating to agricultural products.

2. Until the date fixed in the Directive referred to in paragraph 1 for the application of such common procedures, each Member State may, subject to the consultations mentioned in Article 16, apply to undertakings in the agricultural sector whose subjection to the normal system of value added tax would meet with difficulties the special system best suited to national requirements and possibilities.

Article 16

Where a Member State must, in accordance with the provisions of this Directive, enter into consultations, it shall refer the matter to the Commission in good time, having regard to the application of Article 102 of the Treaty.

Article 17

With a view to the transition from the present systems of turnover taxes to the common system of value added tax, Member States may:

- adopt transitional measures to levy the tax in advance;
- apply, during a certain transitional period, in respect of capital goods, the method of deduction by annual instalments (deductions *pro rata temporis*);
- exclude, in whole or in part, during a certain transitional period, capital goods from the deduction system provided for in Article 11;

and, subject to the consultations mentioned in Article 16:

- authorise (in order to grant relief, total or partial, but general in scope, from the turnover tax charged up to the time of introducing value added tax) standard deductions in respect of capital goods not yet written off and of stocks in hand at that time. Member States may, however, restrict such deductions to goods exported during a period

of one year from the introduction of value added tax. In that event, such deductions shall only be allowed in respect of stocks in hand at the time referred to above and exported in an unaltered state;

- provide for reduced rates or even exemptions with refund, if appropriate, of the tax paid at the preceding stage, where the total incidence of such measures does not exceed that of the reliefs applied under the present system. Such measures may only be taken for clearly defined social reasons and for the benefit of the final consumer, and may not remain in force after the abolition of the imposition of tax on importation and the remission of tax on exportation in trade between Member States.

Article 18

The Commission shall, after consulting the Member States, submit to the Council, for the first time on 1 January 1972 and every two years thereafter, a report on the operation of the common system of value added tax in Member States.

Article 19

The Council shall, in the interest of the common market, adopt at the proper time, on a proposal from the Commission, the appropriate Directives to complete the common system of value added tax, and in particular to restrict progressively or to abolish measures adopted by Member States in derogation from this system, so that national systems of value added tax may be brought into alignment, thereby preparing the way for the attainment of the objective set out in Article 4 of the First Directive.

Article 20

The Annexes shall form an integral part of this Directive.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, 11 April 1967.

For the Council

The President

R. VAN ELSLANDE

ANNEX A

1. Regarding Article 3

If a Member State intends to apply value added tax in a territory smaller than its national territory, it shall enter into the consultations mentioned in Article 16.

2. Regarding Article 4

The expression 'activities of producers, traders, or persons providing services' is to be understood in a wide sense and to cover all economic activities, including, therefore, activities of the extractive industries, agriculture and the professions.

If a Member State intends not to tax certain activities, it should achieve its purpose by means of exemptions rather than by excluding from the scope of the tax persons pursuing such activities.

Member States may also consider as a 'taxable person' anyone who engages occasionally in the transactions referred to in Article 4.

The expression 'independently' is intended in particular to exclude from taxation wage-earners who are bound to their employer by a contract of service. This expression also makes it possible for each Member State not to consider as separate taxable persons, but as one single taxable person, persons who, although independent from the legal point of view, are, however, organically linked to one another by economic, financial or organisational relationships. Any Member State intending to adopt such a system shall enter into the consultations mentioned in Article 16.

States, regional and local government bodies and other public corporate bodies shall not as a general rule be considered as taxable persons in respect of activities which they pursue in their official capacity as official authorities.

If, however, they pursue activities as producers, traders, or providers of services, they may be considered as liable to tax in respect of such activities.

3. Regarding Article 5 (1)

'Tangible property' means both moveable and immoveable tangible property.

The supply of electric current, gas, heat, refrigeration and the like shall be considered as supply of goods.

In case of contribution to a company of the whole or part of the contributor's assets, Member States may regard the benefiting company as the successor in title of the contributor.

4. Regarding Article 5 (2) (a)

For the purposes of this Directive, the contract referred to in Article 5 (2) (a) must not be subdivided into part hire and part sale, but shall be regarded, as soon as concluded, as a contract involving a taxable supply.

5. Regarding Article 5 (2) (d) and (e)

Member States which, for specifically national reasons, cannot consider the transactions referred to in Article 5 (2) (d) and (e) as supply shall classify them in the category of provision of services, subjecting them to the rate which would be applicable to them if they were considered as supply.

The following, *inter alia*, shall be considered as 'works of construction':

- the construction of buildings, bridges, roads, ports, etc., in performance of a building contract;
- earth-moving and planting of gardens;
- installation work (of central heating, for example);
- repairs to buildings, other than current maintenance.

6. Regarding Article 5 (3) (a)

As regards the appropriation of goods in an unaltered state bought by a taxable person, Member States may, instead of taxing, forbid deduction or adjust it if deduction has already been effected. However, appropriation for giving gifts of small value and samples, which from the tax point of view may be classified as overhead expenses, shall not be considered as taxable supply. Moreover, the provisions of Article 11 (2) shall not be applicable to such appropriations.

7. Regarding Article 5 (3) (b)

This provision shall only be applied to ensure equality of taxation between, on the one hand, goods purchased and intended for the needs of the undertaking, and in respect of which there is no entitlement to immediate or complete deduction, and, on the other hand, goods produced or extracted by the taxable person or on his behalf by a third person which are also used for the same needs.

8. Regarding Article 5 (5)

The 'chargeable event' means the event giving rise to the tax.

9. Regarding Article 6 (1)

The definition of provision of services given in this paragraph involves classification of, *inter alia*, the following as provision of services:

- the assignment of intangible property;
- the carrying out of an obligation to refrain from doing something;
- the carrying out of a service rendered by order of a public authority;
- the carrying out of work on goods, if such work is not considered as supply within the meaning of Article 5 (2) (d) and (e) as, for example, current maintenance work, the laundering of linen, etc.

This definition shall not prevent taxation by Member States of certain transactions engaged in by a taxable person as services 'rendered to oneself' when such a measure proves necessary in order to avoid distortion of competition.

10. *Regarding Article 6 (2)*

Member States shall refrain, as far as possible, from granting exemption from tax in respect of the provision of the services listed in Annex B.

11. *Regarding Article 6 (3)*

The Council shall, acting unanimously on a proposal from the Commission, lay down, before 1 January 1970, special rules concerning certain services for which such rules may prove necessary, derogating where appropriate from the provisions of Article 6 (3). Until those rules have been laid down, each Member State may, in order to simplify the procedure for charging the tax, derogate from the provisions of Article 6 (3); it shall, however, take the necessary steps to avoid double taxation or non-taxation.

12. *Regarding Article 8*

Any Member State which applies value added tax only up to and including the wholesale stage may, in the case of goods sold by retail by a taxable person, reduce the basis of assessment by a certain percentage; the basis thus reduced shall not, however, be lower than the purchase or cost price plus, where appropriate, the amount of the customs duties (including levies), taxes and charges on the goods (except value added tax), even if payment thereof has been suspended.

In the case of importation of goods sold by retail, the same reduction shall be applied to the basis of assessment.

It shall be left to Member States to define, in accordance with their national concepts, the concept of 'sale of goods by retail'.

Each Member State may, subject to the consultations mentioned in Article 16, lay down, as a measure to prevent fraud and in respect of specified goods and services, that, in derogation from Article 8, the basis of assessment shall not be lower than a minimum basis determined by its national law.

13. *Regarding Article 8 (a)*

The expression 'consideration' means everything received in return for the supply of goods or the provision of services, including incidental expenses (packing, transport, insurance, etc.) that is to say not only the cash amounts charged, but also, for example, the value of the goods received in exchange or, in the case of goods or services supplied by order of a public authority, the amount of the compensation received.

This provision shall not, however, prevent each Member State which considers it necessary for the achievement of greater neutrality in competition from being able to exclude from the basis of assessment in respect of supply the incidental expenses arising as from the place of supply as defined in Article 5 (4) and to tax such expenses as consideration for the provision of services.

Further, the expenses paid in the name and for the account of the customer which are shown in the accounts of the supplier as transitory items shall not be included in the basis of assessment.

The customs duties and other charges, taxes, etc., paid at importation by agents and other intermediaries in customs clearance including forwarding agents, under their own name, may also be excluded from the basis of assessment corresponding to the services they have provided.

14. *Regarding Article 8 (c)*

In intra-Community trade, Member States shall endeavour to apply to importations of goods a basis of assessment which corresponds, as far as possible, to that used for supply made within the territory of the country; this basis shall include the same components as those taken into account pursuant to Article 8 (c).

Until the abolition of the imposition of tax on importation and the remission of tax on exportation in trade between Member States at the latest, and subject to the consultations mentioned in Article 16, each Member State may apply to importations of goods from third countries a basis of assessment which corresponds, as far as possible, to that used for supply within the territory of the country; this basis shall include the same components as those taken into account pursuant to Article 8 (c).

15. *Regarding Article 9 (2)*

Where this paragraph is applied to the transport services referred to in Annex B, item 5, it must be so applied as to ensure equality of treatment as between the different modes of transport.

16. *Regarding Article 10 (1) (a)*

Relief from tax as provided for in this provision refers to the supply of goods directly exported, that is to say supply made by the exporter. Member States may, however, extend exemption to supply made at the preceding stage.

17. *Regarding Article 10 (1) (b)*

Member States may, however, refrain from granting this exemption if relief from the value added tax charged on the provision of these services is effected in favour of the beneficiary of the services by means of deductions. Moreover, Member States may, except in the case of the provision of services relating to goods in transit, restrict such exemption to the provision of services relating to goods the supply of which inside the country is taxable.

18. *Regarding Article 10 (2)*

This provision relates in particular to the provision of international transport services at importation and to port services.

19. *Regarding Article 10 (2) and (3)*

Where these paragraphs are applied to the transport services referred to in Annex B, item 5, they must be so applied as to ensure equality of treatment as between the different modes of transport.

20. *Regarding Article 11 (1) (a)*

In the cases provided for in Article 5 (5), second sentence, and Article 6 (4), second sentence, the deductions may be made as soon as the invoice is received, even though the goods have not yet been supplied or the services rendered.

21. *Regarding Article 11 (2), second subparagraph*

Member States may, however, restrict the right to deduction to transactions relating to goods the supply of which inside the country is taxable.

22. *Regarding Article 11 (2), third subparagraph*

The *pro rata* figure shall, in general, be determined in respect of all the transactions carried out by the taxable person (general *pro rata* figure). However, a taxable person may, exceptionally, obtain administrative permission to determine special *pro rata* figures for certain sectors of his activities.

23. *Regarding Article 11 (3), first subparagraph*

Subject to the consultations mentioned in Article 16, each Member State may, on conjunctural grounds, partially or wholly exclude capital goods from the deduction system, or apply in respect of such goods, instead of the method of immediate deductions, that of annual instalments (deductions *pro rata temporis*).

24. *Regarding Article 11 (3), third subparagraph*

Member States may specify certain tolerances in order to limit the number of adjustments in the event of variations in the annual *pro rata* figure as compared with the initial *pro rata* figure which served as a basis for deductions in the case of capital goods.

25. *Regarding Article 12 (2)*

The invoice must show separately the price exclusive of tax and the corresponding tax for each different rate, together with any exemption.

Each Member State may, in special cases, provide for derogations from this rule and also from the obligation laid down in Article 12 (2). Such derogations, however, must be strictly limited.

Notwithstanding the other measures to be taken by Member States to ensure payment of the tax and to prevent fraud, all persons, whether taxable or not, who show the value added tax on an invoice, must pay the amount thereof.

26. *Regarding Article 12 (3)*

Each Member State may, for practical reasons, shorten the period laid down in Article 12 (3) or authorise certain taxable persons to lodge the declaration quarterly, half-yearly or annually.

During the first six months of each year, the taxable person shall, where appropriate, lodge a declaration concerning all the previous years's transactions, and including all the particulars necessary for any adjustments.

Each Member State shall, as regards importation of goods, adopt measures governing the procedure in respect of the declaration and of the payment which must ensue.

27. *Regarding Article 14*

Where this Article is applied to the transport services referred to in Annex B, item 5, it must be so applied as to ensure equality of treatment as between the different modes of transport.

28. *Regarding Article 17, fourth indent*

Stocks may be valued *inter alia* by reference to the transactions carried out during preceding years by the taxable persons.

ANNEX B

List of the services referred to in Article 6 (2):

1. assignments of patents, trade marks and other similar rights, and the granting of licences in respect of such rights;
 2. work, other than that referred to in Article 5 (2) (d), on tangible moveable property, carried out for a taxable person;
 3. provision of services to prepare or co-ordinate the carrying out of works of construction, as, for example, services provided by architects and by firms providing on-site supervision of works;
 4. commercial advertising services;
 5. transport and storage of goods, and ancillary services;
 6. hiring of tangible moveable property to a taxable person;
 7. provision of staff to a taxable person;
 8. services provided by consultants, engineers, planning offices and similar services, in scientific, economic or technical fields;
 9. the carrying out of an obligation to refrain from exercising, in whole or in part, a business activity or a right included in this list;
 10. the services of forwarding agents, brokers, business agents and other independent intermediaries, in so far as they relate to supply or importation of goods or the provision of services included in this list.
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