

COUNCIL DIRECTIVE 95/7/EC

of 10 April 1995

amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them

THE COUNCIL OF THE EUROPEAN UNION,

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

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 operation of the internal market can be improved by introducing common rules clarifying the scope of, and arrangements for, applying some of the exemptions provided for in Articles 14 (1), 15, point 2, and 16 (1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment⁽¹⁾; whereas the introduction of such common rules is provided for by the aforesaid Directive, and in particular Articles 14 (2) and 16 (3) thereof;

Whereas Article 3 of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax⁽²⁾ provides for the adoption of special rules for the taxation of chain transactions between taxable persons; whereas such rules must ensure not only compliance with the principle of neutrality of the common system of value added tax as regards the origin of goods and services but also compliance with the choices made as to the principles governing value added tax and its monitoring arrangements during the transitional period;

Whereas it is appropriate to include in the taxable amount on importation all ancillary costs arising from the transport of goods to any place of destination in the Community since that place is known at the time the importation is carried out; whereas, as a result, the

supplies of services in question enjoy the exemptions provided for in Article 14 (1) (i) of Directive 77/388/EEC;

Whereas Article 15 (2) of that Directive provides that the Commission shall submit to the Council proposals to establish Community tax rules specifying the scope of, and practical arrangements for implementing, the export exemptions applicable to supplies of goods carried in the personal luggage of travellers;

Whereas it is appropriate that the period serving as a basis for calculating the adjustments provided for by Article 20 (2) of the said Directive should be extended up to 20 years by Member States for immovable property acquired as capital goods, bearing in mind the duration of their economic life;

Whereas Member States should be enabled to maintain the rate applicable to goods after making up work which they carried out under a contract to make up work on 1 January 1993;

Whereas the rules governing territorial application and the tax arrangements applicable in the field of intra-Community goods-transport services function in a simple and satisfactory manner for both traders and the authorities in the Member States;

Whereas, by treating a transport operation within a Member State as an intra-Community goods-transport operation where it is directly linked to a transport operation between Member States, it is possible to simplify not only the principles and arrangements for taxing those domestic transport services but also the rules applicable to ancillary services and to services supplied by intermediaries involved in the supply of these various services;

Whereas the qualification of certain works on movable property as work carried out under a contract to make up work is a source of difficulty and should be eliminated;

Whereas, with a view to facilitating intra-Community trade in the field of work on movable tangible property, the tax arrangements applicable for these transactions should be modified when they are carried out for a person who is identified for value added tax purposes in a Member State other than that of their physical execution;

(1) OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 94/76/EC (OJ No L 365, 31. 12. 1994, p. 53).

(2) OJ No L 384, 30. 12. 1992, p. 47.

Whereas Article 16 (1) (B) to (E) of the said Directive, taken together in particular with Article 22 (9) concerning release from obligations, makes it possible to overcome the difficulties encountered by traders participating in transaction chains involving goods placed and kept under warehousing arrangements;

Whereas it is necessary in this connection to ensure that the tax treatment applied to supplies of goods and the provision of services relating to certain of the goods which may be placed under customs warehousing arrangements can also be applied to the same transactions involving goods placed under warehousing arrangements other than customs warehousing;

Whereas these transactions concern principally raw materials and other goods negotiated on international forward markets; whereas a list of the goods covered by these provisions should be drawn up;

Whereas, subject to consultation of the Committee on Value Added Tax, the Member States are responsible for defining those warehousing arrangements other than customs warehousing; whereas it is necessary nevertheless to exclude in principle from such arrangements goods that are intended to be supplied at the retail stage;

Whereas it is necessary to clarify some of the rules for applying tax when goods cease to be covered by the arrangements provided for in Article 16 (1) (B) to (E) of the said Directive, particularly as regards the person liable for payment of the tax due;

Whereas it is necessary to clarify the scope of those provisions of Article 17 (2) (a) of the said Directive that are applicable during the transitional period referred to in Article 28 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 5 (5) shall be replaced by the following:

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

2. Article 11 (B) (3) (b), third subparagraph, shall be replaced by the following:

'The incidental expenses referred to above shall also be included in the taxable amount where they result from transport to another place of destination within

the territory of the Community if that place is known when the chargeable event occurs.'

3. Article 15 (2), second and third subparagraphs, shall be replaced by the following three subparagraphs:

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

— the traveller is not established within the Community,

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

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

For the purposes of applying the second subparagraph:

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

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

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

(*) OJ No L 133, 4. 6. 1969, p. 6. Directive as last amended by Directive 94/4/EC (OJ No L 60, 3. 3. 1994, p. 14).'

4. in Article 20 (2), the last subparagraph shall be replaced by the following:

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

5. in Article 28 (2), the following point shall be added :

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

For the purposes of applying this provision, supplies under a contract to make up work shall be deemed to be delivery by a contractor to his customer of movable property made or assembled by the contractor from materials or objects entrusted to him by the customer for this purpose, whether or not the contractor has provided any part of the materials used.' ;

6. Article 28 (a) (5) shall be amended as follows :

— the introductory sentence shall be replaced by the following :

'The following shall be treated as supplies of goods effected for consideration' ;

— (a) shall be deleted,

— the fourth indent in the second subparagraph of (b) shall be deleted,

— the fifth indent in the second subparagraph of (b) shall be replaced by the following :

'— the supply of a service performed for the taxable person and involving work on the goods in question physically carried out in the Member State in which the dispatch or transport of the goods ends, provided that the goods, after being worked upon, are re-dispatched to that taxable person in the Member State from which they had initially been dispatched or transported' ;

7. Article 28b shall be amended as follows :

— in the first indent of C (1), the comma shall be replaced by a full stop and the following subparagraph shall be added :

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

— the following section shall be added :

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

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

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

8. in the first subparagraph of Article 28c (A) (a), 'as defined in Articles 5 and 28a (5) (a)' shall be replaced by 'as defined in Article 5' ;

9. Article 28c (E) (1) shall be replaced by the following :

'1. In Article 16 :

— paragraph 1 shall be replaced by the following :

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

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

B. supplies of goods which are intended to be :

(a) produced to customs and, where applicable, placed in temporary storage ;

(b) placed in a free zone or in a free warehouse ;

(c) placed under customs warehousing arrangements or inward processing arrangements ;

(d) admitted into territorial waters :

- in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland,
- for the fuelling and provisioning of drilling or production platforms ;

(e) placed, within the territory of the country, under warehousing arrangements other than customs warehousing.

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

- for products subject to excise duty, the places defined as tax warehouses for the purposes of Article 4 (b) of Directive 92/12/EEC,
- for goods other than those subject to excise duty, the places defined as such by the Member States. However, Member States may not provide for warehousing arrangements other than customs warehousing where the goods in question are intended to be supplied at the retail stage.

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

- taxable persons for the purposes of supplies effected under the conditions laid down in Article 28k,
- tax-free shops within the meaning of Article 28k, for the purposes of supplies to travellers taking flights or sea crossings to third countries, where those supplies are exempt pursuant to Article 15,
- taxable persons for the purposes of supplies to travellers on board aircraft or vessels during a flight or sea crossing where the place of arrival is situated outside the Community,

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

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

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

D. supplies of goods and of services carried out :

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

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

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

E. supplies :

- of goods referred to in Article 7 (1) (a) still subject to arrangements for temporary importation with total exemption from import duty or to external transit arrangements,

- of goods referred to in Article 7 (1) (b) still subject to the internal Community transit procedure provided for in Article 33a,

as well as supplies of services relating to such supplies.

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

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

— the following paragraph shall be added:

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

10. in Article 28f (1), Article 17 (2) (a) shall be replaced by the following:

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

11. in Article 28g, 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 who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b, (C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person established abroad; however, Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax’;

12. Article 28h shall be amended as follows:

— Article 22 (2), (b) shall be replaced by the following:

‘(b) Every taxable person shall keep a register of the goods he has dispatched or transported or which have been dispatched or transported on his behalf out of the territory defined in Article 3 but within the Community for the purposes of the transactions referred to in the fifth, sixth and seventh indents of Article 28a (5) (b).

Every taxable person shall keep sufficiently detailed accounts to permit the identification of goods dispatched to him from another Member State by or on behalf of a taxable person identified for purposes of value added tax in that other Member State, in connection with which a service has been provided

pursuant to the third or fourth indent of Article 9 (2) (c),’;

— the first indent of the second subparagraph of Article 22 (3) (b) shall be replaced by the following:

‘— in the case of the transactions referred to in Article 28b (C), (D), (E) and (F), the number by which the taxable person is identified in the territory of the country and the number by which the customer is identified and under which the service has been rendered to him.’;

— the first subparagraph of Article 22 (6) (b) shall be replaced by the following:

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

— the second indent of the third subparagraph of Article 22 (6) (b) shall be replaced by the following:

‘— the number by which each person acquiring goods is identified for purposes of value added tax in another Member State and under which the goods were supplied to him.’;

— the fifth subparagraph of Article 22 (6) (b) shall be deleted;

13. Annex J which appears in the Annex to this Directive shall be added.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 1996. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 reference shall be laid down by Member States.

2. By way of derogation from the first subparagraph of paragraph 1, Member States may take measures by way of law, regulation or administrative action in order to bring the provisions in Article 1 (3), (4) and (9) into force not later than 1 January 1996.

However, the Federal Republic of Germany and the Grand Duchy of Luxembourg are authorized to take measures by way of law, regulation or administrative action in order to apply the provisions in Article 1 (9) not later than 1 January 1997.

3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 10 April 1995.

For the Council

The President

A. JUPPÉ

ANNEX

ANNEX J

Description of goods	CN code
Tin	8001
Copper	7402 7403 7405 7408
Zinc	7901
Nickel	7502
Aluminium	7601
Lead	7801
Indium	ex 8112 91 ex 8112 99
Cereals	1001 to 1005 1006: unprocessed rice only 1007 to 1008
Oil seeds and oleaginous fruit Coconuts, Brazil nuts and cashew nuts Other nuts Olives	1201 to 1207 0801 0802 0711 20
Grains and seeds (including soya beans)	1201 to 1207
Coffee, not roasted	0901 11 00 0901 12 00
Tea	0902
Cocoa beans, whole or broken, raw or roasted	1801
Raw sugar	1701 11 1701 12
Rubber, in primary forms or in plates, sheets or strip	4001 4002
Wool	5101
Chemicals in bulk	Chapters 28 and 29
Mineral oils (including propane and butane; also including crude petroleum oils)	2709 2710 2711 12 2711 13
Silver	7106
Platinum (palladium, rhodium)	7110 11 00 7110 21 00 7110 31 00
Potatoes	0701
Vegetable oils and fats and their fractions, whether or not refined, but not chemically modified	1507 to 1515'