

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 322 final/2

REVISED VERSION

Brussels, 21 August 1987

**Proposal for a Council Directive**  
**completing and amending Directive 77/388/EEC**  
**- Removal of fiscal frontiers -**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### Introduction

The Commission's White Paper(1) of 14 June 1985, stresses the importance of the removal of fiscal frontiers as part of the process of completing the internal market.

The overall approach for attaining this objective is explained in the general communication to the Council(2). That Communication sets out the reasons underlying the proposals which the Commission is making and deploys the arguments in their support. It is particularly important therefore that the present document should be read in conjunction with the global communication. Doing away with fiscal frontiers means that intra-Community sales and purchases of goods and services will be treated in the same way as those transacted within Member States.

This situation, which was envisaged from the outset and clearly foreshadowed in the Sixth Directive on the common system of value added tax (Directive 77/388/EEC), necessarily involves the abolition of VAT exemption at export and taxation at import within the Community, plus the adaptation of certain territorial application rules relating to supplies of services. Consequently, several provisions of the Sixth Directive have to be amended or supplemented and certain Directives which were adopted to offset the disadvantages caused by the existence of fiscal frontiers have to be either amended or repealed.

However, since the tax applied and collected in the Member State where a sale takes place will be deductible in the Member State of the purchaser (if he is liable for VAT), the Member State of destination would collect only the tax relating to the value added by purchasers established in that Member State. Since the intention is to retain, within the Community, the principle that the tax charged should be allocated to the country of final consumption, a clearing system will have to be set up to transfer to the purchaser's Member State the VAT initially collected in the seller's Member State. The clearing mechanism is dealt with in a separate communication to the Council(3); nevertheless, certain amendments to the existing VAT system, required as a consequence of the introduction of the clearing mechanism, are included in this proposal.

It should be recalled, in addition, that there are several draft Directives currently being examined by the Council which also have a role to play in establishing

(1) Document COM(85)310 final, point 184

(2) Document COM(87)320 final

(3) Document COM(87)323 final

the fiscal framework for completing the internal market, notably the draft seventh, twelfth, eighteenth and nineteenth Directives. In addition, a proposal will shortly be made by the Commission dealing with passenger transport. Further proposals will also be required before the Community VAT base is completed, as envisaged in the White Paper. The Commission is currently re-examining the treatment of transactions in gold and services supplied by artists and performers having amended the 18th Directive accordingly.

#### Remarks on the proposed amendments

##### Article 1

##### Points 1 and 2

The proposed amendments result from the fact that "importation" is a concept which no longer applies to trade within the Community, but only to trade with third countries.

##### Point 3

The proposed amendment results from the fact that the term "exportation" no longer applies to trade within the Community.

##### Point 4

Completion of the internal market requires a reformulation of the rules of territorial application with regard to transport in general. Since passenger transport will be the subject of a proposal for a separate directive(1) - applicable in principle from 1 January 1990 - it will be necessary to take account of the effect of this proposal on the general rules governing transport. In particular, Article 9-2b will have to be further modified. With a view to the removal

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(1)

of fiscal frontiers, the principle that the tax should be charged on the basis of the distance travelled in each Member State must be replaced by a rule that is better suited to the new situation. Linking the fiscal charge to the country of departure, in conformity with the principle laid down in the 6th directive in respect of passenger transport, is the solution that best meets this requirement. The current situation as regards international transport of goods to and from third countries remains completely unaffected by this change, since export and import exemptions will still apply.

Point 5

The removal of fiscal frontiers makes it unnecessary to continue to link the supply of services listed in Article 9 (2) (e) of the Sixth Directive to the customers's country; under the proposed system, tax charged in the supplier's country will be deductible in the customer's country. Article 9 (2) (e) should therefore be limited to trade with third countries.

Point 6

The proposed amendments result from the fact that the term "importation" no longer applies to trade within the Community, but only to trade with third countries.

Point 7

The proposed amendment results from the fact that the term "exportation" no longer applies to trade within the Community.

Point 8

Elimination of the concept of exportation within the Community makes it necessary to introduce a special exemption for supplies of gold to Central Banks within the Community. These are currently covered by the exemption in article 15 (11) of the Sixth Directive.

Point 9

The purpose of the proposed amendment is to abolish the possibility currently accorded to the Member States whereby they can grant taxable persons a right to opt for the taxation of banking and financial transactions which

are normally exempt under Article 13 (B) (d) of the Sixth Directive. Such an option exists in three Member States only, and the conditions governing its application vary considerably from one to the other. This is an anomalous situation in the context of completing the internal market and achieving freedom to provide services. The Commission's views on this subject are contained in its first report to the Council on the application of the common system of value added tax (see page 27 of COM(83) 426 final).

#### Points 10 and 11

These amendments result from the fact that the term "importation" no longer applies to intra-Community trade.

#### Points 12 and 13

Similarly, these amendments are consequent upon the fact that "exportation" no longer applies to trade within the Community.

#### Point 14

This amendment, dealing with the exemption of services consisting of work on imported movable property, is similarly required because the terms "importation" and "exportation" no longer apply to trade between Member States.

#### Points 15 and 16

Once again, the fact that "exportation" no longer applies to intra-Community trade is relevant. The proposal restricts the "export" exemption currently applicable to supplies of goods for the provisioning of vessels used for navigation on the high seas and for aircraft used on international routes, to traffic with third countries. This is in conformity with the new taxation rule applicable to transport services within the Community (see point 4 above).

#### Points 17

The exemption of supplies of gold to central banks provided for in art. 15 (11) of the sixth Directive in the context of transactions similar to exportations, was

designed to maintain the right of deduction of input tax even when the supplies were "within the territory of the country". Since such supplies are now exempted on the basis of point 8 of this proposal, article 15 (11) has become unnecessary. The right of deduction of input tax is maintained by means of the modification proposed in point 26. As far as supplies of gold for exportation to third countries are concerned, these remain exempted on the basis of the general provisions of art. 15 (1) of the 6th Directive, as revised.

#### Points 18, 19 and 20

These amendments are consequent upon the fact that "exportation" no longer applies to trade within the Community.

#### Point 21

The second paragraph of Article 15 (14) of the Sixth Directive, dealing with travel services supplied in other Member States, becomes superfluous, given that the scope of the first paragraph is restricted to services relating to transactions carried out outside the Community in conformity with the modification proposed under point 20.

#### Point 22

In conformity with the provisions of its Act of Accession, Portugal can treat transport services between Portugal and the Azores and Madeira as international transport operations and thus grant them exemptions from VAT. However, the new territorial application rule applicable to transport services (see point 4 above), would cause air or sea transport operations between the Azores and Madeira and Member States other than Portugal to be taxed. To avoid such a potential distortion of competition it is proposed to amend Article 15 (15) of the Sixth Directive, the current text of which was adopted in the Portuguese Act of Accession to extend the exemption arrangements in respect of those islands to all Member States. For the Member States other than Portugal, the own resources regime for transport will be the same as that provided for in the second paragraph of Article 374 of the Act of Accession of Portugal.

Point 23

Once again, this amendment is necessary because of the change in the concept of "exportation" resulting from the completion of the internal market.

Points 24 and 25

The proposed additions to Article 17 (2) of the Sixth Directive deal with the right to deduction and are interlinked. Since the addition in point 25 makes it possible to deduct in each Member State the tax invoiced in other Member States, it must be made clear in point 24 that this right to deduct, which is being given a Community-wide dimension, can be granted only in the country where the taxable person carries out taxable transactions.

Point 26

The purpose of the proposed addition is to preserve the right to deduct input tax with regard to supplies of gold to Central Banks. Such operations are also referred to in points 8 and 18.

Point 27

The proposed amendment deletes all reference to a right of refund of tax invoiced in one Member State to taxable persons established in another Member State. The current provision in Article 17(4) is superfluous, since any taxable person will have the right to deduct in his own Member State the tax invoiced in other Member States. (The Eighth Directive also becomes superfluous).

Article 17(4) must therefore be restricted to taxable persons in third countries, with reference being made to the Thirteenth Directive, which deals with the appropriate repayment procedures.

Point 28

This new provision is required so that, in each Member State, tax invoiced in other Member States can be deducted.

### Point 29

This provision requires each taxable person to declare the total amount of both input and output VAT relating to transactions carried out with taxable persons in other Member States. This is an important element in the establishment of the future clearing-house system, enabling the net position of each trader in respect of intra-Community VAT to be determined. Taxable persons with a turnover of less than 35.000 ECUs are excluded from the obligation to provide this additional information on their periodic declaration.

### Article 2

The transitional provisions still in force in the Member State must disappear by 31 December 1992 at the latest in view of the completion of the internal market.

### Article 3

This article lists the Directives which will become superfluous, either totally or in part, once fiscal frontiers have been removed (exemptions on importation, duty-free allowances for "travellers", refund of VAT to taxable persons not established in the country concerned).

### Article 4

As regards the clearing system proper, Article 4 refers to the adoption of a Regulation. A Directive is not considered an appropriate means of managing a financial mechanism which is mainly concerned with relations between Member States.

### Article 5

It should be pointed out that all Member States will have to comply simultaneously with the provisions in this draft Directive; the wording used takes account of this necessity.



PROPOSAL FOR A COUNCIL DIRECTIVE SUPPLEMENTING  
THE COMMON SYSTEM OF VALUE ADDED TAX AND  
AMENDING DIRECTIVE 77/388/EEC

- REMOVAL OF FISCAL FRONTIERS -  
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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 (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas completing the internal market, which is one of the fundamental objectives of the Community, requires that fiscal frontiers be abolished, that is to say that the system of remission of tax on exportation and the imposition of tax on importation and of frontier controls on taxable persons as well as on private persons be discontinued;

Whereas the abolition of the remission of taxation on exports and of the charging of tax on imports must not, as regards Community trade between taxable persons, interfere with the principle that the tax revenue arising from the application of the tax at the final consumption stage should be assigned to the Member State where that final consumption occurs;

Whereas consequently Council Directive 77/388/EEC(3), last amended by the Act of Accession of Spain and Portugal, should be amended, and the Directives dealing with exemption at importation should be modified,

HAS ADOPTED THIS DIRECTIVE :

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(1)

(2)

(3) OJ No L 145, 13.6.1977, p.1

Article 1

Directive 77/388/EEC is replaced by the following:

1. Article 2(2) is replaced by the following:

"2. The importation of goods from third countries".

2. Article 7 is replaced by the following:

" Article 7

Importation of goods shall mean the entry of goods from third countries into the territory of the country as defined in Article 3"

3. Article 8(2) is replaced by the following:

"2. By way of derogation from paragraph 1(a), where the place of departure of the consignment or transport of goods is in a third country, the place of the supply by the importer within the meaning of Article 21(2) and the place of any subsequent supplies shall be deemed to be within the country of import of the goods".

4. Article 9(2)(b) is replaced by the following:

"(b) the place where transport services are supplied shall be the place of departure.

'Place of departure' shall mean the place where the transport operation actually commences as given on the ticket or waybill, without taking any intermediate stops into consideration. However, where several suppliers in turn take part in the same transport operation, the place of departure shall mean each place where the service supplied by each such person begins. For the purposes of this provision, the place of departure for a feeder transport operation to a port, airport or, more generally, to the point where main transport operation starts shall not be regarded as the place of departure for that main operation.

In the case of an outward and inward transport operation, even if this is carried out by the same supplier of services, the return journey shall be regarded as a separate service, whose place of

departure shall be determined in accordance with the previous subparagraph. However, with regard to outward and inward transport operations between one bank and the other of a waterway performed under a single contract, the place for the whole transport operation shall be that where the outward journey commences".

5. The introductory phrase of Article 9(2)(e) is replaced by the following:

"the place where the following services are supplied when performed for customers established outside the Community, or for taxable persons established in the Community by suppliers established outside the Community, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:".

6. Article 11 B is amended as follows:

- Paragraph 1 is replaced by the following:

"1. The taxable amount shall be the value for customs purposes, determined in accordance with Council Regulation (EEC) N° 1224/80(\*).

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(\*) OJ No L 134, 31.5.1980, p.1"

- paragraph 2 is deleted.

7. In Article 11 B(5), the words "outside the Community" are added after the words "have been temporarily exported".

8. The following subparagraph is added to Article 13 B:

"(i) supplies of gold to Central Banks.".

9. Article 13 C(b) is replaced by the following:

"(b) the transactions covered in B (g) and (h) above.".

10. In Article 14(1)(c), (d), (e) and (g), the words "or which would (so) qualify (therefore)... if they were imported from a third country" are deleted.

11. Article 14(1)(f) is deleted.
12. The title of Article 15 is replaced by the following:  
  
"Exemption of exports to third countries, like transactions and international transport".
13. In Article 15(1) and (2), the words "outside the territory of the country as defined in Article 3" are replaced by the words "outside the Community".
14. Article 15(3) is replaced by the following:  
  
"3. the supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory as defined in Article 3, and dispatched or transported out of the Community by the person providing the services or by the customer if established in a third country or on behalf of either of them ;".
15. In Article 15(4)(a), the words "to third countries" are added after the words "carrying passengers for reward".
16. In Article 15(6), the words "to third countries" are added after the words "for reward chiefly on international routes".
17. Article 15(11) is deleted.
18. In Article 15(12), the words "to third countries" are added after the words "which export them".
19. In Article 15(13), the words "to third countries" are added after the words "the export of goods".
20. In Article 15(14), the words "outside the territory of the country as defined in Article 3" are replaced by the words "outside the Community".
21. The second paragraph of Article 15(14) is deleted.

22. Article 15(15) is replaced by the following:

"15. air and sea transport operations to or from the islands which make up the autonomous regions of the Azores and Madeira, or carried out between the said islands."

23. Article 16(2) is replaced by the following:

"2. Subject to the consultation provided for in Article 29, Member States may opt to exempt imports for and supplies of goods to a taxable person intending to export them to third countries as they are or after processing, as well as supplies of services linked to that export business, up to a maximum equal to the value of exports to third countries-during the preceding twelve months."

24. In the introductory phrase of Article 17(2), the words "within the country" are added after the words "for the purposes of his taxable transactions".

25. In Article 17(2)(a), the words "liable to pay tax within the Community" are added after the words "by another taxable person".

26. The following subparagraph (d) is added to Article 17(3) :

"(d) transactions exempted under Article 13 B(i)."

27. Article 17(4) is replaced by the following:

"4. As regards taxable persons not established within the territory of the Community, entitlement to a refund shall be determined in accordance with Council Directive 86/560/EEC(\*) .

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(\*) OJ No L 326, 21.11.1986, p. 40"

28. The following subparagraph is added to Article (2):

"Where deductible tax is expressed in the national currency of a Member State other than that in which it is to be deducted, or in the currency of a third country, the amount to be deducted shall be converted into the currencies of the taxable person's country using the average exchange rate for the declaration period".

29. The following subparagraph is added to Article 22(4):

"The return must also contain on the one hand a declaration of the total amount of VAT relating to transactions carried out for taxable persons in other Member States, and on the other hand a declaration of the total amount of deductible VAT relating to transactions carried out by taxable persons in other Member States. This provision shall not apply to taxable persons whose annual turnover does not exceed 35,000 ECUs."

#### Article 2

The provisions brought into force by the Member States under Article 28 of Directive 77/388/EEC shall cease to apply on 31 December 1992 at the latest in each of the Member States concerned.

#### Article 3

1. The following Directives shall cease to apply on 31 December 1992 :

- Directive 79/1072/EEC;
- Directive 83/182/EEC;
- Directive 83/183/EEC;
- Directive 74/651/EEC.

2. The following Directives shall cease to apply on 31 December 1992, in respect of intra-Community trade relations :

- Directive 69/169/EEC;
- Directive 83/181/EEC.

Article 4

On a proposal from the Commission, the Council shall adopt the procedures which will make it possible to establish a clearing-house system with regard to VAT on intra-Community sales.

Article 5

1. Member States shall adopt the necessary provisions to comply with this Directive by 31 December 1992 at the latest. They shall notify the Commission immediately.

2. The Member States shall send the Commission the text of any provisions of national law which they adopt in the field governed by this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the Council,  
President

FICHE D'IMPACT

Propositions de directives concernant la suppression  
des frontières fiscales en matière de TVA

- Proposition de directive du Conseil instituant un processus de convergence des taux de la taxe sur la valeur ajoutée et les accises
- Proposition de directive du Conseil complétant le système commun de la taxe sur la valeur ajoutée et modifiant la directive 77/388/CEE
  - Rapprochement des taux de TVA
- Proposition de directive du Conseil complétant et modifiant la directive 77/388/CEE
  - Suppression des frontières fiscales
- Communication de la Commission :  
Achèvement du marché intérieur - Mise en place d'un mécanisme de compensation de la TVA pour les ventes intracommunautaires

1. CONTRAINTES ADMINISTRATIVES DECOULANT DE L'APPLICATION DE LA LEGISLATION POUR LES ENTREPRISES :

Directives : Néant

Clearing : Fournir quelques éléments supplémentaires sur la déclaration TVA périodique

2. ALLEGEMENTS POUR LES ENTREPRISES :

- La plupart des Etats membres, à l'exception du Danemark, utilisant un système de TVA à deux ou plusieurs taux, la proposition entraînera une simplification de la gestion administrative de la TVA. Tous les Etats membres utiliseront en effet un système de TVA à deux taux, ce qui simplifiera la ventilation entre les taux, la structure des taux sera donc identique.
- De plus, un même produit sera taxé au même type de taux dans tous les Etats membres, la classification des produits par taux sera simplifiée.
- Les formalités d'exportation et d'importation seront supprimées puisque le système actuel de la détaxation (taux zéro) à l'exportation et de la taxation à l'importation sera aboli. Toutes les opérations intra-communautaires seront traitées de la même façon que les opérations en régime intérieur à l'heure actuelle.
- Les petites entreprises ayant un chiffre d'affaires annuel inférieur à 35.000 ECU sont libérées des obligations découlant du clearing et bénéficieront donc d'un traitement plus favorable dans ce domaine. Le chiffre de 35.000 ECU correspond à la limite pour la franchise facultative prévue dans la proposition de directive en matière d'harmonisation du régime particulier TVA applicable aux PME (Doc. COM(86)444 final).

3. INCONVENIENTS POUR LES ENTREPRISES (coûts supplémentaires) :

Non



4. EFFETS SUR L'EMPLOI :

Ces directives n'ont pas d'effets directs sur l'emploi. Toutefois, vu les allègements procurés aux entreprises (cf. point 2) on peut raisonnablement espérer un effet positif sur l'emploi.

De plus, la création du marché intérieur contribuera à la relance de l'économie européenne entière et par conséquent entraînera vraisemblablement des effets positifs sur l'emploi.

5. Y A-T-IL EU CONCERTATION PREALABLE AVEC LES PARTENAIRES SOCIAUX ?

Non

6. Y A-T-IL UNE APPROCHE ALTERNATIVE MOINS CONTRAIGNANTE ?

Non