COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 19 June 1990

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

TRANSITIONAL ARRANGEMENTS FOR TAXATION
WITH A VIEW TO ESTABLISHMENT OF THE INTERNAL MARKET

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. THE ATTACHED PROPOSAL HAS BEEN DRAWN UP WITH A VIEW TO THE DEFINITIVE ABOLITION OF ALL FISCAL FRONTIERS AND IS DESIGNED TO EXPEDITE PROGRESS ON THE FISCAL ASPECTS OF THE INTERNAL MARKET

Completion of the internal market has as its corollary the removal of fiscal frontiers, that is to say, "abolishing the imposition of tax on the importation and the remission of tax on exportation in trade between Member States".(1) In order to give practical shape to the commitments made by the Member States in this connection,(2) the Commission presented in 1987 a proposal(3) supplementing the common system of VAT as laid down in the Sixth Directive. That proposal forms part of an overall strategy for the approximation of indirect tax rates and harmonization of indirect tax structure.

The 1987 proposal introduces the principle of "taxation in the country of origin" since a consequence of abolishing fiscal frontiers is that taxable supplies will attract tax in the country from which goods are transported to another Member State. In this way, intra-Community sales and purchases of goods are afforded the same treatment as sales and purchases within Member States.

(1) Directive 77/388/EEC, OJ No L 145, fifth recital.
(2) Article 99 of the Treaty of Rome as amended by the Single Act, etc.
(3) Proposal COM(87)322, OJ No C 252 of 22.9.87

It should be borne in mind here that one of the conclusions reached by the Council on 13 November 1989 was that these uniform tax arrangements in the country of origin remained a "medium-term objective".(4)

The ultimate objective has thus been clearly identified and is not in doubt. The attached proposal for a Directive by amending the Sixth Directive as amended by COM(87) 322, thus dovetails with and supplements the 1987 proposal, by introducing a number of transitional provisions to help Member States achieve that objective under optimum conditions. This proposal takes account of all these considerations.

2. THE TRANSITIONAL TAX ARRANGEMENTS SET OUT BY THE COMMISSION IN THE ATTACHED PROPOSAL ARE CONSISTENT WITH THE GUIDELINES ADOPTED BY THE COUNCIL AND WILL HAVE A DYNAMIC EFFECT ON THE PROCESS OF ABOLISHING FISCAL FRONTIERS

At the outset, in order to facilitate rapid adoption of the proposals for the complete abolition of fiscal frontiers, the Commission, in a communication sent to the Council and to Parliament on 14 June 1989,(5) suggested the introduction at the earliest possible opportunity of a transitional phase between now and the end of 1992 during which the necessary adjustments enabling Member States to give practical shape to their commitments would be made. Furthermore, while reaffirming the principle of generalized taxation in the country of origin, the Commission developed a new, pragmatic approach which, until such time as VAT rates had been brought sufficiently into line, would secure differential treatment for certain classes of taxable transaction in order to avoid the

(4) Conclusions of the ECOFIN Council of 13 November 1989.
(5) COM(89) 260 final.

risks of distortion of competition that could arise in the case of purchases made by final consumers in sectors deemed to be sensitive. Accordingly, the following would be the only transactions that would continue to be taxed at the rates and under the conditions obtaining in the Member States of destination:

- sales to institutional non-taxable persons and to fully exempt taxable persons;
- mail-order sales to private individuals;
- sales of new passenger vehicles.

Ultimately these derogations would have lapsed since a process of convergence of rates was introduced at the same time.

In spite of Commission efforts to introduce elements of flexibility into its proposals, the Council made the point that a general agreement on the tax arrangements proposed by the Commission could not be reached before 1 January 1993. It considered that such an agreement presupposed the fulfilment of conditions which could not be satisfied by that date.(6) It thus adopted the following conclusions: "For a limited period, the smooth operation of VAT arrangements in the case of transactions between different Member States carried out by taxable persons must be ensured by taxing the recipient in the country of destination at the rate and under the conditions obtaining in that country. Exempt or non-taxable bodies making purchases of a certain value in other Member States will be treated in the same way. ... The differential treatment of certain classes of transaction will enable distortions of

(6) ECOFIN Council of 9 October 1989.

competition to be avoided without hampering freedom of movement.".[7] The Commission welcomed the fact that the Strasbourg European Council asked the Council "to adopt as soon as possible the decisions which will make the process of the complete abolition of fiscal frontiers irreversible".

In the attached proposal, which the Commission calls on the Council to adopt at the earliest possible opportunity, the Commission sets out a balanced transitional solution based on a system of taxation in the country of destination which corresponds to the Council guidelines and which also provides for the link that the Council would like to see established between statistics and taxation as regards taxpayers' obligations.[8]

The arrangements are gradualist in design and thus contain elements of internal dynamism guaranteeing the irreversibility of the process of abolishing fiscal frontiers.

3. THE ATTACHED PROPOSAL LAYS DOWN A TRANSITIONAL PERIOD FOR TAXATION IN THE COUNTRY OF DESTINATION AND SETS THE DATE FOR THE TRANSITION TO THE DEFINITIVE ARRANGEMENTS FOR TAXATION IN THE COUNTRY OF ORIGIN

The transitional tax arrangements proposed by the Commission will take effect on 1 January 1993; they will expire not later than 31 December 1996 following an overall examination with a view to determining on the basis of a Commission proposal, the

(7) Conclusions of the ECOFIN Council of 13 November 1989.
(8) The actual introduction of the statistical machinery linked to the transitional arrangements is the subject of the transitional measures inserted in the proposal for a Council Regulation (EEC) (COM(90)177) on the statistics relating to the trading of goods between Member States.

procedures under which the definitive unification of the common VAT system shall operate. In consequence, the definitive tax arrangements will be operative by 1 January 1997. The Council, therefore, is called upon to approve simultaneously the introduction of the transitional arrangements and the introduction of the definitive arrangements as proposed by the Commission.

The Commission takes the view that such provisions are essential:

- in order to guarantee the irreversibility of the process of abolishing fiscal frontiers, in accordance with the wish expressed by the Strasbourg European Council on 8 and 9 December 1989: only the implementing of the definitive arrangements will allow the degree of integration desired within the internal market to be achieved;
- in order to give time to businesses and administrations to adapt to the new fiscal situation.

To this end, the Council and the Commission will have to adopt the practical procedures for the transition to the definitive arrangements not later than 31 December 1995.

4. THE TRANSITIONAL PROVISIONS PROPOSED BY THE COMMISSION ESTABLISH A SYSTEM OF TAXATION IN THE COUNTRY OF DESTINATION WITHOUT ANY FRONTIER CONTROLS AND WITHOUT ANY INCREASE IN THE BURDEN ON BUSINESSES

(a) It should be pointed out that a number of provisions essential for the establishment and the functioning of the internal market will be provided for as of the beginning of the transitional period.

They are:

- Abolition of any checks or formalities imposed for tax purposes when goods cross intra-Community frontiers or prior to the movement of goods

  As a result, the transitional measures proposed by the Commission are of a kind liable to bring about a lightening of the administrative and costs burdens on firms engaging in intra-Community trade while at the same time providing the means for carrying out the necessary checks. From now on, intra-Community transactions will be subject to the same checks as domestic transactions carried out in Member States. Monitoring of VAT payable in connection with intra-Community trade will be carried out on the basis of normal trade documents inter alia on invoices which must indicate clearly either the amount of VAT charged or the exempt status of the transaction as well as the means of identifying the taxable status of the traders;

- Equal treatment as between intra-Community and domestic transactions as regards the obligations of persons liable to pay the tax

  VAT payable on intra-Community transactions will be settled and paid on the basis of the regular return currently used by traders for domestic transactions. As a result, no new or additional obligation will be imposed on traders provided that the amount relating to intra-Community transactions is broken down by goods sent to

and goods coming from other Member States;

- Removal of the current restrictions on tax-paid purchases made by travellers in the Member State of purchase

  Tax will be charged directly on such purchases by the seller, at the rate and under the conditions obtaining in the country of origin of the goods. As a result, there will no longer be any restrictions on travellers wishing to make tax-paid purchases;

- The easing of burdens on Small and Medium size Enterprises (SME) and the introduction of flexibility into the VAT treatment of operations involving SME's

  In this regard the benefit of the exemption arrangements applicable to SME's domestic transactions shall be extended to such intra-Community supplies as they may carry out;

(b) In view of the Council guidelines which seek to retain as a general rule the principle of taxation at the rates and under the conditions obtaining in the country of destination, the Commission after having examined various technical solutions for the taxation of intra-Community operations which give rise to transport or dispatch, have opted for a legal text which firstly captures the operation carried out in the country of departure and secondly defines acquisition as a new taxable event in the country of arrival. This option means that all reference to concepts of importation are avoided and that taxation in the country of destination can be assured without any

checks or formalities when crossing borders. The tax mechanisms employed conform to the following rules:

- Exemption of supply: transactions between taxable persons (whether entitled to deduct tax in full or in part) must benefit in the country of departure from the exemption currently applied to supplies for export. (However, for reasons indicated earlier, supplies by SME's will not come within the scope of this exemption).
  In the absence of any border formalities or checks, this exemption presupposes that the following two conditions are met:
  - the person by whom the goods are acquired is a taxable person (or a person ranking as such):
    Accordingly, it is up to him to provide evidence of his VAT status if necessary by means of a statement to that effect issued by the administration in the Member State in which he is registered;
  - the goods are dispatched or transported to another Member State, with the onus of furnishing proof of their departure from the country of departure falling on the seller; where appropriate on the basis of documents provided by the trader for whose account the transport operation is carried out:

- Taxation of the acquisition
  The corresponding acquisition will give rise to taxation in the country of destination and the tax will be payable by the person by whom the goods are acquired. The acquisition operation is defined as the process of acquiring the right to dispose of tangible property as

owner. It is based, therefore, on a legal and economic event which takes place in the country of destination that is the counterpart of the supply operation carried out in the country of origin.

In this way, the taxable transaction in the country of destination is as such disconnected from the physical and material operation of introducing the goods into the tax territory, an operation which constitutes the very concept of importation. Naturally, this concerns only purchases of goods that are being dispatched or transported from one Member State to another since the transitional arrangements will in no way alter the scope of VAT as regards domestic transactions.
Accordingly, checks on the taxation of acquisitions of intra-Community origin are based on the commercial documents usually issued or received by traders: order forms, transport documents, delivery notes, sales and acquisition contracts, invoices, settlements of account. Furthermore, in order to facilitate administrative cooperation and mutual assistance, invoices must explicitly give the VAT numbers of the seller and of the person by whom the goods are acquired.

- Special arrangements
So as to limit during the transitional period the major risks of distortion of competition linked to differences in rates between Member States, the principle of taxation in the country of destination will be applied to certain

targeted transactions subject to the following conditions:

* The mechanism for taxing intra-Community transactions between taxable persons is extended to acquisitions made by institutional non-taxable persons and by exempt taxable persons where, in the year under consideration, they exceed a threshold fixed initially at ECU 35 000. This is because, given that such traders act as final consumers where VAT is concerned, their purchasing decisions are liable to be influenced by the difference in rates. It was necessary, therefore, to apply to them the special arrangements defined above.

  The doubling of the threshold from 1 January 1995 will provide for the widening of the scope of the arrangements for taxation in the country of origin for the entire duration of this period. As the Commission would like this special arrangement to be relatively flexible traders whose purchases remain below the threshold may opt for taxation of their acquisitions in the country of destination. This option is valid for two consecutive years and is irrevocable;
* On account of their high unit value, which makes them particularly susceptible to differences in rates, it is proposed that new private vehicles never previously registered should be taxed in respect of their acquisition in the Member State of use, where the first registration on a permanent basis takes place;
* Mail-order sales are an area of activity in which, because of the very structure of this type of

distribution, demand is particularly sensitive. In an open market, significant differences in rates from one Member State to another might only underline this phenomenon. Such differences in rates could cause activities to be shifted elsewhere. The aim during the transitional period is to exert control over this risk without hampering the free movement of goods. The Commission thus proposes that mail-order sales, which it has moreover defined in a manner consistent with the objectives laid down, should be taxed in the country of destination where the seller has an annual turnover of intra-Community mail-order sales of more than ECU 1 million. The tax mechanism envisaged involves shifting the place of taxation of such sales in order to make the non-established seller's tax representative liable for VAT in the country of destination.

- Treatment of operations involving SME's
  Supplies for export carried out by SME's entitled to the exemption laid down in Article 24 of the Sixth Directive and in the proposal for a Twenty-Second VAT Directive will, as is the case for their domestic transactions, be covered by the exemption from tax applicable to SME's domestic transactions. In consequence, supplies for export by SME's will not give rise to the exemption laid

down in Article 15 of the Sixth VAT Directive in the country of departure. Symmetrically, they will not give rise to an acquisition in the country of destination of the goods. However, it is worth recalling that SME's can in any event opt to benefit from the normal VAT arrangements.

With regard to purchases made by SME's, such transactions will be subject to taxation in the country of departure of the goods insofar as they do not exceed the threshold fixed in the special arrangements applicable to purchases by exempt taxable persons - i.e. either ECU 35 000 or ECU 70 000 - SME's in this regard are treated as if they were taxable persons whose domestic activities are fully exempt from VAT.

EXPLANATORY NOTE ON THE LEGAL TEXT:

Observations regarding the provisions applicable during the transitional period solely to intra-Community transactions - Article 2 of the modified version of COM(87)322 introducing a new wording for Article 28 of the Sixth Directive

Point (a)

The provisions laid down define the special tax arrangements applicable to mail-order sales during the transitional period.

Scope of the special arrangements for mail-order sales

Essentially, these arrangements cover mail-order sales to private individuals. However, mail-order sales to institutional non-taxable persons or to fully exempt taxable persons will also be covered in cases where such sales do not qualify for the arrangements generally applicable during the transitional period and provided for at (b), second indent and (c). Mail-order sales to taxable persons are subject to the general arrangements provided for at (b).
Passenger vehicles are also excluded from the scope of the special arrangements for mail-order sales, since they are covered by the specific provisions laid down at (b), first indent and (c).

Definition of mail-order sales

The concept of mail-order sales is determined by factors to do with the way in which the offer is made, e.g. in a catalogue reproduced in bulk, using any medium whatsoever, whether or not printed, which the consumer can consult in the absence of the trader or his representative. Furthermore, the application of three criteria will make it possible to ascertain whether the offer does, in fact, display the characteristics recognized as being specific to mail-order sales contracts. Thus, among the transactions excluded from the special arrangements for mail-order sales are (i) sales in respect of which no prior offer was made and which are in response to distance ordering, and (ii) sales consequent upon simple advertising comprising an offer to buy (in the press).

Condition of eligibility for the special arrangements tied to the volume of cross-frontier transactions

Traders with a cross-frontier mail-order turnover exceeding ECU 1 million (all Community destinations taken together) must apply the special arrangements. Nevertheless, traders not satisfying the eligibility condition tied to the volume of their cross-frontier transactions may in their own interest apply for special arrangements, which will apply for two consecutive years. The threshold mechanism is defined as follows: as soon as a mail-order firm exceeds, during a calendar year, a volume of mail-order sales, in the country of departure of the goods, which come within the scope of this special arrangement and are destined for the other 11 Member States, of 1 million ECU, the firm falls within the scope of the special arrangement; Member States must define the practical procedures for the implementation of this criterion.

Taxation mechanism for mail-order sales

Supplies covered by the special arrangements for mail-order sales are deemed to take place in the country to which the goods are dispatched or transported. The tax is paid in that country, within the conditions laid down in Article 21(I)(a) of the Sixth Directive, where appropriate through the intermediary of a tax representative.

Traders will continue to exercise their right to deduct input tax in the Member State in which they are established in accordance with Article 17(3)(a) of the Sixth Directive as regards transactions which they carry out in another Member State provided those transactions, if carried out within the territory of the country, would have conferred the right to deduct input tax there.

Point (b)

This point lists the transactions that fall within the scope of the general transitional arrangements. The proposed provisions lay down the system of exemptions to be applied in the country of departure to supplies of goods and to supplies of services directly linked to such goods.

Nature of the exemption mechanism

Pursuant to the combined provisions of Articles 5 and 8(1)(a) of the Sixth Directive a seller makes a supply which is situated in the country of departure and which is therefore taxable there. In order to tax the acquisition of the goods dispatched or transported

to the Member State of destination it is essential that the supply made by the seller in the country of departure is exempt. Failing this, double taxation would arise. Supplies referred to under (b) are for this reason treated as supplies under Article 15 of the Sixth Directive which qualify for exemption upon export. It should be underlined that this exemption does not preclude the exercise of the right of deduction of the seller or of the supplier of services under Article 17(3)(b) of the Sixth Directive, given that the right to deduction is maintained for transactions exempt under Article 15.

Definition of transactions exempt in the country of departure of the goods

1. Status of the trader carrying out the exempt transaction

The exemption will apply only if the supply of the goods or the related services is effected by a taxable person, whether entitled to deduct tax in full or in part.
Small and medium-sized businesses, all of whose transactions are exempt within a Member State pursuant to the exemption from tax laid down in Article 24 of the Sixth Directive (as well as by the proposal for a Twenty-Second VAT Directive) are excluded from the arrangements for taxation in the country of destination. Similarly intra-Community supplies made by them will benefit from the Article 24 exemption and will not give rise to any acquisition transaction in the country of destination. Supplies by flat-rate farmers are dealt with under the same principles.

2. Nature of transactions and status of person by whom goods are acquired

(a) The supplies of private vehicles qualifying for exemption in the country of departure are those carried out by a taxable person whose activity is purchasing and selling vehicles other than used vehicles covered by Article 32 of the 6th VAT Directive(9): it should be remembered that used cars sold by taxable resellers of used goods have been directly excluded from the scope of the transitional arrangements since the latter apply without prejudice to the provisions of Article 32 which lays down the Community arrangements applicable to used goods:

* Private vehicles supplied under the transitional arrangements must, therefore, form part of the seller's stock in trade.
* The scope of the concept of private vehicles used here corresponds to that given by Article 2 of Directive 83/182/EEC; it therefore includes motorcycles. Commercial vehicles(10) however are excluded from the special arrangements for destination taxation.

(9) This concerns the new proposal for a directive regarding special arrangements to apply to used goods, works of art, antiques and collectors items (COM(88) 846 final).

(10) Commercial vehicle within the meaning of Directive 83/182/EEC means:
any road vehicle which by its design or equipment, is suitable for and intended transporting, whether for payment or not:
- more than nine persons, including the driver;
- goods,
as well as any road vehicle for special use other than transport as such

* Private vehicles supplied by a taxable user other than the taxable person mentioned above will also be exempt if they satisfy the conditions laid down under the general transitional arrangements: these vehicles are, in fact, capital goods the supply of which will be exempt in the country of departure and the acquisition of which by a taxable person (or a person ranking as such) will be taxed in the country of destination (this is necessary in order to avoid a situation in which the taxable person by whom they are acquired would have to seek a deduction for VAT paid in the country of departure).

(b) Generally speaking, the exemption in the country of departure covers supplies, other than those identified above, where they are made to an eligible trader, that is to say, where the person by whom goods are acquired is:
* either a fully or partially taxable person, irrespective of the amount of acquisitions made by him;
* or an institutional non-taxable person or a fully exempt taxable person whose purchases exceed 35 000 ecus (70 000 ecus from 1 January 1995) during the calendar year when the supply under consideration was made. Nevertheless, since such persons who do not fulfil this condition may opt for taxation of their acquisitions in the country of destination, the seller may claim exemption for his supplies in the country of departure if the person by whom the goods are acquired has exercised the option available to him.

(c) In conformity with the general principles of the common VAT system, supplies of services directly linked to supplies of

goods which are exempt under the transitional arrangements are themselves exempt in the country in which they are territorially located under this proposal. The services concerned here are mainly transport of goods services and ancillary services as well as services of intermediaries acting in the name and on behalf of another. This provision aims at applying the same tax arrangements to services as that applied to the supplies to which they relate thus preserving the neutrality of the tax arrangements for intra-Community trade.

For the record, it is recalled that the COM(87) 322 proposal defined a new territoriality for transport services by providing for the taxation of the totality of intra-Community transport services in the country of departure of the transport only. The transitional arrangements modify the application of this new rule to the extent that they reintroduce exemption for transport services directly linked to a supply of goods for export as defined in point 5(b).

However, in the case of passenger transport the tax treatment of such supplies in relation to journeys undertaken within the Community will be the subject of specific provisions on the basis of a Commission proposal to be made before 31 December 1991.

By way of conclusion, it should be pointed out that, in all the situations covered at (b), the exemption applies irrespective of the place of establishment of the person by whom goods are acquired provided the latter are transported to a country other than the country of departure by the

seller or for his account. However, if the transport operation is carried out by the person by whom the goods are acquired or for his account, the exemption applies only on the express condition that the person by whom goods are acquired is not established in the country of departure. Subject to the provisions at (i), the exemption provided for at (b) is restricted to supplies made by the last seller in the country of departure.

Point (c)

The tax provisions in the country of destination are developed in (c). The proposed provisions define the acquisition transaction and the procedures for taxing such transactions. They are, therefore, the consequence of the provisions laid down at (b) and need to be looked at in conjunction with the latter.

Definition of "acquisition" transactions taxable in the country of destination

(a) By analogy with supplies exempt in the country of departure under the provisions of (b), the matching acquisitions are liable to tax in the country to which the goods are transported or dispatched. The acquisition transaction is, therefore, defined as "the process of acquiring the right to dispose of tangible property as owner": it thus exactly mirrors in the country of destination the supply transaction carried out in the country of departure, this being defined as "the process of transferring the right to dispose of tangible property as owner". These two transactions, which are located in two different countries for VAT purposes, are based on the

occurrence of one and the same legal event which finds practical embodiment in the drawing-up of a supply-acquisition contract.

The point should be made that the acquisition transaction may involve only goods that are transported or dispatched to another Member State, regardless of the conditions under which such transport takes place and, in particular, regardless of the conditions governing payment of the transport costs (by the seller or for his account, by the person by whom the goods are acquired or for his account).

(b) To the extent that differences in the scope of the right to deduct continue to exist, it has appeared necessary to make the appropriation of certain property taxable in the country of destination by assimilating such transactions with acquisitions made for consideration. Similar considerations apply to the transfer of property between two Member States by a fully exempt taxable person or by a non-taxable person within the meaning of Article 4(5). In both cases, the question concerns the preservation of the neutrality of VAT whether it be applied to domestic transactions or within the framework of intra-Community relations: in consequence, it is intended to tax in the country of destination goods which otherwise would have been consumed there without the VAT applicable being charged. Naturally, the Member State of destination is obliged to take account of VAT which may have been charged on the goods in the Member State of departure so as to avoid possible double taxation.

Place at which an acquisition transaction takes place

In order to ensure that taxation takes place in the country of destination, an acquisition transaction from a territorial viewpoint, is situated at the place where the goods that have been transported or dispatched are situated.

Chargeable event and chargeability of VAT in respect of acquisition transactions

In this context, chargeable event and chargeability coincide and occur at the time the acquisition transaction is carried out. Accordingly, a supply transaction exempt under (b) and the matching acquisition transaction under (c) are transactions which are each characterized by their own chargeable event and chargeability but which, nevertheless, are located at the same moment in time since the legal conditions necessary for tax to become chargeable are identical for both transactions.

Point (d)

Given the nature of the acquisition transaction, its taxable amount can only be the taxable amount for the matching supply transaction in the country of departure and, as such, it is based on the concept of consideration defined in Article 11(A)(1) and (2). For the record, point 4 of this proposal defines the rate of exchange applicable to those elements of the taxable amount drawn up in a currency other than that of the country of taxation. In particular this provision applies to the taxable amount for acquisition transactions. An additional provision has been introduced to cover

those cases in which acquisition has given rise to a transport operation carried out by the person by whom the goods are acquired or for his account and to ancillary services the costs of which are borne by the person by whom the goods are acquired and not by the seller. In such cases, the value of the services incidental to the acquisition of goods must be included in the taxable amount for that acquisition and hence taxed at the rate and under the conditions obtaining in the country to which the goods are transported. It is to be noted that this provision has to be taken together with the exemption in the country of departure for the supply of services directly linked to supplies exempt under (b).

If the costs of those same supplies are borne by the seller, their value will form an integral part of the consideration sought by the seller from the person by whom the goods are acquired and will, as a result, be automatically included in the taxable amount for the acquisition transaction. In conformity with the objective of applying taxation in the country of destination, the rate of VAT applicable to the acquisition transaction will be the same as that applied within the territory of the country of destination to a supply of the same goods.

Point (e)

The person liable for the tax payable under the special arrangements for mail-order sales is, in accordance with the present provisions of Article 21(1)(a), the taxable person not established in the Member State of taxation or possibly his tax representative or some other person.
Where tax is payable in respect of an acquisition transaction, the person by whom the goods are acquired is the person liable to pay the tax and he must comply with the obligations relating to declaration.

If the person by whom the goods are acquired is not established in the country where the acquisition transaction is taxable, it is specifically laid down that a fiscal representative of the person by whom the goods are acquired may be designated as the person liable to pay the tax.
The person liable to pay tax is required to comply with the obligations relating to declaration and payment in respect of acquisition transactions on the regular return normally used by him to account for and pay the tax for which he is liable on domestic transactions as a taxable person. As a result, tax payable on an acquisition transaction is treated in exactly the same way as tax payable on a domestic supply transaction. If the person liable is not a taxable person or if he has been released from the obligations relating to declaration which were incumbent upon him as a taxable person under the arrangements applicable to domestic transactions, it will be for the Member States to define what obligations relating to declaration, settlement and payment are incumbent on him (inter alia a requirement to declare and pay the tax at the time a vehicle acquired by a private individual is registered).

Point (f)

Since Article 17(2)(a) of the Sixth Directive as amended by document COM(87) 322 will take effect only on expiry of the transitional period (cf. point (j)), this provision reintroduces for the duration of that period the rules on territoriality laid down in the Sixth Directive for a range of intangible services.

It will not be possible during the transitional period to provide for a right to deduct input tax payable or paid in another Member State.

Point(g)

Provisions which at present allow the right to opt for taxation in respect of banking and financial activities exempt under Article 13(B)(d) of the Sixth Directive, have been reintroduced under this point for the duration of the transitional arrangements.

Point (h)

This provision exempts the acquisition of goods the supply or importation of which would have been exempted in the country of destination.

It thus covers acquisitions of goods the supply of which for domestic transactions would in any event be exempt, in particular by the provisions of Article 13 of the Sixth Directive on exemptions on domestic transactions.

This also covers acquisitions of goods which if imported (from third countries) would have been exempt under the provisions of Article 14(1)(d) and (g) of the Sixth Directive.

Moreover the provisions of Article 15(4) to (9) of the Sixth Directive will be examined later particulalrly in the context of possible changes to the proposal for a directive on ships stores presented by the Commission on 21 January 1980[11].

Point (i)

In view of the creation of the acquisition transaction, this point takes over the provisions of Article 16(2) of the Sixth Directive

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[11] Proposal COM(79)794 final, O.J. E.C. No C 31 of 8.2.1980, page 10

so as to give traders who make export supplies the possibility of benefitting from an exemption from tax in cases where they are the consignee for import transactions, acquisitions, supplies and services linked to their export supplies to other Member States or to third countries.

Point (j)

Under this provision, the person by whom goods are acquired may deduct VAT payable or paid on goods that have been the subject of an acquisition transaction. This right to deduct input tax is subject to the same conditions as the right to deduct VAT payable or paid on goods that have been supplied. It should, therefore, be noted that this right to deduct input tax may in principle be exercised as soon as the person by whom goods are acquired becomes liable for the tax payable on the acquisition transaction. Naturally, acquisition transactions will not be taken into consideration in determining the deductible proportion for partially taxable persons since they are not as such a component of turnover.

It has also been necessary to include a special measure to ensure that, in a given Member State during the transitional period, a right to deduct VAT payable or paid in another Member State is not granted.

Point (k)

In the interests of setting out all the obligations to be complied with during the transitional period by persons liable to pay the tax, the text of Article 22 of the Sixth Directive has been reproduced in its entirety. However, only some of its provisions

have been amended; these are commented on below:

First paragraph of Article 22(3)(a): The obligation to issue an invoice, which already covers any supply made to another taxable person, is extended to supplies made to a non-taxable person within the meaning of Article 4(5). This obligation applies irrespective of the country in which the person by whom the goods are acquired is established and thus supplements the text of Article 22(2) of the Sixth Directive as regards the supporting documents to be provided in respect of intra-Community transactions where both the supply and acquisition of goods are concerned;

Second paragraph of Article 22(3)(b): In the case of supplies of goods covered by the transitional tax arrangements for intra-Community trade in the country of destination, the invoice must give the VAT numbers of the two traders concerned. This provision makes it possible to enter on the invoice one of the factors essential in determining the tax treatment to be applied and, as such, is a necessary item of information for implementing administrative cooperation and mutual assistance procedures;

Second and third paragraphs of Article 22(4): The proposed provisions define the obligation to declare the amount of intra-Community supplies of goods by indicating separately from the total amount of transactions the amount of goods sent to other Member States and the amount of acquisitions received from other Member States. This obligation applies only to transactions involving tangible movable goods and, as a result, excludes transactions involving services not linked to a supply of goods;

Article 22(9): The obligation to issue an invoice in respect of goods supplied to persons in other Member States is not covered by the possibilities for easing the burden of obligations on persons liable to pay the tax since the invoice is important for identification purposes and for checking that the transactions in question have been afforded the proper tax treatment;

Article 22(10): The exemption in the country of departure for supplies of goods referred to in the second indent at (b) is conditional on the VAT status of the person by whom the goods are acquired. In order to ensure that the seller possesses the necessary information to apply that exemption, the person to whom the goods are supplied must be able to produce a statement from the competent tax administration certifying his VAT status. As such a statement can be issued only at the request of the person by whom the goods are acquired, the latter must necessarily submit a new request in the event of any change in his VAT status.

Proposal for an
Amendment to the proposal for a

COUNCIL DIRECTIVE

SUPPLEMENTING THE COMMON SYSTEM OF VAT AND AMENDING DIRECTIVE 77/388/EEC

THE COMMISSION AMENDS ITS PROPOSAL[1] AS FOLLOWS:

1. The following shall be inserted between the second and third recitals:

"Whereas nevertheless the full and definitive abolition of fiscal frontiers presupposes the fulfilment of conditions which cannot be satisfied before 31 December 1992;

Whereas accordingly, a clearly defined transitional period must be provided for during which transitional provisions designed to facilitate passage to the definitive taxation arrangements and to ensure the irreversibility of the process leading to the complete abolition of fiscal frontiers, must be implemented;"

2. Article 2 is replaced by the following provisions:

"Article 2

Article 28 of Directive 77/388/EEC is hereby replaced by the following:

Article 28

Notwithstanding the other provisions of this Directive and without prejudice to Article 32, the following provisions shall apply until 31 December 1996 at the latest:

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[1] OJ No C 252, 22.9.1987, p.2.

(a) Where goods supplied to a non-taxable person or to a taxable person whose activity is fully exempt, who does not qualify for the arrangements provided for in the second indent of point (b), are dispatched or transported they shall be deemed to be supplied at the place where they are at the time they reach the person by whom the goods are acquired, provided that the following conditions are simultaneously met:

- the supplies comprise goods other than private vehicles that have been dispatched or transported to another Member State;
- the supplies are effected within the context of mail-order selling. "Mail-order selling" means a specialized economic activity involving goods selected from a catalogue and sold on a retail basis. "Catalogue" means any offer to the public made using any medium whatsoever which is reproduced in bulk and which lists the articles for sale in such a way that the following three criteria are met:
  - the contract is concluded on the basis of a trader's catalogue which the consumer has a proper opportunity of reading in the absence of the trader,

- there is intended to be continuity of contact between the trader and the consumer in relation to that or any subsequent transaction,
- both the catalogue and the contract clearly inform the consumer of his right to return goods to the trader within a period of not less than seven days of receipt or otherwise to cancel the contract within that period without obligation of any kind other than to take reasonable care of the goods:

- the annual turnover exclusive of value-added tax generated by the seller in connection with mail-order selling to Member States other than that from which the goods are dispatched or transported exceeds the equivalent in national currency of ECU 1 million at the conversion rate ruling on the day on which this Directive is adopted. Member States shall grant to taxable persons not satisfying this condition the right to opt for the present arrangements governing mail-order sales. The option shall apply for two calendar years;

(b) Under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and of preventing any evasion, avoidance or abuse, Member States shall, by analogy with the transactions referred to in Article 15, exempt the following where they are effected by taxable persons other than those qualifying for the exemption from tax referred to in Article 24 or for the flat-rate arrangements referred to in Article 25:

- supplies of private vehicles forming part of the seller's stock in trade and dispatched or transported to another Member State by the seller or for his account or by a person not established within the territory of the country by whom the goods are acquired or for his account;

- supplies other than those referred to in (a) to a taxable person or to a non-taxable person within the meaning of Article 4(5) of goods other than private vehicles as referred to in the first indent which are dispatched or transported to a taxable person or a non-taxable person within the meaning of Article 4 (5) in another Member State by the seller or for his account or by a person not established within the territory of the country by whom the goods are acquired or for his account.
  However, where the person by whom the goods are acquired is a taxable person whose activity is fully exempt or a non-taxable person within the meaning of Article 4(5), this provision shall apply only from the moment during the calendar year when the total amount of corresponding purchases exclusive of value-added tax exceeds the equivalent value in national currency of ECU 35 000 at the conversion rate ruling on the day this Directive is adopted. This amount shall be increased to ECU 70 000 with effect from 1 January 1995, at the conversion rate applicable on that date. The threshold for purchases which applies for the purposes of these provisions consists of the amount of purchases exclusive of value-added tax which have been dispatched or transported from a Member State other than the Member State of arrival of the goods, with the exception of:

  - purchases of private vehicles the supply of which is covered by the provisions of the first indent

  - purchases of goods the supply of which is covered by the provisions of point (a)
  - purchases of goods the supply of which is effected by a taxable person who benefits from the exemption regime of Article 24.

This provision shall also apply where the respective ceilings of ECU 35 000 and ECU 70 000 have not been exceeded, provided that the person to whom the goods are supplied has exercised this option. The option shall be valid for two calendar years;

- supplies of services, including transport and incidental transactions but excluding supplies of services exempt under Article 13, where they are directly linked to transactions referred to in this point (b);
- supplies of services made by intermediaries acting for and on behalf of others where they intervene in transactions referred to in the first, second and third indents of this point (b);

(c) VAT shall be charged on acquisitions for consideration of goods the supply of which by taxable persons is governed by the provisions set out in the first and second indents of point (b). "Acquisition of goods" means the process of acquiring the right to dispose of tangible property as owner. The place where an acquisition is made shall be deemed to be the place where the goods dispatched or transported are at the time they reach the person by whom they are acquired. The chargeable event shall occur and the tax shall become chargeable when the acquisition is made.

The following shall be treated as an acquisition of goods for consideration:

- the acquisition by a taxable person whose activity is fully exempt or by a non-taxable person within the meaning of Article 4(5), for the purposes of his activity in the Member State of destination, of goods transferred from the Member State of departure of the goods. The Member State of arrival of the goods shall take the measures necessary to avoid any double taxation;
- the acquisition by a taxable person, for the purposes of his activity in the Member State of destination, of goods not eligible for a deduction of input tax in full or in part where those goods have been transferred from the Member State of departure of the goods. The Member State of arrival of the goods shall take the measures necessary to avoid any double taxation;

By derogation from Article 8(1)(a) where the place of departure of the consignment or transport of goods is in a Member State other than the country of acquisition of those goods, the place of the supply by the person by whom the goods are acquired and the place of any subsequent supplies shall be deemed to be in the country of acquisition of the goods;

(d) The taxable amount of the acquisition shall be the same as that which would be applicable within the territory of the country to the supply of the same goods in accordance with Article 11(A)(1) and (2) and (C). To the extent that they have not already been included, the taxable amount of the acquisition shall include expenses incidental to the

acquisition such as commission, packaging, transport and insurance costs charged up to the point within the territory of the country at which the goods dispatched or transported arrive.

As regards the transfer of goods referred to in the second indent of point (c), the taxable amount shall be determined in accordance with Article 11(A)(1)(b).
The rate of tax applicable to the acquisition of a good shall be that applied to the supply of the same good within the territory of the country;

(e) In the case referred to in point (a), the tax shall be payable in accordance with Article 21(1)(a).
In the cases referred in point (c), the person by whom the goods are acquired shall declare the acquisition and shall pay the tax. Where the taxable transaction is carried out by a person by whom the goods are acquired who is established abroad, Member States may take measures providing for the tax to be payable by another person - in particular a fiscal representative may be designated for these purposes.
Where the person liable to pay the tax is a non-taxable person or a taxable person released from the obligation to make a tax return, Member States shall take the measures necessary to ensure that he complies with the obligations set out in point (k). To that end, provision may be made for the simplification of those obligations and for an annual return;

(f) The place where services specified in Article 9(2)(e) are supplied when performed for customers established outside the

Community or for taxable persons established in the Community but not in the same country as the supplier 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;

(g) Member States may grant taxable persons the right to opt for taxation of the transactions referred to in Article 13(B)(d);

(h) Member States shall exempt the acquisition of goods the supply of which would in all circumstances be exempted within the country. They shall also exempt the acquisition of goods the importation of which would in all circumstances be exempted pursuant to Article 14(1)(d) and (g);

(i) Subject to the consultation provided for in Article 29, Member States may opt to exempt acquisition by, imports for, and supplies of goods to a taxable person intending to export them to another Member State or to a third country as they are or after processing, as well as supplies of services linked with his exporting business, up to a maximum equal to the value of his exports during the preceding twelve months;

(j) The provisions governing deductions shall also apply to VAT payable or paid on the acquisitions referred to in point (c).

However, the tax payable or paid in a Member State by a taxable person:
- in respect of goods supplied or to be supplied to him by a taxable person;
- in respect of goods which have been imported or have been subject to an acquisition;
- and in respect of services supplied or to be supplied to him by a taxable person;

shall not qualify for deduction in another Member State. With regard to taxable persons who are established in the territory of the Community, the right to refund shall be determined pursuant to Directive 79/1072/EEC during the transitional period;

(k) By way of derogation from the provisions of Article 22 the following shall apply:

1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

2. Every taxable person shall keep accounts in sufficient detail to permit application of value added tax and inspection by the tax authority.

3. (a) Every taxable person shall issue an invoice, or other document serving as an invoice, in respect of all goods and services supplied by him to another taxable person or to a non-taxable person within the meaning of Article 4(5) and shall keep a copy thereof. This obligation shall apply, irrespective of whether the persons referred to in this paragraph are taxable persons or non-taxable persons as

defined in Article 4(5) within the territory of the country or in another Member State.

Every taxable person shall likewise issue an invoice in respect of payments on account made to him by another taxable person before the supply of goods or services is effected or completed.

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

The invoice shall also state in respect of transactions referred to in point (b) of this Article 28 the VAT registration number of the taxable person supplying the goods and that of the person by whom they are acquired.

(c) The Member States shall determine the criteria for considering whether a document serves as an invoice.

4. Every taxable person shall submit a return within an interval to be determined by each Member State. This interval may not exceed two months following the end of each tax period. The tax period may be fixed by Member States as a month, two months or a quarter. However, Member States may fix different periods provided that these do not exceed a year.

The return must set out all the information needed to calculate the tax that has become chargeable and the deductions to be made, as well as, where appropriate, the total amount of supplies referred to in point (b) of this Article 28, the total amount of acquisitions referred to in point (c) of this Article 28 and, in so far as it seems necessary for the establishment of the basis of assessment, the total amount of the transactions relative to such tax and deductions, and the total amount of the exempted supplies.

5. Every taxable person shall pay the net amount of value added tax when submitting the return. The Member States may, however, fix a different date for the payment of the amount or may demand an interim payment.

6. Member States may require a taxable person to submit a statement including the information specified in paragraph 4 and concerning all transactions carried out the preceding year. This statement shall also provide all the information necessary for any adjustments.

7. Member States shall take the necessary measures to ensure that those persons who, in accordance with Article 21(1)(a) and (b), are considered to be liable to pay tax instead of a taxable person established in another country and who are jointly and severally liable for the payment comply with the obligations relating to the submission of a return and payment.

8. Without prejudice to the provisions to be adopted pursuant to Article 17(4), Member States may, subject to respecting equality of treatment between domestic and intra-Community transactions, impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

9. With the exception of the obligation to issue invoices in respect of supplies specified in point (b), Member States may release taxable persons:
   - from certain other obligations;
   - from all other obligations where those taxable persons carry out only exempt transactions;
   - from the payment of the tax due where the amount is insignificant.

10. Where a taxable person or a non-taxable person within the meaning of Article 4(5) or a taxable person qualifying for the arrangements laid down in Articles 24 and 25 so requests, the competent authorities in the Member State in which he is established shall issue to him a statement certifying his VAT status provided the person making the request fulfils the conditions defined in the second indent of point (b). However, where the seller already possesses such a statement, the person by whom the goods are acquired shall not be obliged to provide a new statement during the calendar year for which the statement was

issued. That statement shall be in conformity with the specimen certificate set out in the Annex hereto.

If a statement certifying his VAT status has already been issued to him, the taxable person or the non-taxable person within the meaning of Article 4(5) shall submit a new request in the event of any change in his VAT status."

3. Article 3 is replaced by the following provisions :

"Article 3

1. The following Council Directives shall cease to have effect on 31 December 1992:
Directive 83/183/EEC
Directive 74/651/EEC

2. The following Council Directives shall cease to have effect on 31 December 1992 in so far as intra-Community relations are concerned:
Directive 69/169/EEC
Directive 83/181/EEC
Directive 85/362/EEC

3. The following Council Directives shall cease to have effect on 31 December 1996:
Directive 79/1072/EEC
Directive 83/182/EEC."

4. A new Article 4b shall be inserted :

"Article 4b

Article 11(C)(2) of Directive 77/388/EEC shall be replaced by

the following provisions :

(2) Where elements determining the taxable amount are expressed in a currency other than that of the Member State where evaluation is carried out, the rate of exchange applicable shall be the last rate of sale registered on the most representative exchange market or markets of the Member State concerned at the time the tax becomes payable according to procedures fixed by Member States."

Done at Brussels, For the Council

ANNEX

CERTIFICATE OF VAT STATUS

.....
(Name and address of competent authority)

certifies that .....
(Surnames and forenames or name of firm)

.....
(nature of activity)

.....
(Address of the establishment)

is recognised for VAT purposes under the registration number ..... as an operator entitled to receive supplies of goods exempted from value-added tax by virtue of the application of Article 2 of Directive COM(87) 322 as amended by Directive COM (90) 182.

.....
Date

Official
Stamp

.....
(Signature, name and grade)

(1) If the applicant does not have a VAT registration number, the competent authority shall state the reason for this.

COMPLIANCE BURDENS ON FIRMS AND AFTER 1992 DUE TO VAT AND STATISTICAL RETURNS

IMPACT ASSESSMENT

Present situation:

VAT

Current customs based import/export procedures require that goods consignments must stop at customs posts when crossing borders. In addition the goods have to be declared to the authorities and cleared through Customs either at the border or elsewhere. Goods consignments are declared to the customs authorities using the Single Administrative Document (SAD).

At present up to 50 boxes approximately on the (SAD) may have to be completed in respect of each individual consignment, in trade between Member States(1). Additionally a further five boxes must be completed by the administrative authorities.

No precise figures are available for the number of SAD's issued in any one year. However a reasonable estimate is that between 50 to +/- 60 millions SAD's are used in purely intra-Community trade each year. This figure would not include other consignments, such as third-country goods transiting the Community.

Taxable traders who use the SAD for import and export transactions also have to complete periodic VAT returns in the usual manner.

Statistics

The SAD is also used as the basis for the collection of statistics on trade between Member States.

Situation from 1993 onwards

Under the Commission's proposal, the obligations imposed on Community firms will be considerably reduced:

(1) All these boxes may not necessarily be completed by the same firm.

VAT

No SAD will be required in most intra-Community trade.

There will be no stops or controls at borders by customs. Custom clearance formalities will also be dispensed with.

For traders subject to VAT, the only obligations relating to intra-Community trade will be:

- an inclusion in their normal periodic VAT-returns of two global (import and export) figures for their trade with other Member States.

- the inclusion of the VAT-number of seller and purchaser on the invoice documenting the transaction.

- obtaining a declaration from the domestic VAT-authorities, that they are subject to VAT. This documentation shall be given to the seller in the other country as a precondition for the zero-rating of exports.

Once completed, however, these requirements would involve no further compliance burden transaction-by-transaction. The only other documentary requirement will be to keep the normal common records and documents which firms are required to keep in any case.

Small enterprises(2) VAT exempt can chose between two options:

- they simply buy in other Member States at the rate of VAT applicable in those other Member States (rate of VAT in country of origin), implying absolutely no subsequent relations with VAT-authorities in any countries, subject to an annual purchases threshold of 35.000 ecus(3), above which they must use the following option;

- they can choose to buy VAT-free, but pay subsequently the domestic rate of VAT on the purchase. This presupposes a registration with the VAT-authorities, so that they can prove their status to the seller.

The same regime applies to traders which are exempt from VAT by reason of the type of activity they carry on (banks, insurance, some public institutions etc.).

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(2) The Commission has a proposal before the Council which will harmonise the VAT exempt thresholds, which at present vary between Member States, to an obligatory level of 10.000 ecus per annum and an optional level of 35.000 ecus throughout the Community.

(3) This threshold will be raised to 70.000 ecus with effect from 1 January 1995

Statistics

As the SAD document disappears a new system is introduced for the collection of trade statistics between Member States implying the following burdens:

Small enterprises which are VAT exempt are completely exempted from the supply of any statistics on trade between Member States.

- The great majority of other firms will only be required to complete two extra boxes (value of intra-Community imports and exports) on their periodic VAT returns, which would serve both VAT and statistical purposes.

- Only the largest firms (about 20% of VAT registered firms) will in addition be required to complete an INTRASTAT monthly declaration for statistical purposes on which seven compulsory and three optional data items are to be indicated.

The situation after 1992

When the regime change towards the taxation in the country of origin as the general principle, requirements relating to the documentation of the status of the buyer will in general disappear.

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