COMMISSION OF THE EUROPEAN COMMUNITIES

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FIRST REPORT FROM THE COMMISSION TO THE COUNCIL

on the application of the common system of value added tax, submitted in accordance with Article 34 of the Sixth Council Directive (77/388/EEC) of 17 May 1977)

CONTENTS

INTRODUCTION

The final provisions of the Sixth Council Directive of 17 May 1977 on the common system of value added tax (1) stipulate, in Article 34, that:

"For the first time on 1 January 1982 and thereafter every two years, the Commission shall, after consulting the Member States, send the Council a report on the application of the common system of value added tax in the Member States. This report shall be transmitted by the Council to the European Parliament."

A similar provision had appeared in the Commission's proposal for a Directive, but the last sentence was added at the express request of Parliament and this amendment, supported by the Commission was accepted by the Council. The definitive text of Article 34 thus reflects the full importance, commensurate with the objectives of the Sixth Directive, that the Community institutions attach to the application of the common system of value added tax.

Progress in tax harmonization has not been without its setbacks and problems - as can be seen from a comparison of the Commission's original proposal with the text of the Directive finally adopted by the Council. The gap between the ambitious intentions at the outset and the relatively modest final outcome is basically due to the fact that an instrument on tax matters such as the Sixth Directive inevitably impinges on areas of national legislation in which each Member State is particularly sensitive.

Securing the convergence of nine different sets of national laws entailed concessions on all sides, and in many cases involved a reshaping of attitudes that were rooted in the past and which reflected differing fiscal, economic and social structures.

Such essential factors could not be ignored by the Council when it was adopting the Sixth Directive, and for its part the Commission was duty-bound to facilitate the adoption of a text that would not lead to a

(1) OJ No L 145 of 13 June 1977.

sharp and immediate legal caesura at national level whilst at the same time ensuring that the Directive would become an essential part of the establishment of a European structure in both the economic and fiscal spheres.

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The difficulties encountered by most Member States in complying with the deadline of 1 January 1978 laid down in Article 1 of the Sixth Directive subsequently illustrated these general considerations.

Belgium and the United Kingdom were the only Member States to meet the original deadline, and the Ninth Council Directive of 26 June 1978 (1) was needed in order to authorize the other seven Member States to defer application of the Sixth Directive until 1 January 1979. In the case of Germany and Luxembourg, it was not until 1 January 1980 that national legislation aligned on the Directive came into force.

This staggering of the deadlines and phasing in of the Directive resulted in a period of confusion, with some taxable persons claiming rights by virtue of the primacy of Community law and others complaining about the coexistence in a number of Member States of differing tax rules. These disputes have been brought before national courts, and some matters have been referred to the Court of Justice of the European Communities for a preliminary ruling.

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(1) OJ No L 194 of 19 July 1978.

There have been a large number of decisions by the Court as regards the direct effects of Community legislation and which deal with the following two problems:

- firstly, the applicability of provisions in cases where directives have not been implemented by the deadline set or have not been correctly transposed into national legislation; and

- secondly, the extent to which the provisions of directives can be invoked directly by a private individual.

The problem of the direct effect of Community directives has been examined more than once by the Court of Justice i.e. in the judgments in Cases 9/70, 20/70 and 23/70. In these judgments, the Court gave an unequivocal answer to the question of the extent to which a taxpayer may rely on a Community directive that has not been implemented by the deadline set or that has not been correctly transposed into national law.

In another connection, the Court reasserted an individual's right to invoke the direct effects of Community directives where they are clear-cut and unconditional. The cases in question were Cases 8/81 and 255/81, which were concerned with references for a preliminary ruling on the interpretation of Article 13(B)(d)(1) of the Sixth Directive.

The Court ruled that, as from 1 January 1979, it was possible for the provisions of Article 13 concerning the exemption from turnover tax of transactions consisting of the negotiation of credit to be relied upon by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and failure to implement the directive could not be used as an argument against him.

Application of the Directive "in space" has proved less tricky than its application "over time", the reason being that the geographical scope of the Sixth Directive as defined in Article 3 is directly based on Article 227 of the Treaty. In other words, any difficulties likely to arise will stem from the interpretation of Article 227 and not from that of the Directive itself.

Exclusion of the French overseas departments from the scope of the Directive typifies this situation. On the basis of a certain interpretation of Article 227 of the Treaty, the Council and the Commission were of the opinion that these departments were automatically excluded from the scope of the Directive and, consequently, need not be mentioned in Article 3(2) thereof. It was only in response to a differing interpretation of Article 227 given by the Court of Justice in a tax dispute sphere that the Council was obliged to adopt the Eleventh Directive of 26 March 1980 (1), which added the French overseas departments to the list of territories excluded from the scope of the common system set out in Article 3(2) of the Sixth Directive.

No further comment need be made on the external difficulties which surrounded or which have arisen following adoption of the Sixth Directive, and the main body of this report will be devoted to the internal difficulties of the common value added tax system.

To this end, the difficulties encountered in the application of this system have been broken down into the following three headings:

- Part I:

  Difficulties stemming from the divergence which exists between national laws that the Directive expressly left untouched;

- Part II:

  Difficulties to do with the interpretation of the Directive;

- Part III:

  Difficulties arising from problems which have been deferred or left in abeyance.

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(1) OJ No L 90 of 3 April 1980.

PART I

DIVERGENCES NOT REMOVED BY THE DIRECTIVE

As complete harmonization of value added tax has never been regarded as an end in itself, progress in this sphere can and ought to be made only as the need arises, and there was therefore no question of bringing about changes in national legislation that were not considered absolutely necessary. Thus many tax provisions have been left untouched by the harmonization process, with the upshot that there are a number of divergences which can be classified into three groups:

- divergences arising from certain optional provisions permitted by the Directive;
- divergences arising from the right to opt for taxation authorized by the Directive;
- divergences arising from temporary derogations.

The problems in the first two groups are examined in Chapters I and II below. Those in the third group are discussed in an earlier report on the transitional provisions applicable in Member States under Article 28 of the Sixth Directive (doc. COM(82)885).

CHAPTER I

Divergences arising from certain options permitted by the Directive

It is not the Commission's intention in this chapter to review all the discretionary powers permitted by the Directive but simply to draw attention to those that may create distortions which are in compatible with the objectives of the common VAT system:

A. Power to derogate from the definition of taxable person (second subparagraph of Article 4(4));

B. Power to derogate from the definition of taxable amount upon importation (Article 11(B)(2));

C. Power to derogate from the provisions governing the adjustment of deductions (Article 20(5));

D. Powers in connection with the special scheme for small undertakings (Article 24);

E. Power to fix flat-rate compensation percentages for farmers;

F. Power to retain or introduce simplification procedures that derogate from the Directive (Article 27).

A. Power to derogate from the definition of taxable person permitted by the second subparagraph of Article 4(4) of the Sixth Directive: Recognition of "groups of undertakings"

Five Member States have availed themselves of the consultation procedure provided for in Article 29 of the Sixth Directive in order to include in their national legislation the right to "treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organizational links".

In the Netherlands, natural persons and bodies within the meaning of the General Tax Code who have their domicile or are established in the territory of the country and who have a permanent establishment there are considerable to be a single taxable person where they are bound to one another by financial, economic and organizational links in such a way that they constitute a single entity. The VAT Law caters

expressly for the "single taxable entity", a long-standing concept in the Netherlands which has been enlarged upon by case law. There are abount 4,000 such entities in the country comprising 16,000 persons, companies, etc. This compares with a total of around 400,000 taxable persons as defined for VAT purposes.

In Denmark, undertakings subject to the registration requirement and not owned by the same person may, if they so request, be registered as a single taxable person. Consequently, no tax is charged on transactions between undertakings covered by such a joint registration. In 1979, there were 889 joint registrations covering 3,554 undertakings; this compares with a total of 370,561 taxable persons as defined for VAT purposes.

In Ireland, the tax authorities may, at their request, decide to regard two or more taxable persons as a single taxable person if they are satisfied that their business activities are so closely interlinked that it would be expedient, in the interests of the efficient administration of the tax, to treat them in this way. Under this system, a group of taxable persons made up, for example, of interlinked companies is exempt from the requirement to issue invoices in respect of transactions carried out amongst themselves. Companies established abroad may belong to such a group. There are around 800 groups comprising 2,500 companies and representing 2,9 % of all taxable persons.

In the United Kingdom, two or more legal persons are eligible to be treated as members of a group if one of them controls each of the others, or if one person (whether a legal or natural person) controls all of them, or if two or more natural persons carrying on a business in partnership control all of them. The effect of group registration is that the business carried on by the several members of the group is treated for VAT purposes as being carried on by one of them, who is known as the representative member and who is registered for tax purposes. Supplies by one member of the group to another member are not liable to VAT. The representative member is responsible for submitting returns and for paying tax or claiming refunds for the whole group.

All members of the group are liable jointly and severally for any tax due from the representative member. An undertaking established abroad may belong to a group provided it has a physical presence in the United Kingdom. At 1 April 1978, there were 15 645 group registrations, representing some 1.2% of all registrations. The average number of members per group was 3.74. For the financial year 1977/78, groups accounted for around 40 % of total turnover declared in the United Kingdom.

In Germany, the concepts of "Organschaft" and "united company", which were applicable long before the Sixth Directive was adopted, have been retained. The term "company" is taken to mean all the industrial, commercial or professional business carried on by the trader. Industrial, commercial or professional business is not carried on independently :

- where the actual circumstances show a legal person to be financially, economically and organizationally incorporated into an undertaking (subsidiary company - Organgesellschaft);
- where natural persons, individually or as a group, are bound to an undertaking in such a way that they are obliged to comply with the instructions of the entrepreneur; a "united company" thus exists when the interest in two or more associations of equal rank (i.e. neither of them being controlled by or controlling the other) is held in the same proportions by the same persons, and uniform decision-making is guaranteed for all associations. In the case of bodies with this status in law, to which foreign companies may belong, supplies of goods and services between the linked persons need not be invoiced and control is effected by a single tax office (Finanzamt), thereby simplifying tax administration.

It would not be appropriate here to offer any value judgement on such pragmatic bodies that appear to operate satisfactorily in the five countries mentioned. However, because of their very flexibility, these bodies, which have a legal status based on non-legal criteria, harbour a danger in that they could be given an international dimension that would make it possible for them to frustrate certain rules of the common VAT system.

The Commission would emphasize that compliance with the consultation procedure instituted by Article 29 should not be regarded as rendering inoperative the conditions laid down in the second subparagraph of Article 4(4) of the Sixth Directive. Of the five countries applying in their legislation the "single trading entity" principle, only the Netherlands has adopted the condition of territorial scope set out in the Directive, whereas Germany has introduced a "single trading entity" arrangement that is expressly open to undertakings established abroad. Accordingly, the Commission has instituted infringement proceedings against Germany on the basis of Article 169 of the Treaty.

Denmark, Ireland and the United Kingdom have not included in their legislation the condition of territorial scope for "single trading entities" prescribed in the second subparagraph of Article 4(4) of the Sixth Directive. For this reason, the Commission, whilst reserving the right to initiate any future action, has already embarked on a closer analysis, with the administrations concerned, of the different arrangements in force in order to gauge whether, at a practical level, administrative provisions permit waivers from the Directive.

B. Power to derogate from the definition of taxable amount upon importation (Article 11(B)(2))

The purpose and effect of Article 11 of the Sixth Directive is to create perfect parallelism between the concepts of "taxable amount" applicable, on the one hand, within the territory of the country, (Articles 11(A)(1), (2) and (3)) and, on the other, upon importation (Articles 11(B)(1), (3) and (4)). At the same time, this Article attempts to reconcile these concepts with those of "customs value" in cases where goods are subject to customs duties (definition of open market value virtually identical to that of customs value at the time the Directive was introduced).

Article 11(B)(1) stipulates that the taxable amount upon importation (like that applicable within the territory of the country) is the price paid or to be paid by the importer where this price is the sole consideration for the imported goods, or the open market value where no price is paid or where the price paid or to be paid is not the sole consideration for the imported goods. "Open market value" is defined as the amount which an importer would have to pay, under conditions of fair competition, to a supplier at arm's length in the country from which the goods are exported at the time when the tax becomes chargeable in order to obtain the goods in question.

This attempt to achieve parallelism is a step along the road to eventual completion of a common market since, according to the note on Article 8(c) in Annex A to the Second VAT Directive, "Member States shall endeavour to apply to importations of goods (from other Member States) a basis of assessment which corresponds ... to that used for supply made within the territory of the country" (the latter rarely being the customs value). However, there was a danger, prior to 1 July, 1980, that Article 11(B)(2), which confers on Member States the power to adopt as the taxable amount the value defined in Regulation (EEC) No. 803/68, might hamstring the harmonization process in so far as this provision could be invoked by Member States wishing to apply special rules to imports in some instances. This power which was not confined to goods on which customs duties were chargeable, was able to be used as a means of subjecting imports from Community countries to the same assessment criteria as imports from non-member countries. This is a glaring illustration of the inadvisability of this particular option, or for that matter, any power whose scope is not clearly defined.

The evolution of customs legislation within the GATT multilateral negotiations offered a solution to some of the problems. Thus, Regulation (EEC) No. 1224/80 of 28 May 1980, which superseded Regulation (EEC) No. 803/68 from 1 July 1980, stipulates that the customs value of goods must, as far as possible, be based on the transaction value of the goods to be valued (Article 3). When customs value cannot be determined by application of the transaction value method there are five alternative methods.

Quite apart from the fact that, psychologically speaking, customs valuation is a relic from the days before establishment of the customs union, it may also give rise to distortions in treatment as between the taxation of imports and that of supplies of goods within the territory of

the country. Accordingly, the Commission will at the earliest opportunity propose to the Council that Member States no longer be empowered to rely on the provisions of the customs Regulation when valuing goods imported from another Member State.

The Commission has also found that the criteria for determining the taxable amount upon importation are not complied with by one Member State where the importation (but also the supply) of valuable horses is concerned. The Member State in question fixes a flat-rate taxable amount for such horses on the basis of the slaughter price and on the horse's age. Since this flat-rate amount bears no relationship to the horse's real value, it is incompatible with the rules laid down in the Sixth Directive. Accordingly, the Commission has initiated Article 169 proceedings and the matter was referred to the Court of Justice on 22 March 1982 (Case 95/82).

C. Power to derogate from the provisions governing the adjustment of deductions (Article 20(5))

Tax charged on purchases by a taxable person is immediately, i.e. in the first tax return following the purchase, deducted by that person to the extent that the goods are used for the purposes of a taxable activity. This rule also applies to capital goods (e.g. immovable property, plant and machinery). In the case of capital goods, however, Article 20(2) of the Sixth Directive provides for annual adjustments of the deduction initially made that are designed to reflect changes that occur in the extent to which the goods are used for purposes of a taxable activity over a period of five years,[1] including the year of purchade (standard period regarded as the normal depreciation period for capital goods). Each annual adjustment results in a credit or debit for the taxable person.

Article 20(5), under which Member States may, subject to certain conditions, forgo application of the adjustment rule during the five-year period stipulated for capital goods, has given rise to implementing difficulties. The two Member States (the United Kingdom and Ireland) which announced their intention of availing themselves of this provision had difficulty in proving that the conditions laid down therein were met.

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[1] This period may be extended to ten years in the case of immovable property.

Consultation of the VAT Committee, which is necessary in order to derogate from the adjustment principle, has brought to light the confusion caused by the application of Article 20(5).

This is because it is virtually impossible to ascertain whether the three conditions mentioned in that provision are in fact met in a particular country, viz:

1. "insignificant practical effect" of applying the adjustment rule "having regard to the overall tax effect in the Member State concerned";
2. "need for due economy of administration";
3. "need to avoid distortion of competition".

While the second condition, being purely pragmatic, poses no particular problem, the same cannot be said of the other two conditions.

In the absence of any specific tax statistics covering a sufficiently long period, it is difficult to assess how "insignificant" would be the effect of applying a rule which, it must be assumed, is not being applied in the country concerned.

In the absence of complaints from undertakings considering themselves to have been penalized by the non-adjustment of tax initially deducted, it is difficult to say whether or not the conditions of competition have been impaired.

In the Member States which apply this derogation, the deduction initially made is not reviewed (except, of course, at the end of the year or purchase in order to make a provisional assessment of the deductible proportion as provided for in Article 19(3) of the Directive). From a tax angle, this may be to the benefit or detriment of a particular taxable person and may, therefore, give rise to inequalities as between taxable persons at national and international levels alike. Clearly, assessment of the effect on competition will depend on the extent and frequency of variations in the degree of allocation of capital goods at macroeconomic level. For our purposes, this takes in all "mixed" undertakings (i.e. carrying on both taxed and exempt activities). These are all factors which cannot be taken into

account a priori.

These drawbacks would have been much less far-reaching if, instead of empowering Member States to derogate generally from the adjustment rule, the Directive had laid down threshold values below which taxable persons would have been exempt from this rule. The Commission intends to propose an amendment to the Directive along these lines.

D. Powers in connection with the special scheme for small undertakings (Article 24)

Under Article 24(1) of the Sixth Directive, Member States may introduce special VAT arrangements for small undertakings. Although it does not specify the details of these arrangements, Article 24 does stipulate that such simplified or flat-rate procedures must not lead to a reduction in tax.

The considerable flexibility Member States thus enjoy in this respect has resulted in the introduction of widely differing simplified procedures such as collective flat-rate amounts for determining input or output VAT, individual flat-rate amounts, and simplified arrangements for calculating tax. The experience gained in the years in which these different procedures have been in force could form the basis for a harmonized scheme featuring both the flat-rate and simplified arrangements applicable in all Member States.

In addition, Article 24(2) of the Sixth Directive empowers Member States to introduce exemptions and graduated tax reliefs.

Member States which applied an exemption ceiling equivalent to less than 5,000 ECU and those which introduced an exemption upon entry into force of the Sixth Directive were allowed to increase its value up to that figure but have not been authorized to raise it since, even to take account of inflation. Even so, Germany, which applied an exemption equivalent to no more than 5,000 ECU prior to entry into force of the Sixth Directive, raised it to the equivalent of 7,900 ECU on 1 January 1980.

On the other hand, Member States which upon entry into force of the Sixth Directive applied an exemption equivalent to more than 5,000 ECU have been able to increase it in order to maintain its value in real terms. This

power has been used to the full by the United Kingdom, which doubled its ceiling from the quivalent of 14,000 ECU in 1978 to 28,000 ECU in 1981, and by Ireland, which upped its celings from the equivalents of 3,000 ECU and 18,000 ECU in 1979 to 15,000 ECU and 30,000 ECU respectively in 1981, and this despite the political undertaking written into the Council minutes that this option would be used with moderation.

Bearing in mind that an upper limit had been imposed on Member States with exemption ceilings equivalent to less than 5,000 ECU, this development flouts the principle of the Sixth Directive, which was designed to restrict any increase in exemptions.

Then again, the value of the graduated tax relief that may be administered alongside the exemption arrangements may not, pursuant to the third subparagraph of Article 24(2)(a), be raised in those Member States that applied this mechanism together with an exemption equivalent to less than 5,000 ECU at the time of the entry into force of the Sixth Directive.

On the other hand, there does not appear to be a similar restriction on the graduated tax relief applied by those Member States that introduced such a mechanism when the Sixth Directive entered into force.

Similarly unaffected is the right of Member States that applied an exemption equivalent to more than 5,000 ECU upon entry into force of the Sixth Directive to introduce graduated tax relief and to adjust its level as and when necessary in order to maintain its value in real terms.

Article 24(4) lays down a mechanism for fixing the exemption by reference to the turnover exclusive of tax, although this means that the beneficiary will not be able to invoice VAT an deduct input VAT.

Even so, Germany has set a turnover ceiling of DM 20,000 inclusive of tax.

It was, nevertheless, agreed by the Council that Member States which applied, at the time of entry into force of the Sixth Directive, an exemption calculated by reference to the amount of tax could retain this arrangement. Application of this facility, however, resulted in non-compliance with Article 24(5), which stipulates that taxable persons exempt from VAT may neither deduct VAT charged on their inputs nor show VAT on their invoices. The Member States concerned claimed that recognition of exemption arrangements based on the amount of tax payable necessarily meant the invoicing of VAT and deduction of input VAT. This

mechanism, the effect of which is to remit tax collected on behalf of the Treasury by small undertakings qualifying for the exemption, creates distortions as compared with the exemption arrangements based on turnover. Closer harmonization is thus needed in this area.

The broad latitude described above has led to marked divergences between Member States" administrative arrangements which should be ironed out by the end of the transitional period by means of a common simplified scheme system of exemptions. The Commission intends to draw up a fuller report on the situation in Member States.

E. Power to fix flat-rate compensation percentages for farmers (Article 25: Common flat-rate scheme for farmers)

Pursuant to Article 25(1) of the Sixth Directive, Member States may introduce for farmers a flat-rate scheme to offset input VAT paid by them on their purchases.

Two sets of problem have arisen in the implementation of this scheme, concerning respectively its scope and the basis of assessment used.

1. Limiting the scope of Article 25

This scheme, which was devised as an alternative to the normal VAT scheme or to the special VAT scheme for small undertakings covered by Article 24, was to apply essentially to small farmers unable to comply with the obligations imposed by the other two schemes.

Since Article 25(2) goes no further than to give a functional definition of "farmer" and hence of "flat-rate farmer" without setting any quantitative criteria for output or annual turnover, the Member States generally have adopted this scheme as the normal one for farming, and in some cases even for certain ancillary or secondary activities such as equipment cooperatives, processing cooperatives and cooperatives providing artificial insemination or marketing services.

In some instances, certain activities such as the provision of farm services, horticulture, fish farming, etc. have been excluded, but only rarely has the scope of the scheme been limited by reference to the size of farms. Only France excludes large cattle farmers, who are defined as such by reference to the number of animals sold or in stock at the end of the year, and, since 1 January 1982, farmers with a turnover of more than FF 300,000. For its part, Germany is planning to exclude limited companies from the flat-rate scheme with effect from 1982.

Since no Community limit has been laid down, Member States have lost sight of the fact that this mechanism was devised for small farmers. For this reason, it is necessary to propose the introduction of a ceiling in terms of output or turnover.

Member States need also to be reminded that the definition of "agricultural undertaking" must not be taken to include related activities and that, accordingly, transactions carried out by cooperatives as well as the resale of second-hand capital goods used in agriculture must be excluded from the scheme.

These departures from the basic rules laid down in the Sixth Directive must be rectified.

2. Problems relating to the basis of assessment

Article 25(3) lays down the principles for calculating flat-rate compensation percentages. These principles are based on the premise that flat-rate farmers must not be given refunds in excess of the VAT charge on inputs.

Supervision of the correct application of the provisions in question has brought to the Commission's notice the fact that, in one Member State, the flat-rate refund for certain products is much higher than the amount of input tax and thus constitutes a hidden subsidy to the farmer. Accordingly, the Commission has initiated infringement proceedings against that Member State on the basis of Article 169 of the Treaty.

Two other problems have arisen concerning the justification for the basis of assessment and the way in which exports are taken into account.

a) Justification for the basis of assessment used in calculating flat-rate percentages

The requirement that Member States must notify the Commission of the percentages they fix has been found to be insufficient: it is also necessary to spell out the implied obligation to show, at the time of notification, how the percentage or percentages chosen have been calculated, so that the Commission, which does not possess any statistics on flat-rate farming specifically, is in a position to determine whether they are well founded. It should be added here that most Member States have had difficulty in applying the common method of calculation set out in Annex C, to which Article 25(12) refers. More often than not they have no separate statistics on flat-rate farmers, such data being included in statistics on farming in general. New methods for compiling specific statistics are needed that will separate out, for the purpose of calculating the flat-rate percentages, the farmers subject to the normal scheme, whose structures are essentially different. Where appropriate, it will also have to be spelt out that VAT corresponding to the rates in force when the calculation is made may be applied to the reference basis made up of the average of the macroeconomic data for the preceding three years. This will permit an adjustment that more accurately reflects the actual VAT charge on inputs;

b) Taking into account exports by flat-rate farmers

Because full harmonization has not been achieved in this field, distortions have been discovered in the way in which direct exports by flat-rate farmers are taken into account. In some Member States, flat-rate compensation does not apply to direct exports by such farmers, while in others exports do qualify for those arrangements. Where this involves invoicing the foreign taxable person to whom the products are sold, this person is unable to deduct the VAT in question since it has been paid in another Member State.

Harmonization is needed, therefore, in order to remove these anomalies.

F. Power to retain or introduce simplification procedures that derogate from the Sixth Directive

1. The purpose of such measures must be to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. In addition, they must not have any significant effect on the amount of tax due at the final consumption stage.

Article 27 draws a distinction between measures of this kind that were already in force in Member States before 1 January 1977 and those that Member States would like to introduce. The former, referred to in Article 27(5), were to be notified to the Commission by 1 January 1978, while the latter are covered by a special procedure laid down in Articles 27(2) to (4).

2. The pre-existing measures notified to the Commission pursuant to Article 27(5) are listed in Annex I to this report.

Although the deadline was not met by all Member States, the Commission takes the view that, since the date laid down in Article 1 of the Sixth Directive was deferred by the Ninth Directive of 26 June 1978, no essential procedural requirement has been infringed.

On the other hand, the Commission attaches particular importance to compliance with the substantive rules set out in Article 27(1). It thus reserves its position on certain of these measures and in fact has instituted infringement proceedings in respect of a number of them.

Belgium: minimum taxable amount for new, second-hand and ex-demonstration cars and for buildings and construction work;

Denmark: exemption for the barter of stamps without cash adjustment, irrespective of the status of the parties to the contract; exemption for supplies of food and beverages by catering firms, canteens, etc.; exemption for the supply and hiring out of vessels other than pleasure boats, with a capacity of more than 5 tonnes; same exemption for repair work and fitting out and for the importation of vessels, whether intended for international or domestic service; same exemption for aircraft (not notified);

France: flat-rate assessment of maximum taxable amounts for the importation and supply of valuable horses;

Ireland: refunds to non-registered farmers of VAT charged on certain buildings and on land drainage and reclamation schemes;

Luxembourg: application of the flat-rate scheme for farmers to the supply and sale of goods, including capital goods, that have been used for the purposes of their agricultural undertaking.

3. Most of the new measures covered by the procedure set out in Articles 27(1) to (4) have so far been approved without any difficulty. They include:

Germany: minimum taxable amount for certain supplies of goods and services delivered for a very low consideration; suspension of application of the tax to dealings in precious metals;

Belgium: flat-rate assessment of travel agents' margins; deferral of the requirement to pay VAT in the property development sector at the stages preceding that involving the main contractor;

Netherlands: the main contractor made liable for payment of VAT normally payable on work performed by sub-contractors in the building, metal-working and shipbuilding sectors.

4. For the measures notified to it under Article 27(2) as well as for the pre-existing measures, the Commission is anxious to ensure that the conditions laid down in Article 27(1) are met. After receiving a further request for a derogation that seemed to infringe the basic VAT principles, the Commission decided to stipulate the basic limits within which a derogation would be deemed admissible. In particular, it takes the view that the effect of derogation must not be to render VAT rules inoperative in an entire sector. Such would be the case if a derogation were sought that would have the effect of systematically relieving taxable persons at the final stage of the economic cycle in a particular sector from payment of tax and of making the final consumers liable to pay the VAT in question.

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CHAPTER II

Divergences arising from the rights of option for taxation

A. Justification for the right of option

The common VAT system includes a common list of exemptions, enumerated in Articles 13 to 16 of the Sixth Directive. Moreover, under the transitional provisions of Article 28, Member States may continue to exempt the transactions listed in Annex F to the Directive. Taken together, these provisions mean that a large number of economic activities qualify for exemption from VAT, and this is bound to create difficulties.

It is worth remembering that, except where otherwise stipulated, the performance of exempted transactions excludes the taxable person from the right to deduct VAT charged on his inputs (cf. in particular Article 17(2)). The drawback of such exclusion from the right to deduct input VAT is that goods and services supplied for the purposes of an exempt activity carry a hidden and indeterminate tax burden that is apt to be passed on in their selling prices. Under these circumstances, the requirement that VAT be proportional to the price paid or to be paid, which is one of the fundamental principles of the common VAT system, is no longer met.

A further drawback is that the purchaser of such goods or services who uses them for the purposes of his business cannot deduct this hidden tax burden in any way. This results in cumulative taxation which again runs counter to the objective of VAT neutrality.

B. Rights of option under Article 28

The rights of option for taxation that Member States were entitled to retain under the transitional provisions of Article 28 are discussed in the report on the transitional provisions that has been sent to the Council (doc. COM(82)885).

These rights of option are mentioned here only for information.

C. Rights of option under Article 13(C)

Being permanent, these rights of option for taxation under Article 13(C) merit special attention. They are applicable to the following transactions:

- letting and leasing of immovable property;
- the supply of buildings after first occupation and the supply of land which has not been built on other than building land;
- banking and financial transactions.

Annex II to this report provides an overall picture of the situation in the individual Member States. It contains three tables corresponding to the three categories of transaction referred to above.

a) Letting and leasing of immovable property

Where the leasing of immovable property is concerned, the conditions and procedures for exercising the right of option in the six Member States concerned are such as to restrict its application to the commercial, industrial and professional sectors, and the possibility of abuse seems to be ruled out. There is reason to believe that the exercise of such rights of option actually ties in with the objective pursued by the Directive in Article 13(B)(b), which, in practice, permits exemptions only in respect of the leasing of residential property. As and when the situation in the Member States changes, the Commission may decide to propose a more detailed and more restrictive wording for this exemption, thereby obviating the use of the option scheme.

b) Supply of buildings

Three Member States have chosen to permit the right of option in respect of the supply of eligible buildings or immovable property, with quite different operational rules. This power simply adds to the list of those authorized by the Directive in respect of immovable property, namely the flexible definition of the concepts of

"new buildings" and "building land" in Article 4(3), both of which Member States may continue to exempt during the transitional period. Under the circumstances, and although this right of option does not dovetail with the Directive's objectives, there would seem to be no possibility of abolishing it in the short or medium term other than by means of a general clarification of the application of value added tax in the immovable property sector.

c) Banking and financial transactions

The right to opt for the taxation of banking and financial transactions, exempt under Article 13(B)(d), has been exercised by three Member States. While the scope of the option is confined in Belgium to receipt and payment transactions, it extends in Germany and France to virtually the entire range of transactions that are normally exempt, although the operational rules are quite different. In Germany the option may be exercised only if the person to whom the service is supplied is himself a taxable person; this inevitably works to the benefit of the person exercising the option and produces a loss of tax revenue. In France, the option must be applied across the board and is irrevocable; this creates an element of uncertainty and the advantage of the scheme is less clear-cut for the undertaking exercising the option, just as its incidence on tax revenue is difficult to gauge. A situation of this kind runs against the general objectives of the Directive, particularly in a sector where, as a rule, virtually all transactions are exempt. Even if the exemptions depart from the principle of tax neutrality, this is no reason for introducing option schemes that run counter to other basic principles such as that of tax equity.

A point worth noting is that, whereas the other options examined above were introduced because of imperfect harmonization in a particular sector, this is not true of banking and financial transactions. Consequently, the situation in this sector should be looked at more closely with a view to securing uniform application of the arrangements in question.

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PART II

DIFFICULTIES CONNECTED WITH THE INTERPRETATION OF CERTAIN PROVISIONS IN THE DIRECTIVE

Since Council directives are authentic in the languages of the Member States to which they are addressed, they must of necessity try to avoid wherever possible the use of legal concepts or expressions which mean different things in different countries. Unfortunately, this rule cannot always be observed; and in any case, blind observance might well produce an intelligible phraseology which itself could give rise to divergent interpretations. The Sixth Directive was unable wholly to avoid both these two pitfalls peculiar to Community law, as well as the difficulties of interpretation inherent in most national legislative texts.

These various types of problems are the bread and butter of the Value Added Tax Committee set up under Article 29 of the Sixth Directive, consisting of representatives of the Member States and of the Commission. Since its inaugural meeting on 23 November 1977, the Committee had held 13 meetings by 31 December 1981 and 77 working papers had been discussed, 29 of these under the consultation procedure.

The Commission presents in this report a number of problems which are typical of the situation which has just been described:

- classification of certain economic activities (Article 4(2));
- delimitation of activities engaged in by public authorities (Article 4(5));
- questions of interpretation concerning the place where services are supplied (Article 9);
- questions of interpretation concerning the taxable amount (Article 11);
- questions of interpretation concerning exemptions (Articles 13, 14 and 15);
- questions of interpretation concerning the scope of the right to deduct (Article 17) and the calculation of the deductible proportion (Article 19).

CHAPTER I

Problems in classifying certain economic activities (Article 4(2)) during the transitional period laid down in Article 28

Article 4(2) of the Sixth Directive provides a general definition of the economic activities on which VAT is liable to be charged: "all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions". A definition so drawn should have exhausted, for all practical purposes, discussions and disputes as to the distinction between commercial and other activities, or between commercial and agricultural activities, which had been common in the Member States where as a rule only commercial and industrial activities had hither to been subject to VAT.

Unfortunately, this type of difficulty has not yet disappeared completely, given that the Member States may continue toexempt, during the transitional period laid down in Article 28, "services supplied by authors, artists, performers, lawyers and other members of the liberal professions" (see Annex F, point 2, to the Sixth Directive).

In this context the Commission came to consider the position of race-horse trainers, whose activities were not subject to VAT in France or in Ireland. The French authorities justified the exemption from taxation on the ground that the activity was a profession whilst the Irish authorities justified it by claiming that the activity was generally exercised as ancillary to an agricultural activity and that in consequence if came under the special scheme for farmers.

After consulting the VAT Committee, where delegations were divided on this matter, the Commission decided that in the absence of a Community definition of the professions it could not object to the temporary retention of the exemption in France, since Article 28(3)(b), in conjunction with Annex F, point 2, authorized such exemption "under conditions existing in the Member State concerned".

The Irish authorities, for their part, have amended their legislation to bring it into line with Community law.

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CHAPTER II

Criterion of activities engaged in by bodies as public authorities (Article 4(5))

The first subparagraph of Article 4(5) runs: "States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions."

It is left to the Member States to define the activities engaged in by public bodies "as public authorities". It was not possible to produce a Community definition because of the wide divergencies between Member States on this point. This situation gives rise to a number of difficulties, albeit limited in extent by the list given in Annex D to the Directive, concerning the activities in respect of which the above bodies are considered taxable persons.

A significant example of this problem is the taxable position of certain professions whose members may authenticate acts in their capacity as public officers (e.g. notaries). In two Member States (Belgium and the Netherlands), these public officers are regarded as non-taxable persons in respect of those duties whereby they have a certain share in the judicial powers of the State.

In the VAT Committee, a majority of the delegations was of the opinion that the members of those professions were indeed professional people and accordingly liable for VAT on all their transactions, with the proviso that their services might be exempted during the transitional period under Article 28 and Annex F, point 2. On the budgetary front, this is no mere academic debate, since the question of financial compensation under the own resources system arises only in the case of liability for taxation (with exemption during the transitional period). Belgium does in fact pay compensation in respect of VAT own resources covering all activities of notaries and bailiffs.

Another source of difficulty lies in the provision contained in the second subparagraph of Article 4(5), by which bodies governed by

public law, when they engage in activities or transactions referred to in the first subparagraph, "shall be considered taxable persons in respect of these activities or transactions where treatment as non-taxable persons would lead to significant distortions of competition." It is sometimes difficult in practice to determine whether or not that last condition is met.

The Commission considers that this situation is unsatisfactory and that the conditions and limits of liability for tax of bodies governed by public law should be spelt out in more specific terms.

Under German law, for instance, land-registry offices were not considered taxable persons, although some of their duties were the same as those performed by quantity surveyors who, as members of a profession, were liable for VAT. The professional association of quantity surveyors attacked the exemption of land-registry offices. Since the situation could lead to "significant" distortions of competition, the German authorities made the transactions performed by these offices subject to VAT at the standard rate with effect from 1 January 1982.

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CHAPTER III

Questions of interpretation concerning the place where services are supplied (Article 9)

A. Application of Article 9(1) to the hiring out of movable tangible property other than means of transport

Pursuant to Article 9(1) of the Sixth Directive, the place where a service is supplied (and taxed) is deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, failing that, the place where he has his permanent address or usually resides. Since the aim was to tax the supply of services at the place where they were actually made available to the customer (economic criterion) and not at the place where a purely statutory place of business was located, this provision was not thought likely to cause any serious difficulties. It was assumed when the text was drafted that at the place where a service was supplied there was bound to be, in most cases at least, a "place of business", however rudimentary, with which that service was connected.

However, it has been pointed out that in the application of Article 9(1) as worded at present a difficulty would arise if a taxable service was supplied in a country in which there was not the slightest vestige of a place of business (or fixed address) belonging to the supplier. The case in mind was that of a foreign firm which had de facto no actual place of business, fixed establishment, permanent address or residence in a given country in which it purchased an item of movable tangible property for the purpose of hiring it out in that country. In such a case, an excessively literal interpretation of Article 9(1) could lead to the non-taxation of the hiring in the country in which, in accordance with the principle on which this provision is based, it should be taxed, that is to say the country in which the hiring out occurs. (It must be remembered that under the Directive even a single transaction involving "the exploitation of property", such as hiring out, is considered an economic activity.) Furthermore, the same hiring out transaction would very probably also escape taxation in the country where the supplier has his main place of business, as the national tax authorities would be unlikely to become aware of a transaction performed abroad. That is why on 23 April 1979 the Commission presented

to the Council a proposal for a Tenth Directive on the harmonization of laws relating to turnover taxes, which aims to clarify beyond doubt that the supplier is established in the country in which the property hired out by him is located at the time it is actually made available to the customer. The hiring out of means of transport was expressly excluded for reasons of supervision, given that such property is by definition mobile and can easily cross frontiers.

This proposal for a Directive, which has been approved by Parliament and by the Economic and Social Committee subject to a number of comments on the general thinking behind Article 9(of the Sixth Directive), should be adopted as soon as possible. It does not overturn Article 9(1) of the Sixth Directive, but, by supplementing and thus making that provision more specific, should obviate most of the difficulties arising when the place of establishment differs from the place where the transaction is effected.

Once the proposal for a Tenth Directive is adopted, the Commission is prepared to propose that Article 9(2)(d) be deleted, since it will have become redundant.

Moreover, the Commission has discovered in the laws of several Member States provisions concerning the place where services are supplied in the case of the hiring out of movable tangible property which do not seem in accordance with Articles 9(1) and (2) of the Sixth Directive.

In Germany the place of supply for the hiring out of such property, with the exception of all means of transport, is the place of utilization. Consequently, the German legislation means that the hiring out of property is taxed from the moment such property is used in Germany, even if it has been imported by the lessee and VAT has been paid on it in the country in which it was hired out.

France and Italy have also made the criterion of utilization generally applicable, whereas the Directive specifies that criterion only where it is the lessor who exports the property from one Member State to another. The application of different definitions leads to cases of double

taxation or sometimes non-taxation in the supply of services involving more than one country.

The Commission has initiated the infringement procedure of Article 169 of the EEC Treaty against the Federal Republic of Germany, Italy and France for failure to comply with the Sixth VAT Directive, but has reserved its position on any future action concerning Denmark, since the provisions adopted in that country need to be discussed in more detail with the authorities concerned in order to verify whether they comply with Community law.

B. Scope of the term "forms of transport" in Article 9(2)(d)

Article 9(2)(d) introduces a derogation from the general rule that the hiring out of movable tangible property is taxed in the country where the supplier is established, by shifting the place of taxation to the country where the hired property is utilized, when it has been exported by the supplier. However, the hiring out of "forms of transport" is expressly excluded from this derogation and is therefore governed by the general rule of the place where the supplier is established. Hence the importance of ensuring that the concept of "forms of transport" has an identical meaning in all Member States, for it is not difficult to see the practical consequences of allowing different criteria to be adopted, particularly with regard to property which is by its very nature liable to cross frontiers and thus cause confusion as to the scope of Article 9(2)(d). These consequences will depend on the scope of the concept of "form of transport" in each Member State: if, for example, a container is hired out (and at the same time exported) by a lessor in one Member State to a customer in another Member State, a risk of double taxation or non-taxation arises if one of these States includes containers among "forms of transport" and the other does not.

A Community list of means of transport (covering those items most likely to cause problems) would help in most cases to prevent such difficulties. A list of this kind should shortly be drafted by the

VAT Committee, although it has not yet been possible to reach unanimous agreement on the concept of "means of transport" as applied to goods which cannot be classed as vehicles in the accepted sense of the word.

C. Definition of certain services referred to in Article 9(2)(e)

This provision, which forms an exception to the general rule that supplies of services are taxable at the place of establishment of the supplier, sets out a list of services which are taxable at the place of establishment of the customer, subject to certain conditions (notably in intra-Community trade, when a customer established in a different Member State from that of the supplier is a taxable person).

In some Member States the question has arisen whether supplies of certain services not mentioned explicitly in this list of exceptions could be treated in the same way as those which do appear in it, with the consequence of transferring the taxation to the customer's country.

Most of these difficulties of interpretation concern the second and third indents of Article 9(2)(e), particularly the definition of advertising services, the services of consultants and experts and those relating to the supplying of information.

One Member State felt that it was entitled to treat auctioneers as consultants, while another Member State asked the VAT Committee whether certain notices published in newspapers should be regarded as advertising. The concept of the supplying of information, which follows that of data processing in the text of the Directive, also needs to be clarified, the question being whether it should include only the supplying of computerized information or whether it should be interpreted in the broadest sense of the word.

Without wishing to exaggerate the importance of the problems which have been encountered, the Commission nevertheless intends to continue the VAT Committee's clarification work.

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CHAPTER IV

Questions of interpretation concerning the taxable amount (Article 11)

Determination of the taxable amount has given rise to a number of difficulties and disagreements, which are analysed below.

A. Minimum taxable amount

The legislation of one Member State provides that the taxable amount to be applied for the supply or importation of new cars may not be less than the list price in force at the time the tax is payable.

In the Commission's view, this measure conflicts with:

- Article 11(A)(1)(a), which provides in particular that the taxable amount in respect of the supply of goods within the country shall be the consideration which has been or is to be obtained by the supplier; and

- Articles 11(A)(3)(a) and (b), which specify that the taxable amount shall not include price reductions by way of discount for early payment or price discounts and rebates allowed to the customer and accounted for at the time of the supply; and

- Articles 11(B)(1)(a) and (b) and 11(B)(4), which lay down the criteria for determining the taxable amount on importation, which are similar to those used to determine the taxable amount within the country.

The Commission has decided to refer this matter to the Court of Justice.

B. Supply of a new item with a used item taken in part-exchange

Article 11(A)(1)(a) of the Directive also stipulates that the taxable amount in respect of supplies of goods and services shall normally be everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies.

The legislation of two Member States provides that when a new item is supplied and the supplier takes a used item of the same kind in part-exchange, the taxable amount is reduced by the value of the used item. As these provisions conflict with Article 11(A)(1)(a), the Commission has initiated the infringement procedure of Article 169 of the EEC Treaty in respect of both countries.

It has sometimes been advance in justification of this practice that it constitutes a special system, authorized temporarily under the second paragraph of Article 32, which provides that Member States may retain, until a Community system becomes applicable, any existing special rules concerning used goods.

It is evident that such a claim cannot be accepted in the case in question. The supply of a new item of movable property is a taxable transaction and the form of payment cannot in any way affect that fact. In any case Article 11 clearly states that the taxable amount shall be everything which constitutes the consideration, which implies that in cases where payment is made partly in cash and partly in kind, the taxable amount of the new item must be the sum of those two values.

C. Subsidies

Article 11(A)(1)(a) of the Directive stipulates that subsidies received by a taxable person which are "directly linked to the price" of the supplies made by that person must be included in the taxable amount as components of the prices paid by third parties. While it is relatively easy to decide straight away that subsidies are "directly linked to the price" when their amount is determined either by reference to the selling price of the goods or services supplied, or in relation to the quantities sold, or again in relation to the cost of goods or services supplied to the public free of charge, it is extremely difficult to decide in the case of other types of subsidy such as deficit subsidies or operating subsidies, which are paid with the aim of improving a firm's economic position and which are granted without specific reference to any price. The absence of any substantial difference between these two types of subsidy (those "directly linked to the price"

are usually also aimed at improving a firm's position), together with the fact that a Member State can convert a subsidy of the first type into a subsidy of the second type, illustrate the fragility of a distinction based on purely formal criteria (the manner in which the subsidy is granted) and thus the inadequacy of the Directive in this respect.

A further source of divergence between Member States lies in the second indent of Article 19(1) of the Directive, which permits Member States who so wish to include in the denominator of the deductible proportion the amount of subsidies which are not directly linked to the price. By reducing the taxable person's right to deduct this is tantamount to a form of hidden and indeterminate taxation of subsidies excluded from the taxable amount.

A comprehensive generic definition of the subsidies which it is desired to include in the taxable amount would not be the way to eliminate differences of interpretation as to the nature of each subsidy and the differences between schemes resulting from the second indent of Article 19(1). The ideal solution would be to draw up a Community list of subsidies regarded as "directly linked to the price". The difficulties in compiling such a list could be overcome in the case of the large number of subsidies already covered by Community rules (EAGGF and others). This would have the advantage of considerably reducing, as a first step, divergences between Member States, which would continue to exist only for subsidies under exclusively national jurisdiction. As a second step, these divergences would be eliminated one after the other as a result of surveys of particular sectors (transport, agriculture, public bodies, etc.). The disadvantage of this solution is that it would probably take a long time.

Another remedy to the present situation - albeit much more drastic - would be to refrain from including in the taxable amount all types of subsidy other than those remunerating services supplied to final consumers. However, this would require an amendment to the text of Article 11 of the Sixth Directive.

In any event, the Commission considers that the whole problem of subsidies under the VAT system needs to be thought out afresh for two reasons: firstly, as we have just seen, the provisions regulating this matter in the Directive are a source of divergences between Member States; and secondly, certain subsidies are so large that their impact on VAT (and on own resources) is too great for a lack of harmonization in this field to be allowed to continue.

D. Incidental expenses to be included in the taxable amount: problem of interest on hire-purchase sales

Article 11(A)(2)(b) lays down the principle that incidental expenses which the supplier charges to the purchaser are included in the taxable amount. This principle is strengthened by a provision permitting Member States to consider expenses covered by a separate agreement between the supplier and the purchaser to be incidental expenses.

It is in this context that the question has arisen as to what arrangement should be applied to the financing charges which a supplier charges to a purchaser over and above the cash price, in the case of a hire-purchase sale. This question is not insignificant, given that credit transactions are exempt under Article 13(B)(d). If it is considered that such financing charges are preponderantly of the nature of incidental expenses, such charges will fail to qualify for the exemption of interest laid down by Article 13. The problem becomes even more difficult to resolve when the arrangements for a hire-purchase sale are covered by an agreement separate from the sale of the goods themselves: in such a case are the charges to be classified as interest or as incidental expenses, which would be allowed under Article 11(A)(2)(b)?

As the Member States have arrived at different answers to this question, the resulting situation is unsatisfactory since it runs counter to tax harmonization in an area directly affecting the final consumer. Measures must therefore be taken to end this divergence, initially by establishing a common interpretation of the concept of "incidental expenses". The Commission intends shortly to refer this matter to the VAT Committee.

E. Definition of the first place of destination

Article 11(B)(3) specifies that the taxable amount for imports shall include the incidental expenses incurred up to the first place of destination within the territory of the country, this being the place mentioned on the consignment note or any other transport document or, in the absence of such indication, the place of the first transfer of cargo in the country of importation.

Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes states that in determining the customs value, there shall be added to the price actually paid or payable, inter alia, the cost of transport and insurance, and loading and handling charges associated with the transport of the imported goods (Article 8(1)) to the place of introduction of the goods into the customs territory of the Community.

The concept of the place of introduction does not correspond to that of the place of destination, since the customs value of imported goods does not include the cost of transport after importation into the customs territory of the Community, provided that such cost is distinguished from the price actually paid or payable for the imported goods. Accordingly, where goods are carried by the same means of transport, the costs are assessed in proportion to the distance covered outside and inside the customs territory of the Community. By contrast, for tax purposes such costs must be included in the taxable amount in so far as they are not already included (free-at-destination price), and Member States may equally include in the taxable amount incidental expenses which result from transport to another place of destination within the country, if the second place is known at the time when the chargeable event (importation) occurs.

These divergences in the method of calculating the components of the taxable amount show that, even after the adoption of Regulation (EEC) No 1224/80 on customs valuation, differences remain between customs value and taxable amount for VAT purposes when "the first place of destination" does not correspond to "the place of introduction" and that the option allowed to the Member States (in Article 11(B)(2)) of adopting the customs value as the taxable amount is ill-advised and a source of difficulties.

For the purpose of calculating the incidental expenses to be included in the customs value "to the place of introduction" into the customs territory of the Community, the customs Regulation (Articles 14 and 15) specifies what is meant by place of introduction and lays down all the rules needed to determine that place correctly by reference to the mode of transport of the goods (by sea, inland waterway, rail, road, etc.).

The concept of "first place of destination", on the other hand, is defined in Article 11(B)(3) of the Sixth Directive, but all the rules needed to determine that place are not given. That concept should be clarified with reference to the mode of transport of the goods, particularly if the place of destination is taken to be "the place of the first transfer of cargo".

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CHAPTER V

Questions of interpretation concerning exemptions (Articles 13, 14 and 15)

The difficulties of interpretation relating to exemptions fall into two groups of unequal range, some being of general significance and others occurring only in a specific context. The former can really be reduced to a single question, namely what is the exact meaning of the introductory paragraph which appears at the beginning of Articles 13(A), 13(B), 14 and 15? This question is discussed at point A below. The difficulties in specific areas are presented under the following headings:

B - difficulties concerning certain exemptions under Article 13(A);

C - difficulties concerning certain exemptions under Article 13(B);

D - difficulties concerning exemptions under Articles 14 and 15;

E - difficulties concerning the scope of the right to deduct (Article 17) and the calculation of the deductible proportion (Article 19).

A. General difficulty of interpretation concerning the meaning of the introductory paragraph (Articles 13(A), 13(B), 14 and 15)

The text in question runs as follows:

"1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse: ..... ."

This provision, which was inserted into the Directive during discussions in the Council, might at first sight seem anodyne, for it is difficult to imagine a Member State legislating in this field without trying to ensure "the correct and straightforward application" of the exemptions it is enacting and to prevent any tax evasion, avoidance or abuse.

In fact, this provision reflects a major concern among Member States, namely to retain the greatest possible room for manoeuvre over the conditions for applying Community exemptions. The intention is to

repeat, in a form appropriate to the objectives of the Directive, the principle enunciated in the third paragraph of Article 189 of the EEC Treaty, while at the same time acknowledging that such conditions can have no other objectives than that of clarification and combating tax evasion and avoidance.

This brief review of general considerations is not irrelevant to the legal proceedings initiated in certain Member States by persons claiming the application of a particular exemption laid down by the Directive, when that exemption has not yet been introduced into national legislation. To counter such claims, the competent authorities of the Member States concerned tend to invoke the introductory paragraph to Article 13, claiming that provision allows Member States a margin of discretion and that an exemption provided for in the Directive cannot therefore have direct effect in the absence of implementing measures adopted at national level.

The Court of Justice, having received a request for a preliminary ruling under Article 177 of the EEC Treaty, gave an initial judgment on this matter on 19 January 1982 in Case 8/81: the Court declared that certain provisions of the Directive may, under certain conditions, be directly applicable and be relied upon by individuals, even where national legislation had not been adjusted in line with the Directive.

B. Difficulties of interpretation concerning certain exemptions under Article 13(A)(1)

The Commission would like to draw particular attention to the difficulties encountered in applying the exemptions covered by sub-paragraphs (a), (b), (1), (m) and (n) of Article 13(A)(1).

In any case it has always considered that, since VAT is a tax on goods and services, the exemptions provided for in the Directive should have been solely related to specific transactions, which would have obviated many problems of interpretation and delimitation.

a) Exemption relating to the supply of services by the public postal services (Article 13(A)(1)(a))

This exemption relates to the supply by the public postal services of services other than passenger transport and telecommunications

services and the supply of goods incidental thereto.

It has been found that the legislation of one Member State extends this exemption to transport undertakings (railways and airlines) which carry mail on behalf of the public postal service.

The authorities of that country claim that the exemption instituted by the Sixth Directive must be viewed in the light of its objective, and that all services involved in the provision of the public postal service may qualify for exemption, even if the firms concerned are in the private sector, provided that the latter are bound by a legal obligation to assist the public service.

This line of reasoning was not endorsed by the Commission, which is opposed to such broad interpretation of exemptions; like any other firm which is exempted, the public postal service must bear VAT on the inputs relating to its exempt activities.

The argument used by the Member State in question is also not devoid of impact on the determination of the basis for calculating the Communities' own resources, which would suffer a reduction in this particular case.

The Commission has initiated the infringement procedure of Article 169 of the EEC Treaty in respect of the Member State in question.

b) Exemption concerning hospital and medical care undertaken by bodies governed by public law or by similar establishments (Article 13(A)(1)(b))

While the application of the exemption is relatively straightforward as regards public or semi-public hospitals, it is not so clear as regards other hospitals, centres for medical treatment or diagnosis, and other establishments of a similar nature. The latter may benefit from the exemption provided that they are duly recognized and that they supply their services "under social conditions comparable to those applicable" in the public sector. The real difficulty lies in drawing the line between establishments fulfilling these conditions

and other establishments. It is true that under the transitional provisions (Article 28(3)(b) and Annex F, point 10, of the Directive) Member States may continue to exempt establishments which do not fulfil the conditions of Article 13(A)(1)(b). Nevertheless, the difficulty remains as regards calculation of the Communities' own resources as the application by Member States of an exemption extended in this way must give rise to financial compensation in respect of transactions which would not normally be covered by the exemption provided for in Article 13(A)(1)(b).

The VAT Committee's discussions on this point have not, unfortunately, brought things any further forward.

c) Exemption for the provision of medical care in the exercise of the medical and paramedical professions (Article 13(A)(1)(c)

The legislation of one Member State extends exemption to supplies of goods by members of the medical and paramedical professions in connection with their services: for example, supplies of pairs of spectacles under a medical prescription.

In the Commission's opinion, this stretches the interpretation of the text of the Directive, with direct repercussions on the Communities' own resources. The Commission has accordingly initiated the procedure of Article 169 of the EEC Treaty in respect of that Member State.

d) Exemption concerning supplies by non-profit-making organizations with aims of a political, trade-union, etc. nature (Article 13(A)(1)(l))

The question has arisen as to the exact scope of this exemption, because there are certain differences between the several language versions of the text. Some language versions use the word "syndicat" or equivalent, which has a range of meanings, whereas others use the very specific term "trade union" or equivalent.

The Commission is of the opinion that these differences should have no practical consequences as regards non-profit-making organizations (whether professional, employers' or employees' organizations) which limit their activities to representing the collective interests of their members. In such a case, these organizations are in fact acting as the collective voice of their members, and the subscriptions paid by the latter are for membership of a collective organization, and do not represent a consideration for services rendered. Such organizations should therefore fall outside the scope of VAT.

Organizations which do not limit their activities to the collective representation of their members may become liable for the tax if the subscriptions they receive actually represent a consideration for individually identifiable services provided to their members.

The Commission's view on this matter has been confirmed by the Court of Justice in Cases 154/80 and 89/81. In Case 89/81, the Court stated that: "where a person's activity consists exclusively in providing services for no direct consideration, there is no basis of assessment and the free services in question are therefore not subject to value added tax." In Case 154/80, the Court declared that in order to decide whether servides provided had been remunerated, such remuneration must be capable of being expressed as a specific amount of money.

It is against this background that it is necessary to determine the scope of the exemption instituted by Article 13(A)(1)(l) of the Sixth Directive and, consequently, to draw conclusions from the differences in the language versions referred to above.

In the context of the analysis set out above, the Commission considers that the impact of such differences must be minimal since it could concern only services rendered to their members by trade associations or employers' organizations which:

1. fall within the scope of the tax;
2. receive subscriptions set by their own rules which may be regarded as the consideration for such services.

e) Exemptions concerning "certain services closely linked to sport" (Article 13(A)(1)(m)) and "certain cultural services" (Article 13(A)(1)(n))

The extremely vague wording of these two categories of exemption is not only puzzling to the teader but also, more importantly, leads to difficulties of implementation which are not without effect on the determination of the basis for calculating the Communities' own resources.

It seems paradoxical to introduce cases of compulsory exemption and leave the substance to the discretion of each Member State. There is however no doubt that in adopting the text of these provisions the Council considered that the Member States should grant only limited exemptions in the two areas of sporting and cultural activities, for otherwise there would have been no reason to use the adjective "certain". The Commission considers that it is expecially necessary to achieve genuine harmonization in these areas as Member States may continue, during the transitional period, to tax those services which should be exempt: confusion is therefore complete, since the substance of such services has not been determined.

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C. Difficulties concerning certain exemptions under Article 13(B)

Difficulties arise in three areas under this head: gold coins; the services provided by certain financial organizations which issue "payment cards"; and gambling.

a) Gold coins

According to Article 13(B)(d)(4), the exemption for transactions concerning coins used as legal tender does not apply to collectors' items, that is to say gold coins which are not normally used as legal tender or coins of numismatic interest.

This very broad definition of collectors' coins should apparently make it possible to tax gold coins which are not of obvious numismatic interest and which are acquired more as a form of investment. It should be noted in this respect that gold sold in the form of ingots, bars, etc. by a taxable person (other than a central bank) in the course of his business is also subject to VAT.

A problem of interpretation has arisen in connection with the transitional measures; namely Article 28(3)(b) of the Directive, which in conjunction with point 26 of Annex F, allows Member States to continue, as a transitional measure, to exempt "transactions concerning gold other than gold for industrial use". Two questions have arisen: first, whether this concept of non-industrial gold could also cover gold coins which are not normally used as legal tender (if not, the scheme of immediate taxation would apply); and secondly, assuming the first question is answered in the affirmative, what criteria a Member State exercising the option in Article 28 could use to maintain exemption during the transitional period.

With regard to the first question, the VAT Committee came out in favour of applying the option of exemption during the transitional period to gold coins. However, the Committee did not reach a

consensus on the uniform application of this transitional exemption (by agreeing, for example, that a Member State which opts to maintain the exemption for gold coins should exempt any gold coin as soon as it is quoted on one of the markets of the Member States).

The view which prevailed was that the Directive allowed gold coins to be exempted only if they were already exempt when it entered into force, which implicitly confirms the absence of a uniform scheme during the transitional period. The resulting situation not only creates a serious risk of distortion of competition and deflection of trade in a sector as sensitive and important as the gold market, but also causes difficulties in determining Member States' contributions to the Communities' own resources.

However, the Commission notes that the situation is levelling out, since France and Luxembourg are now the only countries which maintain exemptions in this sector.

b) Payment cards

A problem of interpretation has arisen with reference to "travel and entertainment cards", which enable their holders to purchase goods and services without having to pay cash at the time of purchase. These cards are issued, against payment of a fixed annual subscription, by financial organizations which undertake to pay the suppliers of the goods or services the amount they are owed (after deducting an amount representing the issuing organization's remuneration), the card-holder being required to pay his debt to the issuing organization upon receiving a statement of his account.

This relatively complex situation, involving two distinct relationships, one between the issuer of the card and its holder, and the other between the issuer and the suppliers of goods and services, is not explicitly covered in the Sixth Directive. The tax arrangements applicable to it therefore depend on the interpretation, narrow or broad, of the rules in the Directive.

The VAT Committee, to which the matter was referred, considered unanimously that the service provided by the issuer of the card to its holder constituted a payment facility and therefore fell within the exemptions in Article 13(B)(d). The situation is less clear as regards the arrangements to be applied to the transaction between the issuing organization and the supplies of goods and services. Some Member States are inclined to see the transaction as a type of (taxable) advertising which the issuing organization performs for the benefit of the suppliers, in the form of business promotion and customer search activities. A majority of Member States, on the other hand, together with the Commission, consider that this transaction is also covered by the exemptions in Article 13(B)(d).

The Commission notes that discussions in the VAT Committee have produced a broad majority view in favour of the latter interpretation, and it intends to continue its efforts to eliminate the disparities.

c) Gambling

Under Article 13(B)(f), Member States must exempt "betting, lotteries and other forms of gambling, subject to conditions and limitations laid down by each Member State". The wording of this provision merely confirms the existing position, largely justified by the difficulty, both theoretical and practical, of determining the turnover of the activities in question, which are generally more suited to the application of specific taxes than to VAT. However, the Directive clearly states that the scope of this exemption may be reduced by each Member State, which leaves open the possibility of divergences within the Community. Symptomatic divergences have emerged in particular in respect of one-armed bandits. Some Member States stress the gambling aspect of these machines (which in principle implies their exemption from VAT), while others consider that their gaming

aspect does not exclude a certain degree of mechanical and mental dexterity, at least sufficient for them to be considered as more than simply gambling machines, and therefore exclude them from the exemption.

The Commission notes that discussions in the VAT Committee have produced abroad majority in favour of the latter viewpoint and it intends to continue its efforts to eliminate divergences in this area.

The procedure of Article 169 of the EEC Treaty has been initiated in respect of one Member State which, in the Commissions' view, is applying the exemption broadly to all mechanical games.

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D. Difficulties concerning certain exemptions under Articles 14 and 15

a) Difficulty concerning exemption under Article 14: re-importation of property which has undergone work outside the country of origin

The provision referred to here is Article 14(1)(f), concerning exemption for the re-importation of movable property "where that property has while in another Member State undergone work which has been taxed without the right to deduction or refund".

Some Member States have found this exemption unnecessary on the grounds that it duplicates the exemption provided for in Article 14(1)(e) concerning the "re-importation ..... of goods in the state in which they were exported, where they qualify for exemption from customs duties or would qualify therefore if they were imported from a third country".

The Commission considers that the respective wording of sub-paragraphs (e) and (f) does not admit of such a conclusion, which would indeed run counter to the objectives, namely to prevent double taxation within the Community.

Admittedly, the risk of double taxation is designed to be prevented by Article 15(3), which exempts as a quasi-export "work on movable property acquired or imported for the purpose of undergoing such work ..... and dispatched ..... by the person providing the services or by his customer who is not established within the territory of the country".

However, there remains a risk of double taxation in the case of property which has been imported temporarily and subsequently undergone work within the meaning of Article 15(3), without this being the intention of the importer at the time of importation.

In such a case, the work must be taxed in the country where it is carried out and the property must be exempted when re-imported into the country of consignment. This exemption is set out in Article 14(1)(f) as regards the re-importation of property which has undergone work that has been definitively taxed in the country where the work was carried out. This exemption is useful in practice

for private individuals and taxable persons with exempt activities, and must ultimately be regarded as a tax exemption granted to private individuals within the Community that offers the threefold advantage of eliminating double taxation, non-taxation and certain tax formalities at internal frontiers.

By contrast, when the goods are re-imported by a person liable for VAT who is entitled to a deduction or refund in respect of the work carried out on the goods, exemption can only be granted, if at all, on the basis of Article 14(1)(e). That provision covers any re-importation of goods in an unaltered state, under the same conditions as those laid down for exemption from customs duties. Exemption from customs duties, currently governed by Council Regulation (EEC) No 754/65 (1), is granted only for certain types of work explicitly enumerated (treatment necessary to maintain the goods in good condition, repairs and restoration to good condition), and only if the work has not resulted in an increase in the value of the goods at the time of exportation.

It is thus perfectly clear to the Commission that each of these provisions (Articles 14(1)(f) and 14(1)(e)) applies in a distinct set of circumstances, and accordingly that Member States cannot claim to be applying the one on the grounds that their legislation is in conformity with the other.

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(1) OJ L 89, 2.4.1976.

b) Difficulty concerning exemption under Article 15: inclusion of vessels intended for breaking up

The combined provisions of Article 14(1)(a), Articles 15(4)(a) and (b) and Article 15(5) permit the tax-free supply and importation of sea-going vessels intended for a particular activity. The benefit of the exemption is granted only if two conditions are met:

- the vessels must be sea-going;
- such vessels must be intended for one of the activities expressly listed in Article 15(4)(a) or (b).

Consequently, the supply or importation of a vessel for breaking up cannot qualify for the exemption provided for in Article 15(5), if that paragraph is interpreted narrowly.

On the other hand, it should be noted that if the vessel is imported from a non-Community country, it may qualify for exemption from customs duties only if it is for breaking up (Heading No 89.04 of the CCT).

However, the exemption from customs duties granted on the importation of vessels for breaking up is based on certain economic considerations concerning the activities of shipyards that do not carry the same weight in respect of VAT, as the ship-breaker may deduct the amount of tax paid (although the financing charges, which might make his activity less profitable, must not be forgotten).

The VAT Committee, at the request of the representative of a Member State, studied all aspects of the tax treatment applied in the Member States to the purchase or importation of such vessels, and it was found that most Member States grant an exemption, either under a broad interpretation of Article 15 or under other provisions of the Directive.

That study also revealed that the intention of the legislator,at the time the Sixth Directive was adopted, was to permit exemption, even if that was not clearly expressed in the texts. For that reason it would be advisable to remove the ambiguities by amending Article 15(5), and thus ensure that this exemption is applied uniformly in all the Member States.

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E. Questions of interpretation concerning the scope of the right to deduct (Article 17) and the calculation of the deductible proportion (Article 19)

A number of difficulties concerning the arrangements for deducting input tax have arisen in connection with banks and financial institutions.

Considering that the majority of transactions effected in this sector are covered by the exemptions in Article 13(B)(d), the scope for deducting input tax is of necessity limited by application of the general rule that input tax is deductible only in so far as the goods and services are used for the purposes of transactions which are effectively taxable (Article 17(2)).

It has however been found that in several Member States certain administrative practices have come into being, based on an interpretation which deviates to some extent from the letter, if not the spirit, of the Directive, and in particular from the provisions of Article 19 concerning the calculation of the deductible proportion.

These practices tend to substitute the concept of gross margin for that of turnover in the denominator of the fraction expressing the deductible proportion, which leads to an increase in the right to deduct for the firms concerned.

This question came up in the VAT Committee in connection with credit transactions, exchange transactions and dealings in securities. At the present stage in the discussions it has not yet been possible to obtain unanimous agreement; however an almost unanimous consensus has emerged in favour of excluding the concept of gross margin in respect of interest.

On the other hand, the concept of gross margin has found some favour as regards dealings in securities and exchange transactions. As regards dealings in securities, the Committee was virtually unanimous that gross margin alone should be taken into account, even if the bank was acting in its own name. A majority held the same view as regards exchange transactions.

An overall solution to this tricky problem is therefore emerging which should improve the neutrality of tax conditions affecting competition in the banking sector.

PART III

PROBLEMS HELD OVER BY THE SIXTH DIRECTIVE

Since the Sixth Directive merely marks a further stage in the tax harmonization process, it was inevitable that a number of questions should be left in abeyance, with the Council confining itself to asking the Commission to present the necessary proposals, some by a specified deadline, others with no timelimit. It is on the basis of these time considerations that the Commission presents its progress report on the work which has been or is to be carried out in connection with :

1. Articles 14, 15 and 16 concerning exemptions on importation, exemption of exports and exemptions linked to international goods traffic;

2. Article 17(4) concerning the refund of VAT to taxable persons not established in the territory of the country;

3. Article 17(6) concerning non-eligibility for deduction of the tax charged on certain expenditure;

4. Article 28(5) concerning passenger transport;

5. Article 32 concerning the special scheme for second hand goods;

6. the prevention of tax evasion and avoidance.

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CHAPTER I

1. Exemptions in respect of imports, exports and international goods traffic (Articles 14, 15 and 16 of the Sixth Directive) for which the rules have still to be harmonized

Under a number of Articles in the Sixth Directive (Articles 14(2), 15(4), 15(10) and 16(3) the Council committed itself to laying down, on a proposal from the Commission, Community tax rules clarifying the scope and detailed rules for implementation of the exemptions granted in international trade.

These commitments, which were not given in the case of exemptions from VAT within the territory of the country, are due to a number of reasons:

- trade with non-Community countries: there was a need to supplement Community customs legislation with tax provisions which were sufficiently precise and as close as possible to the customs provisions. For administrative purposes, the various rules applicable to one and the same transaction under different headings (customs and taxes, but also agriculture and statistics) must obviously be mutually consistent. However, given the different requirements, objectives and structure of each regime, basing the rules for applying VAT purely and simply on the customs rules could not be envisaged as a permanent solution and the approach adopted in the Sixth Directive should only be regarded as a temporary measure. Consequently, there must be a body of Community tax law alongside Community customs legislation, with the rules being in some cases less precise and in some cases simply referring back to the customs rules, but in any case taking account of the requirements of tax harmonization;

- intra-Community trade: Community rules must be designed to simplify to the utmost the rules currently in force, most of which date from the period before the common market was established. The proposals which the Commission is required to present to the Council must therefore simplify as far as possible the procedures and formalities applicable for tax purposes within the Community, in line with one of the goals of tax harmonization, namely the creation of a genuine internal market.

A. Proposals now before the Council

Three proposals have already been presented to the Council. The first two concern trade between non-Community countries and Member States, while the third applies only to intra-Community trade.

(a) The purpose of the proposal for a Directive presented by the Commission on 23 January 1980[1] is to establish the Community procedure applicable to tax exemptions for the stores of international means of transport (aircraft, vessels and trains). The principle of such exemption is already laid down in the Sixth Directive; the aim of the proposal is to establish the implementing arrangements for such exemption and to define its scope precisely. In addition, with a view to simplifying the tax rules applicable to one and the same transaction and achieving genuine harmonization, the proposed procedure covers both VAT and excise duties and is similar to the procedure proposed for customs duties,[2] which has been under discussion by the Council for a number of years.

(b) The purpose of the proposal for a Directive presented to the Council on 13 June 1980 (3)(4) is to determine the scope of Article 14(1)(d) of the Sixth Directive, which provides for exemption in the case of "final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff or which would qualify therefore if they were imported from a third country", while at the same time giving Member States "the option of not granting exemption where this would be liable to have a serious effect on conditions of competition on the home market". The scope of this proposal is particularly wide, since it covers exemptions as diverse as those granted in respect of the outfits and study requisites of students, the capital goods and stocks of firms transferring their activity from one Member State to another and the exemptions granted on certain goods imported by philanthropic organizations. These are just a few examples taken from a text consisting

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1 OJ No C 31, 8.2.1980, p. 10
2 OJ No C 73, 23.3.1978.
3 OJ No C 171, 11.7.1980, p. 8
4 Directive adopted by the Council on 28/3/1983 (OJ No L 105 of 23/4/83)

of some fifty articles.

As in the case of the stores of international means of transport, and for the same practical administrative reasons, the Commission decided to link as closely as possible the tax procedure and the procedure for customs duty relief laid down in a proposal presented on 14 March 1979. However, the objectives pursued and the problems posed in the two areas (customs duties and taxes) are different, and these differences are inevitably reflected in the drafting of the two texts. While certain custom duty reliefs, granted, for example, because of their negligible economic impact, can be transposed into the tax procedure, others cannot be carbon-copied for fear of distorting the conditions of competition. This is the case with the customs duty reliefs which the Commission proposed should be granted on goods of an educational, scientific and cultural nature, in line with the provisions of international agreements. Any such exemption granted in the tax field,however, could give rise to distortions of competition harmful to Community producers. For the same reasons, the Commission considers that the tax exemptions should be more restrictive than the customs duty reliefs in the case of goods imported by charitable or philanthropic organizations in carrying out their general objectives or for the benefit of handicapped persons.

Moreover, whereas the proposal on customs duty reliefs is confined to imports from non-Community countries, the proposal on tax exemptions deals with both imports from non-Community countries and intra-Community transactions. With regard to intra-Community transactions, the Commission's aim was to simplify checks at internal frontiers by introducing a number of tax exemptions (capital goods and stocks imported by firms transferring their activity from one Member State to another; study requisites imported by students; severely damaged vehicles imported following an accident occuring in a Member State, etc.) or by relaxing the conditions governing the exemptions.

Both this proposal and the customs proposal are hoped to make rapid progress in the Council.

(c) After lengthy discussions with national tax and customs authorities, the Commission presented a proposal for a Regulation concerning the temporary use of goods. [1] The aim of this proposal is to allow the free movement of goods acquired under the general conditions of taxation on the domestic market of a Member State and used temporarily in one or more other Member States, replacing existing procedures by a Community procedure that will ease formalities and thus facilitate the freedom to provide services within the Community.

At present, the movement of goods sent from one Member State for temporary use in one or more other Member States gives rise:

- either to a succession of national formalities (temporary exportation - transit - temporary importation - re-exportation - transit - reimportation),
- or to the use of the ATA procedure introduced by the Customs Convention on the ATA Carnet for the Temporary Admission of Goods, concluded in Brussels in 1961 under the auspices of the Customs Cooperation Council.

This situation gives rise to numerous complaints by users and has been a focus of particular attention by Parliament.

The proposed arrangements comprise two procedures, a standard procedure and a simplified procedure, which may be summarized as follows :

- The standard procedure would apply to all goods which are in free circulation within the meaning of the EEC and ECSC Treaties, have been acquired under normal conditions in the Member State from which they are sent and have not benefited by reason of their exportation from any exemption from turnover taxes or other taxes on consumption.

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[1] OJ No C 227, 8.9.1981, and OJ No C 247, 21.9.1982

So as to allow their movement within the Community, the goods are to be placed under cover of a Community temporary movement carnet issued free of charge by the customs authorities in the Member State of departure, without the lodging of a guarantee, to any person having a permanent establishment in the Member State of departure. The document must accompany the goods and will allow the authorities in the Member State in which goods are temporarily used to keep a check on the conditions under which such use takes place.

The movement arrangements will be terminated as soon as the Community movement carnet has been returned and the goods simultaneously presented to any competent customs office in the Member State of departure.

- The simplified procedure is intended to allow certain goods to be used temporarily within the Community for a period of twelve months with virtually no formalities at intra-Community frontiers. This procedure is to apply to goods to be exhibited or used at an exhibition, trade fair or similar event; to press, radio and television equipment; and to equipment to be used for gainful purposes and accompanying persons who have to travel frequently to other Member States in the course of their gainful activity.

The Commission, as well as the European Parliament and the Economic and Social Committee, attach special importance to the swift adoption of the proposed Regulation which should provide considerable practical facilities for craftsmen, reporters, journalists, exhibitors at fairs etc., who make, in the course of their profession, supplies of services in other Member States. By means of this Regulation, the Commission hopes to introduce facilities in an area where, as a large number of complaints show, many community citizens, particularly in border zones, are presently highly inconvenienced by complex formalities and procedures. The urgency of this matter has also been recognized by the European Council which, at its session at Copenhagen in December 1982, included this particular proposal in the programme of priority measures for the reinforcement of the European internal market.

B. Proposals still to be drawn up

A number of proposals have still to be drawn up pursuant to the Sixth Directive, and these are becoming a matter of increasing urgency.

The proposals will have to take account of the customs rules which form a common legal framwork governing each Community country's relations with countries outside the Community. Uniform application of value added tax to transactions connected with international trade in goods with non-Community countries can help the Community to present itself to such countries as a single entity, operating on a harmonized basis that is not confined to the rules for applying the CCT.

In addition, such harmonization should reinforce the economic interpenetration of Member States by introducing sufficient flexibility into the rules governing formalities at intra-Community frontiers. Such rules should meet the requirements of the collection of own resources and obviate any real distortion of competition, but they will also bring home to economic operators in the Community the reality of the common market, since they will no longer be subject to different tax rules depending on the country with which they are carrying out business.

The proposals to be drawn up relate to three groups or categories of exemptions:

1. Rules governing the temporary admission procedure are called for by Articles 14(2) and 16(3). The temporary admission procedure is bound to be rather complex, in view of the transactions which may be involved during the period of importation of goods covered by it (supplies of goods and services) and in view of the constraints imposed by the provisions of the Sixth Directive concerning the chargeable event, the chargeability of tax and the taxable amount for such goods when they are released from the temporary admission procedure and enter into home use.

   Because of this complexity, the provisions which the Commission departments have drawn up, as part of one and the same exercise, are set out in several legal instruments, so as to deal individually with all the aspects of the procedure and pin down the various problems involved. Two proposals are now before the Council: a proposal for a Directive on the temporary importation of certain means of transport (private cars, pleasure craft, etc.)(1), and a proposal for a Regulation on the movement and use of goods (see under A(c) above), both these proposals being confined to intra-Community trade. Provisions have still to be drawn up on the temporary importation of commercial vehicles irrespective of the country of origin (Member States, non-Community countries); and on the movement and use of goods originating in non-Community countries.

2. Article 26(3) calls for harmonization of the arrangements governing the special exemptions linked to international goods traffic, the intention being that harmonized rules should at the earliest opportunity be laid down for the importation and supply of goods and for the supply of services connected with goods placed under such arrangements, namely the free zone, customs and fiscal warehousing and inward processing regimes. In view of their economic importance, the harmonization of such arrangements is not only desirable but essential if firms are not to enjoy tax advantages in one country which are unjustified as compared with the advantages open to them in other countries.

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(1) Directive adopted by the Council on 28/3/1983 (OJ No. L 105 of 23/4/83)

Special attention should be given to the exemption of imports and supplies of goods intended for a taxable person with a view to being exported in their unaltered state or after processing, and the exemption of supplies of services connected with the activity of regular exporters. Harmonization of the provisions governing such exemptions is all the more necessary as they differ in scope from Member State to Member State.

3. Article 14(2) calls for harmonization of the provisions governing a third group of procedures, namely those connected with the re-importation of goods (Article 14(1)(e) and (f)). The harmonizing provisions will have to cover, amongst other things, car repairs that have had to be carried out abroad and goods returned because the business contract has not been executed. In addition, care must be taken to avoid not only distortions of competition (Article 14(1)(g)), but also the non-taxation or double taxation which may result from the option given to Member States to consider certain transactions specified in Article 11(B)(5) as supplies of goods or services. Such harmonization must be seen in conjunction with the exemption provided for in Article 15(3), which concerns the supply of services consisting of work on movable property that is to be exported.

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CHAPTER II

Refund of VAT to taxable persons not established in the territory of the country (Article 17(4))

Under this provision, the common rules for the refund of value added tax to firms established in a Community country other than that in which the goods or services have been invoiced and taxed are to be laid down in a specific Directive.

The Commission sent the Council its proposal in January 1978, and the Council adopted the Directive on 6 December 1979 (Eighth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes[1]), after endorsement by the Economic and Social Committee and Parliament.

The Member States were to adapt their laws to give effect to the Eighth Directive as from 1 January 1981. Only Italy failed to meet the deadline, but made good the delay with Decree No 793 of 30 December 1981, which had retroactive effect as from 1 January 1981.

By and large, the implementation of this Directive is too recent to allow any critical appraisal of how the system has been operating. However, it has been found that there are a number of discrepancies in the interpretation of the provisions of Article 1, which states that "'a taxable person not established in the territory of the country' shall mean a person ..... who ..... has had in that country neither the seat of his economic activity, nor a fixed establishment from which business transactions are effected ..... and who ..... has supplied no goods or services deemed to have been supplied in that country ....." Work is now in progress in the VAT Committee to reduce these difficulties.

It should be noted that the Eighth Directive applies only to "Community" taxable persons and not to taxable persons established outside the Community. As far as the latter are concerned, the Sixth Directive allows Member States full discretion, including total exclusion from eligibility for refund. During the discussions on the Eighth Directive, this situation was criticized sharply within the various Community

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[1] OJ No L 331, 27.12.1979.

institutions, and the Commission undertook to send the Council as soon as possible a proposal on the refund of VAT to taxable persons not established in Community territory.

The proposal for a Thirteenth Directive which the Commission recently sent the Council fulfills this undertaking (1).

CHAPTER III

Non-deductibility of certain expenditure incurred by firms (Article 17(6))

The right to treat certain categories of expenditure as non-deductible has been allowed since the adoption of the Second Directive of 11 April 1967, Article 11(4) of which provides for the option of excluding from the deduction system goods and services which are "capable of being exclusively or partially used for the private needs of the taxable person or of his staff".

Although the Second Directive was superseded by the Sixth Directive, the grounds for such an exclusion remain, and it is stated in Article 17(6) of the Sixth Directive that the Council, acting on a proposal from the Commission, "shall decide what expenditure shall not be eligible for a deduction of value added tax. Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure .....".

It is against this background that the proposal for a Twelfth Directive (2), which the Commission recently sent the Council, must be seen; it should put an end to present disparities in Member States, by excluding from the right to deduct input tax certain categories of expenditure that do not necessarily have a direct link with the activity of the firm or which, by their nature, cannot be considered to have been incurred exclusively for business purposes, such as expenditure relating to passenger cars, travel expenses, entertainment expenses and expenditure on luxuries.

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(1) OJ No. C 223 of 27.8.82
(2) OJ No. C 37 of 10.2.83

CHAPTER IV

Arrangements applicable to passenger transport (Article 28(5))

Article 28(5), states that at the end of the transitional period passenger transport shall be taxed in the country of departure for that part of the journey taking place within the Community according to the detailed rules of procedure to be laid down by the Council acting on a proposal from the Commission.

During the transitional period, Member States may, pursuant to Article 28(3)(b) and point 17 in Annex F, maintain the exemptions which they applied before the Sixth Directive was adopted.

All the Member States have made very extensive use of the transitional provisions in the case of international air and sea transport, and most of the Member States make use of them in the case of international land transport; some Member States also use them to maintain exemptions for domestic transport.

In this general context, those Member States which at present tax international transport in respect of the part of the journey taking place within their territory (in accordance with the principle laid down in Article 9(2)(b) of the Sixth Directive are paradoxically placed in a difficult position because of the obstacles thus placed in the way of persons wishing to cross their frontiers.

The Commission will in due course present a proposal to bring in the permanent arrangements envisaged for passenger transport.

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CHAPTER V

Special scheme for second-hand goods

In January 1978, the Commission sent the Council a proposal for a Seventh Directive on the harmonization of the laws of the Member States relating to turnover taxes, thus fulfilling its obligations under Article 32 of the Sixth Directive.

The proposal for a Sixth Directive made provision, in respect of works of art, collectors' items and antiques, for a special VAT scheme that would have allowed taxable persons purchasing goods deriving from the final consumption stage with a view to their resale, to exercise a right to deduct a given amount deemed to correspond to the input tax. However, the Council was unable to reach any decision on the matter because of the complexity of the problems involved.

The new proposal for a Directive provides that in the case of works of art and collectors' items and in the case of certain used goods, the taxable amount is to be reduced, so that it will consist of either a fixed percentage of the selling price or the difference between the selling price and the purchase price; in the case of other used goods, such as motor vehicles, the special deduction scheme originally put to the Council in the proposal for a Sixth Directive would apply.

After very careful examination over many meetings and despite all attempts to bridge the differences between the Member States, it has once again proved impossible to reach agreement on the two basic aspects of the proposal for a Directive, namely :

- its scope; and
- the practical implementing arrangements.

The basic question is which goods are to be covered by a special scheme whose aim is to prevent double taxation and to eliminate the distortions of competition which may arise as between sales of new and used goods, or as between sales carried out through commercial channels and those carried out through alternative channels. The Member States are deeply divided on this point : while some are prepared to accept the scope proposed by the Commission, others wish to see a special scheme only for certain categories of goods, and not even the same categories.

With regard to the practical implementing arrangements, some Member States prefer the "tax-from-tax" or "base-from-base" methods of deduction to be applied to all goods included in the special scheme, because these methods are fairer to the taxable person. Other Member States wish to see only the flat-rate system applied, on the grounds that it is more reliable for tax revenue purposes and does not pose the same difficulties of supervision. Other Member States again would be prepared to apply different systems for different types of goods.

The failure to agree on the proposal for a Seventh Directive has serious consequences from the jurisdictional point of view as well as for tax harmonization. This is because, under the second paragraph of Article 32, Member States may not introduce any new special systems or amend their existing special systems in order to alleviate the effects of double taxation of distortion of competition on the national market. Furthermore, only the adoption of a Community system can prevent deflections of trade within the Community and allow the assessment basis of VAT in respect of the Community's own resources to be determined more fairly as between Member States, through identical application of VAT to taxable transactions.

The Commission urges the Council to take a decision soon on this proposal, which was presented more than four years ago and which the Commission has amended to take account of the comments made by Parliament.

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CHAPTER VI

Prevention of tax evasion and avoidance

The Sixth Directive makes reference to tax evasion and avoidance only to justify the need for Member States to apply special measures at national level. These may be either measures which the Directive deliberately excludes from the harmonization process, or measures which fall within the harmonization process, but which derogate from a particular provision of the Directive.

The first category includes measures relating to the conditions for granting the exemptions provided for in Articles 13, 14 and 15, and measures relating to the obligations of persons liable for payment imposed

pursuant to Article 22(8). The second category includes measures under "simplification procedures" introduced pursuant to Article 27.

This situation merely confirms the obvious, that the prevention of tax evasion and avoidance remains primarily the responsibility of the national authorities. However, this does not mean that the Community institutions are indifferent to a question which, in view of budgetary and economic difficulties, is of major importance today. Moreover, Article 35 of the Sixth Directive allows the Community to expand its role in this area, since it provides for the adoption of further Directives to develop the common system of value added tax. A first step in combating tax evasion and avoidance at Community level is the Community framework that has been established for mutual assistance by the tax authorities of the Member States. This was introduced by Council Directive 79/1070/EEC,[1] providing for mutual assistance in the exchange of information for the purposes of the correct assessment of VAT, and by Council Directive 79/1071/EEC,[2] providing for mutual assistance in the recovery of VAT. These two Directives entered into force on 1 January 1981.

The state of progress in implementing these Directives in the Member States is as follows :

Mutual assistance in the exchange of information (Directive 79/1070/EEC)

Belgium :	Article 36 of the Law of 8.8.1980, published in the Moniteur Belge of 15.8.1980
Denmark :	Order No 6 of 2 January 1981
Germany :	Infringement proceedings initiated
France	Article 11 of Law No 81-1179 of 31 December 1981 (JO of 1.1.1982)
Ireland :	Ministerial Regulations, S.I. No 407, 1980
Italy :	Decree No 506 of 5 June 1982 (G.U. 215 of 6.8.1982)
Luxembourg :	Law of 4 June 1981, Recueil de législation A No 36 of 11 June 1981, p. 855

[1] OJ No L 331, 27.12.1979, p. 8

[2] OJ No L 331, 27.12.1979, p. 10

Netherlands : Since the Dutch legislation previously in force already allowed the exchange of information, no new legislative measure was required

United Kingdom : Section 17(2) of the Finance Act 1980.

Mutual assistance in the recovery of VAT (Directive 79/1071/EEC)

Belgium : Articles 76 and 77 of the Law of 8 August 1980, published in the Moniteur Belge of 15.8.1980

Denmark : Law No 589 of 9.12.1980

Germany : Law of 7.8.1981 (BGB1 I p. 807)

France : Article 11 of Law No 81-1179 of 31 December 1981 (JO of 1.1.1982)

Ireland : Ministerial Regulations, S.I. No 406, 1980

Italy : Infringement proceedings initiated

Luxembourg : Law of 4 June 1981, Recueil de législation A No 36 of 11 June 1981, p. 856

Netherlands : Law of 4.6.1981, published in Staatsblad 334.

United Kingdom : Section 17(1) of the Finance Act 1980.

It is still too early to comment on the practical results of these two Directives, since they have not been in force for long. The Commission will endeavour to draw up an initial report in 1983, with the help of the authorities in the Member States. The relevant Working Party has already examined the scope for introducing automatic information exchange in respect of certain transactions. The Commission departments intend to carry this examination further.

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CONCLUSION

In presenting this report, the Commission would stress the particular importance of what it regard as the first review of the implementation of the common system of VAT since the Sixth Directive was adopted.

Any review covers both the positive and the negative aspects and since the body of the report focuses on the difficulties encountered in implementing the Directive, it might at first sight tend to suggest that the concluding assessment must be negative. However, any such view of the question would be arbitrary and wrong, for the difficulties met with are clearly nothing more than flaws identified for purposes of analysis in an overall system that is coherent and which is operating satisfactorily.

Furthermore, as is evident throughout this report, the shortcomings largely stem either from divergences expressly permitted by the Directive (such as the powers, options and derogations analysed in Part I), or from problems deliberately held over (see Part III).

Consequently, it cannot be said that the common system of VAT is not operating properly on the grounds of difficulties that are attributable precisely to an absence of harmonization. On the question of the differences of interpretation examined in Part II, it was found that these can in general be overcome; some of them in fact are merely the result of broad drafting, reflecting to some extent a concern to maintain some degree of "non-harmonization" in particular instances. Wherever possible, the Commission has outlined a practical solution.

The gradual elimination of these divergences (both those "a priori" that are expressly provided for and those "a posteriori" resulting from differing interpretations of the Community rules) is first and foremost a precondition for improving the levying of VAT own resources.

The Commission would point out that the scope and in some cases the nature of the temporary derogations allowed unter Article 28 of the Sixth Directive have necessitated a complex set of corrective measures, some positive and some negative, which considerably increases the administrative burden on Member States and the Commission in the management of own resources.

Furthermore, the differences of interpretation, for which in theory no compensation arrangements are possible, run directly counter to the principle of equity on which the system of the Community's own resources is based.

In between the temporary derogations and the differences of interpretation lies the nebulous area of permitted powers and options, whose real budgetary impact is difficult to measure since it varies over time.

Consequently, the budget function of the common system of VAT makes it imperative that harmonization efforts be pursued on all the points analysed in this report.

The budgetary aspect is not however the only one. Further harmonization of VAT is also a necessary condition for the creation of a true internal market in the Community. The guarantee of free movement of persons and goods within the Community depends entirely upon continuing the process of harmonization of VAT.

There are three types of measures here which appear to have particular political significance in view of the favourable impact they would have on public opinion:

- the simplification of formalities at frontiers;
- an increase in the tax and duty-free allowances granted to travellers;
- elimination of double taxation on used goods imported by private individuals.

With regard to the first point, the Commission has presented a proposal for a fourteenth VAT Directive (1) concerning the deferred payment of tax payable on importation by taxable persons.

The Sixth Directive provides for the taxation of goods at importation in the same way as for supplies of goods within the country. Tax at importation is, in principle, due when goods enter the territory of the country, but Member States have the option, in accordance with Article 23

(1) OJ No. C 201 of 5.8.1982, p. 5

of the Sixth Directive, to defer payment to a latter stage i.e. at the time of the regular return. Four Member States currently exercise this option with different procedures. This situation gives rise to a disparity in the way in which operations are treated for tax purposes in different Member States and runs counter to the development of intra-Community trade. The Commission's proposal provides for an obligatory Community procedure whereby payment of the VAT due at importation for goods coming from another Member State would be deferred to the moment when the taxpayer submits his regular return, at which moment this tax can be deducted from the tax due in respect of the whole of the taxpayer's activities.

This proposal represents an important element in the Commission's campaign to strengthen the internal market with a view to eliminating the obstacles to intra-Community trade (1).

As far as the second point is concerned, the Commission has likewise presented two proposals (2).

As for the last point, the Commission falls back upon the important judgment given by the Court of Justice in Case 15/81 (G. Schul). The Court ruled:

> "Article 95 of the Treaty prohibits Member States from imposing value added tax on the importation of products from other Member States supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation, to the extent to which the residual part of the value added tax paid in the Member State of exportation and still contained in the value of the product when it is imported, is not taken into account."

This judgment gives rise to certain immediate practical consequences, on the one hand for the citizen who wishes to import a used good into one Member State from another and who can now take advantage of the fact that double taxation is prohibited, and on the other for Member States' tax administrations who must now, in accordance with the precedent set by the Court, take account of the VAT paid on used goods in another Member State. Against this background, the Commission is currently studying the need to present a proposal designed to allow the principles laid down by the Court to be applied in practice throughout the Community.

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(1) Communication from the Commission to the Council on strengthening the internal market (Doc. COM(82)399 final)
(2) OJ No. C 114 of 28.4.1983

Lastly, on a more general note, the Commission will initiate or pursue the measures which it feels are necessary in order to improve the transparency and neutrality of the tax under the proper conditions of competition. The measures will be in the following areas:

- uniform interpretation of the Sixth Directive;
- phasing out of the "options" and "permitted powers";
- elimination of the temporary derogations;
- filling in the remaining gaps in the Directive.

The Commission hopes to have the support of all the Community institutions in so doing.

ANNEX I

Notifications given pursuant to Article 27(5)
of the Sixth Directive

ANNEX I

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Germany	27.12.1977	Article 9(2)(b)	Routes between two placed in foreign territory which pass through the territory of the country to be treated in the same way as international transport and vice-versa
	27.12.1977	Article 10(2)	Suspension of the tax for forward transactions carried out on the London futures market
	27.12.1977	Article 28(2) (zero rate)	Suspension of the tax for certain supplies of services by the German railways to railways in neighbouring countries, at frontier stations (e.g. supply of staff or premises)
	27.12.1977	Article 10(2)	Suspension of the tax for certain supplies after importation (e.g. for imported fruit)
	27.12.1977	Article 11(C)(2)	Conversion of foreign securities into DM using the average rate for the month or the day's rate where use is made of the derogation from the general rule of conversion using the latest exchange rate recorded
		Article 17	Flat-rate deductibility of the tax charged on travel expenses
		Article 10(2)	Special scheme under the Franco-German agreement to improve infrastructures on the Rhine
		Article 10(2)	Other similar international agreements

ANNEX I

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Germany (continued)	27.12.1977	Article 16(1)	Non-taxation of certain transactions intended for traders established in a free port who do not have the right to deduct the tax
		Article 11(A)(1)(a)	Flat-rate determination of the taxable amount for foreign passenger transporters
Belgium	23.12.1977	Article 21(1) Article 22(3)(a)	Issuing of the invoice and payment of tax by the customer instead of the supplier
		Article 10(2) Article 11(A)(1)(a)	Payment of the tax at a preceding stage: a) levying of VAT on manufactured tobacco b) door-to-door sales
		Article 22(4) Article 21(1)(a)	Other special methods of payment of the tax: a) sale of entrance tickets b) scheme for betting shops c) payment of the tax by means of fiscal stamps (stockbrokers, artists (painters), etc.)
		Article 11(A)(1)(a)	Tax paid on a flat-rate basis: a) foreign passenger transport undertakings b) commissions granted by the organizers of football pools and the like
		Article 21	The VAT due in respect of certain transactions to be paid at the time of another taxable transaction and calculated on the basis of a flat-rate amount
		Article 4(1) Article 10(2)	Non-payment of the tax at the stage in question: a) door-to-door distributors of printed matter, press correspondents b) recovery material (not subject to the tax)

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5)(OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Belgium (continued)	23.12.1977	Article 10(2)	c) simplified scheme for florists
			d) companies representing authors and composers - payment of the tax by such companies, pre-author stage - company escaping the tax
		Article 10(3)	e) sea fishing: non-taxation of the importation of fish brought ashore on fishing vessels and intended for sale
		Article 10(2)	f) precious stones and pearls: exemption with right of deduction for supplies to dealers in such goods
		- " -	g) special scheme applied to sales involving an intermediate firm
		- " -	h) temporary workers: exemption, subject to certain conditions, of the services which they supply
		Article 10(2) or Article 28(2)	i) suspension of the tax for supplies of boats used for domestic commercial navigation and of associated services, and for the commissions of travel agents in respect of sales of international railway tickets
		Article 11(A)(1)(a)	Minimum taxable amount: a) new- second-hand and ex-demonstration motor vehicles; special scheme for spare parts b) buildings and building work
		Article 11(A)(1)(a)	No adjustment of the taxable amount in the event of the loss of the right to a cash discount

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NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Belgium (continued)	23.12.1977	First indent of Article 11(C)(3)	No adjustment of the taxable amount if the packing is not returned
		Article 11(B)	No adjustment, within certain limits, where the tax on importation proves insufficient
Denmark	21.12.1977		Exemption of the activity of certain categories of enterprises:
		Article 2	a) the sale of dental prostheses etc. by dental laboratories, dentists and dental technicians
		Article 2	b) the sale of certain goods by insurance companies and by banks and savings banks
		Articles 2 and 11	c) stamps dealt in by means of exchange without any payment being made whatever the status of the parties to the contract
		Article 2	d) the distribution by associations of bulletins, trade journals, etc.
		Article 2	e) the sale of catalogues, photocopies, etc. by libraries, museums and the like
		Article 2	f) the sale of account books etc. by banks if the price of such articles does not exceed the purchase price
		Article 2	g) the supply of food and drink by canteens and the like

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NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Denmark (continued)	21.12.1977	Article 2	h) supplies of goods or services by blind persons
		Articles 5(6) and 6(2)	Fixing of flat-rate amounts of tax due in respect of own consumption
		Article 2, Articles 15(4)(a), 15(4)(b) and 15(5), and point 18 in Annex F	Exemption of the supply and hiring out of ships, other than pleasure craft, of not less than 5 gross register tonnes. Same exemption for repairs and equipment and for importation, irrespective of the use to which the ships are to be put, in international or national traffic
		Article 2, Article 15(6) and point 3 in Annex F	Same exemption for aircraft (not notified)
		Article 22(3)(a)	Invoicing and deduction for supplies of goods or services exchanged between taxable persons (barter transactions)
France	23.12.1977	Article 2	Scheme applicable to petroleum and similar products: a) payment of the tax suspended in respect of transactions involving these products carried out prior to their release for home use
		Article 10	b) chargeable event constituted by the release for home use of these products after leaving the refineries and storage facilities
		Article 11(B)(1) and (2)	c) taxable amount at the time of release for home use determined as a standard amount

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NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
France	23.12.1977	Article 2	Scheme applicable to capital goods used by firms exploiting the continental shelf:
			- payment of the tax suspended in respect of the acquisition of equipment
		Article 2	Scheme applicable to imports and resales in an unaltered state of sheepskins with wool on, greasy wool and raw vegetable fibres
			- suspension of VAT
		Article 11	Flat-rate determination of the maximum taxable amounts for imports and supplies of high-value horses
		Articles 2 and 21	Taxation of purchases by non-taxable persons of drinks subject to indirect duties, food preserves, precious pearls, etc.
		Article 11	Taxation of the total amount of transactions carried out by persons who act as intermediaries in the supply of products by non-taxable persons
		Article 11	Option of taking the real current value instead of the price agreed between the parties for supplies of buildings
Ireland	6.3.1979	Article 22(2)	Simplified schemes for retailers
		Article 17(3)	Repayments to foreign taxable persons

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Ireland (continued)	6.3.1979	Article 25(5)	Repayment to unregistered farmers of VAT borne on certain farm buildings and in respect of land drainage and reclamation
		Article 28(2)	Zero-rating for fertilizers, animal feed stuffs and seeds
		Article 4(1)	Exemption from VAT of sales by fisherman of their catch to taxable persons
		Article 12(4) Article 2 of the First VAT Directive	Application of zero and 10% rates to split proportions of the taxable amount for supplies of livestock and immovable goods, bringing the effective rates to 1% for livestock and 3% for immovable goods
		Article 5	Treatment of the supply of food and drink as a supply of services, with consequent application of the 10% rate instead of the zero rate
		Article 6	Treatment of the granting of leases as supplies of property
		Article 12	Imposition of tax at a higher rate on materials in certain circumstances
Italy	28.11.1979	Article 10(2)	Payment of the tax at a preceding stage
		Article 11(A)(1)(a)	Tobacco, matches, periodicals
		Article 21	Payment of the tax in respect of public telephones and urban transport at a single stage (respectively, by the concession holder or the operator of the transport service, even if there is an intermediary between them and the user) on the basis of the price paid by the user

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NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Italy (continued)	28.11.1979	Articles 11 and 17	1. The taxable amount for entertainments, public performances and games (excluding lotteries and betting) is that used for calculating the tax on entertainments 2. Input taxes in respect of the above events are calculated on a flat-rate basis (two-thirds of the tax due)
		Article 6	Transactions such as the transfer etc. of copyright effected by authors or their heirs (except those relating to cinematographic works, architecture and commercial advertising) and the associated supply of services by intermediaries do not constitute supplies of services, since they are excluded from the scope of the VAT Law
		Article 5	Zero-rating of supplies of gold ingots
		Article 10	Payment of the tax suspended in respect of sales of agricultural and fishery products to cooperatives for the purpose of resale for the account of the producers
		Article 6	Certain supplies of services consisting in controlling the quality of products and applying quality control marks are not taxable, since they are excluded from the scope of the VAT Law
		Article 15(5)	Notification of the Italian Government's intention of introducing exemption for the supply of boats intended for demolition (exemption now introduced in Italy)

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Luxembourg	29.12.1977	Articles 8 and 9	Assumption that, unless proof to the contrary is provided by the taxable person, taxable transactions have been carried out within the country
		Article 13(A)(1)(l)	The activities carried out by non-profit-making organizations for the benefit of their members and in return for a subscription are excluded from the scope of the tax (exclusion transformed into exemption by Law of 1979)
		Articles 21(1)(a) and (b)	Tax payable on supplies of goods and services by taxable persons not established within the territory of the country - tax representative
		Article 11(C)(2)	Conversion of foreign currencies into Luxembourg francs at the average rate for the month or at the day's rate where use is made of the derogation allowed to the general rule of conversion using the latest selling rate recorded on the national exchange market
		Article 11	Possibility allowed under the Law to fix flat-rate or minimum taxable amounts for certain taxable transactions
		Article 9(2)(b)	Transport operations where an insignificant part of the transport takes place abroad to be treated as national transport
		Article 24	Possibility, in determining the amount of input and output taxes, of establishing flat-rate amounts for certain categories of taxable persons
		Article 10(2) Article 11(A)(1)(a)	Application of a system of collecting the tax at source in respect of imports and supplies of manufactured tobacco

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NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Luxembourg	29.12.1977	Article 25	Application of the agricultural flat-rate scheme to supplies of goods, including capital goods, used by the taxable person for the purposes of his agricultural undertaking
Netherlands	12.6.1979	Article 6	Special scheme for goods sold at auction
		Article 10(2) Article 11(A)(1)(a)	Application of a system of collecting VAT at source in respect of manufactured tobacco
		Article 10(2) Article 14(1)(h)	Zero-rating of imports and supplies by auction of fish landed by vessels returning from fishing
		Article 22 and possibly Article 24	Methods for flat-rate calculation of VAT receipts on the basis of specified rates
	24.7.1980	Article 10(2)	Deferment of the chargeability of the tax for supplies of goods by foreign suppliers to consignees, until the time when the goods are supplied within the country
		Article 17	Special measures applicable to livestock dealers
		Article 11(A)(3)(b)	Scheme applicable to trading stamps and coupons

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixth Directive	Object of the measure
Netherlands (continued)	24.7.1980	Article 2(1)	1. Application of the tax on forward transactions only to those transactions which result in an actual supply within the meaning of Article 2 of the Sixth Directive 2. Zero-rating of transactions relating to consignments of coffee, up to the time when they leave the warehouse
		Article 11(A)(2)	Exclusion of packing from the taxable amount without the adjustment provided for in the case of non-returnable packing (effective maintenance of the previous system despite the new provisions of the Law introduced in accordance with the Sixth Directive)
United Kingdom	28.12.1977	Article 22 and possibly Article 24	Flat-rate methods of calculating tax receipts on the basis of specified rates
		Article 11(A)(3)(b)	Special arrangements for trading stamps: the issue of trading stamps is considered to involve a promissory discount
		Articles 2 and 28(2)	System under which persons all of whose supplies are zero-rated may be treated as not subject to VAT
		Article 11	Special scheme applicable to intermediaries involved in the sale of cosmetics: calculation of VAT on the basis of the selling price to the consumer
		Articles 2(1) and 6	Zero-rating of "futures" transactions on terminal markets and to the supply of services to market members

ANNEX I

NOTIFICATIONS GIVEN PURSUANT TO ARTICLE 27(5) OF THE SIXTH DIRECTIVE

Member State	Date of notification	Relevant provision of the Sixht Directive	Object of the measure
United Kingdom (continued)	28.12.1977	Articles 6, 11 and 13(B)(b)	Special scheme applicable in respect of long stays in hotels: up to 80 % reduction in the taxable amount

A N N E X I I

(options allowed under Article 13 C)

Table No. 1 - Right of option for taxation of the letting and leasing of immovable property

Table No. 2 - Right of option for taxation of the supply of "old" buildings and of land which has not been built on

Table No. 3 - Right of option for taxation of banking and financial transactions

Table No 1

APPLICATION OF ARTICLE 13C(a) OF THE SIXTH VAT DIRECTIVE

SUMMARY TABLE OF THE RIGHT OF OPTION FOR TAXATION OF THE LETTING AND LEASING OF IMMOVABLE PROPERTY, EXCEPT FOR THE TRANSACTIONS ALREADY EXCLUDED UNDER ARTICLE 13B(b)

Member State	Transactions covered by national legislation	Exercise of the right of option	Status of the lessee	Agreement of the lessee	Prior notification or authorization	Period	Termination	Particular consequences for the optant
GERMANY	Leasing of immovable property (except for the part intended for personal use)	For each transaction, at the discretion of the optant Not applicable to : - small traders exempt from the tax or - flat-rate farmers	Taxable person who will use the immovable property for his undertaking (even for exempt transactions)	Not necessary	Not necessary: the relevant transactions must, however, be recorded separately in the accounts	No limit	Appears possible	Possible adjustment for ten years following first occupation by the optant
DENMARK	Leasing of immovable property intended for business purposes (except for the part intended for personal use)	In respect of each premises	Not to be taken into consideration	Not necessary unless the option is exercised during the lease	Prior notification	For at least two years	Possible	Possible adjustment for ten years following acquisition
FRANCE	Leasing of bare immovable property for business purposes (even if the building comprises premises for residential use)	In respect of each premises or set of premises (the option does not exclude eligibility for the full or partial relief allowed under the scheme for small traders)	Taxable person (even if exempt)	Not necessary	Prior notification	Valid up to the end of the fourth year; subsequently renewable by tacit extension, by five-year periods	Not possible. The option ceases automatically if the use of the premises is changed	The optant obtains, inter alia, an initial credit, provided that he has not been able to deduct input tax (1/10 per calendar year)[1]
IRELAND	Leasing of immovable property	General	Not taken into consideration	Not necessary	Prior authorization of the tax authorities	Until termination	Authorization of the tax authorities subject to the payment of any excess amount as between the repayment obtained and the net tax paid during the period of option (maximum ten years)	
LUXEMBOURG	Leasing of immovable property under a registered leasing contract	In respect of any building or part of a building representing a separate unit which is used entirely or, in the case of mixed use, mainly by a lessee entitled to deduct input tax. The schemes for small traders and flat-rate farmers are not applicable to the transactions in question	Taxable person entitled to deduct tax	Not necessary	Prior authorization of the tax authorities	No limit	Appears possible, particularly if a new leasing contract is concluded	Possible adjustment for ten years after construction or acquisition
NETHERLANDS	Leasing of immovable property other than buildings or parts of buil-	In respect of each item of immovable property. Not applicable to : - small traders exempt from the tax or - flat-rate farmers	Not taken into consideration	Yes	Upon joint application, prior authorization by the tax authorities	No limit	Appears possible, by mutual agreement; the option lapses if there is a change of lessor or lessee	Possible adjustment for ten years after first occupation or acquisition

[1] If the right of option is exercised, there is exemption from pay roll tax.

[2] Irish law does not provide for any adjustment scheme for the tax deducted that has been charged on capital goods.

Table No 2

APPLICATION OF ARTICLES 13 B(g) and (h) OF THE SIXTH VAT DIRECTIVE

SUMMARY TABLE ON THE RIGHT OF OPTION FOR TAXATION OF THE SUPPLY OF "OLD" BUILDINGS AND OF LAND WHICH HAS NOT BEEN BUILT ON

Member State	Transactions covered by national legislation	Exercise of the right of option	Status of the purchaser	Agreement of the purchaser	Prior notification or authorization	Period	Termination	Particular consequences for the optant
GERMANY	In principle, all the transactions coming under this heading (including the transfer of certain rights in rem over immovable property)[1]	In respect of each operation, at the discretion of optant. Not applicable to : - small traders exempt from the tax or - flat-rate farmers	Taxable person who will use the immovable property for his undertaking (even for exempt transactions)	Not necessary	Not necessary: the relevant transactions must, however, be recorded separately in the accounts	n.a.	n.a.	—
LUXEMBOURG	Supplies of immovable goods (including the transfer of certain rights in rem over immovable property)[1]	In respect of any building or part of a building representing a separate unit which is used entirely or, in the case of mixed use,[3] mainly by a purchaser entitled to deduct input tax. the schemes for small traders and flat-rate farmers are not applicable to the transactions in question	Taxable person entitled to deduct the tax	Not necessary	Authorization of the tax authorities before the drawing up of the official record	n.a.	n.a.	For ten years following construction or acquisition subject to tax, non-deduction or partial deduction may be the subject of adjustment (maintenance expenses are excluded from this)
NETHERLANDS	Supplies of immovable property (including the transfer of certain rights in rem over immovable property)[2]	In respect of each item of immovable property. Not applicable to : - small traders exempt from the tax or - flat-rate farmers	Not taken into consideration	Yes	Upon joint application, prior authorization by the tax authorities	n.a.	n.a.	For ten years, as from first occupation or acquisition subject to tax, non-deduction or partial deduction may be the subject of adjustment[4]

(1) The supply of new buildings and of building land is exempt.

(2) In the case of the supply of a building, the exemption applies only as from two years after first occupation.

(3) In this case, the option relates to the entire immovable property. This means that the purchaser or tenant may deduct input tax only proportionally.

(4) The transfer of immovable property is exempt from transfer duty if the supply is subject to VAT and if the supplier:

1. has not used it for business purposes (e.g., in the case of a trader in goods) or
2. has used it for business purposes, but if the person acquiring the property is not entitled to deduct input tax.

Table No 3

APPLICATION OF ARTICLE 13 B(d) OF THE SIXTH VAT DIRECTIVE

SUMMARY TABLE OF THE RIGHT OF OPTION FOR TAXATION OF BANKING AND FINANCIAL TRANSACTIONS

Member State	Transactions covered by national legislation	Exercise of the right of option	Status of the purchaser	Agreement of the purchaser	Prior notification or authorization	Period	Termination	Particular consequences for the optant
GERMANY	Those coverd by Articles 13(B)(d)(1) to (5)	In respect of each transaction at the discretion of the optant - not applicable to small traders exempt from the tax	Taxable person who will use it for his undertaking (even for exempt transactions)	Not necessary	Not necessary: however, the relevant transactions must be recorded separately in the accounts	No limit	n.a.	-
BELGIUM	Payment and encashment transactions	All transactions	Not taken into consideration	Not necessary	Prior notification to be attached to a periodic return	Irrevocable	n.a.	-
FRANCE	Transactions which were effectively subject to the tax on banking and financial activities (TFA, abolished on 1.1.1979)[1], carried out by persons who were or would have been subject to that tax[2]	All transactions	Not taken into consideration. However, the option applies only to transactions between : - bodies governed by the "Chambre syndicale des banques populaires", - "caisses de crédit mutuel" belonging to the "Confédération nat. du crédit mutuel", - "caisses de crédit agricole mutuel".	Not necessary	Prior notification	Irrevocable	n.a. The option becomes null and void if the optant no longer fulfils the conditions laid down (cf. footnote 2)	The optant enjoys a reduced rate for the special annual tax on credit outstanding[3]

(1) This involves a number of transactions covered by Article 13 B(d) including:

- transactions involving accounts and cheques (commissions for keeping an account, closing an account, on certified cheques, etc.);
- transactions involving commercial paper (except collection of discount charges and like payments, etc.);
- credit and guarantee transactions (except in respect of interest and like payments, etc.);
- exchange transactions (except those relating to export financing);
- transactions involving gold coins, carried out by a person subject to TFA;
- the management of special investments funds;
- the issue of luncheon vouchers.

(2) The option is consequently available to banks, financial institutions, stockbrokers, money changers, discount brokers, intermediate brokers and any person engaged principally in transactions connected with banking or financial activities.

(3) This tax replaced TFA on 1.1.1979, to offset the budgetary cost of the abolition of TFA.

A N N E X I I I

List of Judgments of the Court of Justice concerning the application of the Second and Sixth Directives on the common system of VAT

Case No	Subject
111/75	Article 6 of the Second Directive
51/76	Articles 11 and 17 of the Second Directive
126/78	Article 6(2) and point 5 in Annex B of the Second Directive
181/78 and 229/78	Article 4 and point 2 in Annex A of the Second Directive
154/80	Article 8 of the Second Directive
89/81	Article 4 and the first paragraph of Article 11(2) of the Second Directive
222/81	Subparagraph (b) in the first paragraph of Article 8 of the Second Directive
8/81	Article 13B(d)(1) of the Sixth Directive
15/81	Point 2 in Article 2 of the Sixth Directive (and Article 95 of the Treaty)
255/81	Article 13B(a) of the Sixth Directive