COUNCIL DIRECTIVE 98/80/EC

of 12 October 1998

supplementing the common system of value added tax and amending Directive 77/388/EEC — Special scheme for investment gold

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas, under the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment [4] transactions concerning gold are in principle taxable although, on the basis of the transitional derogation provided for in Article 28(3) in conjunction with point 26 of Annex F to the said Directive, Member States may continue to exempt transactions concerning gold other than gold for industrial use; whereas the application by some Member States of that transitional derogation is the cause of a certain distortion of competition;

Wheres gold does not only serve as an input for production but is also acquired for investment purposes; whereas the application of the normal tax rules constitutes a major obstacle to its use for financial investment purposes and therefore justifies the application of a specific tax scheme for investment gold; whereas such a scheme should also enhance the international competitiveness of the Community gold market;

Whereas supplies of gold for investments purposes are similar in nature to other financial investments often exempted from tax under the current rules of the sixth Directive, and therefore exemption from tax appears to be the most appropriate tax treatment for supplies of investment gold;

Whereas the definition of investment gold should only comprise forms and weights of gold of very high purity as traded in the bullion markets and gold coins the value of which primarily reflects its gold price; whereas, in the case of gold coins, for reasons of transparency, a yearly list of qualifying coins should be drawn up providing security for the operators trading in such coins; whereas the legal security of traders demands that coins included in this list be deemed to fulfil the criteria for exemption of this Directive for the whole year for which the list is valid; whereas such list will be without prejudice to the exemption, on a case-by-case basis, of coins, including newly minted coins which are not included in the list but which meet the criteria laid down in this Directive;

Whereas since a tax exemption does, in principle, not allow for the deduction of input tax while tax on the value of the gold may be charged on previous operations, the deduction of such input tax should be allowed in order to guarantee the advantages of the special scheme and to avoid distortions of competition with regard to imported investment gold;

Whereas the possibility of using gold for both industrial and investment purposes requires the possibility for operators to opt for normal taxation where their activity consists either in the producing of investment gold or transformation of any gold into investment gold, or in the wholesale of such gold when they supply in their normal trade gold for industrial purposes;

Whereas the dual use of gold may offer new opportunities for tax fraud and tax evasion that will require effective control measures to be taken by Member States; whereas a common standard of minimum obligations in accounting and documentation to be held by the operators is therefore desirable although, where this information does already exist pursuant to other Community legislation, a Member State may consider these requirements to be met;

Whereas experience has shown that, with regard to most supplies of gold of more than a certain purity the application of a reverse charge mechanism can help to prevent tax fraud while at the same time alleviating the financing charge for the operation; whereas it is justified to allow Member States to use such mechanism; whereas for importation of gold Article 23 of the Sixth Directive allows, in a similar way, that tax is not paid at the moment of importation provided it is mentioned in the declaration pursuant to Article 22(4) of that Directive;

Whereas transactions carried out on a bullion market regulated by a Member State require further simplifications in their tax treatment because of the huge number

[1] OJ C 302, 19. 11. 1992, p. 9.
[2] OJ C 91, 28. 3. 1994, p. 91.
[3] OJ C 161, 14. 6. 1993, p. 25.
[4] OJ L 145, 13. 5. 1977, p. 1. Directive as last amended by Directive 96/95/EC (OJ L 338, 28. 12. 1996, p. 89).

and the speed of such operations; whereas Member States are allowed to disapply the special scheme, to suspend tax collection and to dispense with recording requirements;

Whereas since the new tax scheme will replace existing provisions under Article 12(3)(e) and point 26 of Annex F of the Sixth Directive, these provisions should be deleted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following Article 26b shall be added to Directive 77/388/EEC:

'Article 26b

Special scheme for investment gold

A. *Definition*

For the purposes of this Directive, and without prejudice to other Community provisions: "investment gold" shall mean:

(i) gold, in the form of a bar or a wafer of weights accepted by the bullion markets, of a purity equal to or greater than 995 thousandths, whether or not represented by securities. Member States may exclude from the scheme small bars or wafers of a weight of 1 g or less;

(ii) gold coins which:
- are of a purity equal to or greater than 900 thousandths,
- are minted after 1800,
- are or have been legal tender in the country of origin, and
- are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80 %.

Such coins are not, for the purpose of this Directive, considered to be sold for numismatic interest.

Each Member State shall inform the Commission before 1 July each year, starting in 1999, of the coins meeting these criteria which are traded in that Member State. The Commission shall publish a comprehensive list of these coins in the "C" series of the *Official Journal of the European Communities* before 1 December each year. Coins included in the published list shall be deemed to fulfil these criteria for the whole year for which the list is published.

B. *Special arrangements applicable to investment gold transactions*

Member States shall exempt from value added tax the supply, intra-Community acquisition and importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claim in respect of investment gold, as well as transactions concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold.

Member States shall also exempt services of agents who act in the name and for the account of another when they intervene in the supply of investment gold for their principal.

C. *Option to tax*

Member States shall allow taxable persons who produce investment gold or transform any gold into investment gold as defined in A a right of option for taxation of supplies of investment gold to another taxable person which would otherwise be exempt under B.

Member States may allow taxable persons, who in their trade normally supply gold for industrial purposes, a right of option for taxation of supplies of investment gold as defined in A(i) to another taxable person, which would otherwise be exempt under B. Member States may restrict the scope of this option.

Where the supplier has exercised a right of option for taxation pursuant to the first or second paragraph, Member States shall allow a right of option for taxation for the agent in respect of the services mentioned in the second paragraph of B.

Member States shall specify the details of the use of these options, and shall inform the Commission of the rules of application for the exercise of these options in that Member State.

D. *Right of deduction*

1. Taxable persons shall be entitled to deduct

(a) tax due or paid in respect of investment gold supplied to them by a person who has exercised the right of option under C or supplied to them pursuant to the procedure laid down in G;