COUNCIL DIRECTIVE 95/7/EC

of 10 April 1995

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

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

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

Whereas it is appropriate to include in the taxable amount on importation all ancillary costs arising from the transport of goods to any place of destination in the Community since that place is known at the time the importation is carried out; whereas, as a result, the supplies of services in question enjoy the exemptions provided for in Article 14 (1) (i) of Directive 77/388/EEC;

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

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

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

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

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

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

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

[1] OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 94/76/EC (OJ No L 365, 31. 12. 1994, p. 53).
[2] OJ No L 384, 30. 12. 1992, p. 47.

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

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

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

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

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

Whereas it is necessary to clarify the scope of those provisions of Article 17 (2) (a) of the said Directive that are applicable during the transitional period referred to in Article 28 1;

Whereas it is accordingly necessary to amend Directive 77/388/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended as follows:

1. Article 5 (5) shall be replaced by the following:

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

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

'The incidental expenses referred to above shall also be included in the taxable amount where they result from transport to another place of destination within the territory of the Community if that place is known when the chargeable event occurs.';

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

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

— the traveller is not established within the Community,

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

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

For the purposes of applying the second subparagraph:

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

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

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

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

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

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

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

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

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

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

— the introductory sentence shall be replaced by the following :

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

— (a) shall be deleted,

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

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

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

7. Article 28b shall be amended as follows :

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

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

— the following section shall be added :

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

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

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

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

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

'1. In Article 16 :

— paragraph 1 shall be replaced by the following :

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

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

B. supplies of goods which are intended to be :

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

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

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