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COUNCIL DIRECTIVE 92/111/EEC

of 14 December 1992

amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax

(OJ L 384, 30.12.1992, p. 47)

Corrected by:

►**C1** Corrigendum, OJ L 197, 6.8.1993, p. 57 (92/111/EEC)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas Article 3 of Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of valued added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers [3] sets 1 January 1993 as the date for the entry into force of these provisions in all the Member States;

Whereas in order to facilitate the application of these provisions and to introduce the simplifications needed, it is necessary to supplement the common system of value added tax, as applicable on 1 January 1993, so as to clarify how the tax shall apply to certain operations carried out with third territories and certain operations carried out inside the Community, as well to define the transitional measures between the provisions in force on 31 December 1992 and those which will enter into force as from 1 January 1993;

Whereas in order to guarantee the neutrality of the common system of turnover tax in respect of the origin of goods, the concept of a third territory and the definition of an import must be supplemented;

Whereas certain territories forming part of the Community customs territory are regarded as third territories for the purposes of applying the common system of value added tax; whereas value added tax is therefore applied to trade between the Member States and those territories according to the same principles as apply to any operation between the Community and third countries; whereas it is necessary to ensure that such trade is subject to fiscal provisions equivalent to those which would be applied to operations carried out under the same conditions with territories which are not part of the Community customs territory; whereas as a result of these provisions the Seventeenth Council Directive 85/362/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value added tax on the temporary importation of goods other than means of transport [4], becomes null and void;

Whereas it is necessary to state exactly how the exemptions relating to certain export operations or equivalent operations will be implemented; whereas it is necessary to adapt the other Directives concerned accordingly;

Whereas it is necessary to clarify the definition of the place of taxation of certain operations carried out on board ships, aircraft or trains transporting passengers inside the Community;

Whereas the transitional arrangements for taxation of trade between the Member States must be supplemented to take account both of the Community provisions relating to excise duties and the need to clarify and simplify the detailed rules for the application of the tax of certain

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(1) OJ No C 337, 21. 12. 1992.
(2) Opinion delivered on 24 November 1992 (not yet published in the Official Journal).
(3) OJ No L 376, 31. 12. 1991, p. 1.
(4) OJ No L 192, 24. 7. 1985, p. 20. Directive as last amended by Directive 90/237/EEC (OJ No L 133, 24. 5. 1990, p. 91).

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operations which will be carried out between the Member States as from 1 January 1993;

Whereas Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products [1] lays down particular procedures and obligations in relation to declarations in the case of shipments of such products to another Member State; whereas as a result the methods of applying tax to certain supplies and intra-Community acquisitons of products liable to excise duties can be simplified to the benefit both of the persons liable to pay tax and the competent administrations;

Whereas it is necessary to define the scope of the exemptions referred to in Article 28c of Directive 77/388/EEC [2]; whereas it is also necessary to supplement the provisions concerning the chargeability of the tax and the methods of determining the taxable amount of certain intra-Community operations;

Whereas, for taxable operations in the domestic market linked to intra-Community trade in goods which are carried out during the period laid down in Article 281 of Directive 77/388/EEC by taxable persons not established in the Member State referred to in Article 28b (A) (1) of the said Directive, it is necessary to take simplification measures guaranteeing equivalent treatment in all the Member States; whereas to achieve this, the provisions concerning the taxation system and the person liable to tax in respect of such operations must be harmonized;

Whereas in order to take account of the provisions relating to the person liable to pay tax in the domestic market and to avoid certain forms of tax evasion or avoidance, it is necessary to clarify the Community provisions concerning the repayment to taxable persons not established in the country of the value added tax referred to in Article 17 (3) of Directive 77/388/EEC as amended by Article 28f of the said Directive;

Whereas the abolition as from 1 January 1993 of tax on imports and tax relief on exports for trade between the Member States makes it necessary to have transitional measures in order to ensure the neutrality of the common system of valued added tax and to avoid situations of double-taxation or non-taxation;

Whereas it is therefore necessary to lay down special provisions for cases where a Community procedure, started before 1 January 1993 for the purposes of a supply effected before that date by a taxable person acting as such in respect of goods dispatched or transported to another Member State, is not completed until after 31 December 1992;

Whereas such provisions should also apply to taxable operations carried out before 1 January 1993 to which particular exemptions were applied which as a result delayed the taxable event;

Whereas it is also necessary to lay down special measures for means of transport which, not having been acquired or imported subject to the general domestic tax conditions of a Member State, have benefited, by the application of national measures, from an exemption from tax because of their temporary import from another Member State;

Whereas the application of these transitional measures, both in relation trade between the Member States and to operations with third territories, presupposes supplementing the definition of the operations to be made subject to taxation as from 1 January 1993 and the clarification for such cases of the concepts of the place of taxation, the taxable event and the chargeability of the tax;

Whereas, on account of the current economic situation, the Kingdom of Spain and the Italian Republic have requested that, as a transitional measure, provisions derogating from the principle of immediate deduc-

(1) OJ No L 76, 23. 3. 1992, p. 1.
(2) OJ No L 145, 13. 6. 1977, p. 1. Directive as amended by Directive 92/77/EEC (OJ No L 316, 31. 10. 1992, p. 1.)

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tion laid down in the frist subparagraph of Article 18 (2) of Directive 77/388/EEC be applied; whereas this request should be granted for a period of two years which may not be extended;

Whereas this Directive lays down common provisions for simplifying the treatment of certain intra-Community operations; whereas, in a number of cases, it is for the Member States to determine the conditions for implementing these provisions; whereas certain Member States will not be able to complete the legislative procedure necessary to adapt their legislation on valued added tax within the period laid down; whereas an additional period should therefore be allowed for the implementation of this Directive; whereas a maximum period of twelve months is sufficient for this purpose;

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 3 (4) shall be replaced by the following:

   '4. By way of derogation from paragraph 1, in view of the conventions and treaties which they have concluded respectively with the French Republic and the United Kingdom of Great Britain and Northern Ireland, the Principality of Monaco and the Isle of Man shall not be treated for the purposes of the application of this Directive as third territories.

   Member States shall take the measures necessary to ensure that transactions originating in or intended for:

   — the Principality of Monaco are treated as transactions originating in or intended for the French Republic,
   — the Isle of Man are treated as transactions originating in or intended for the United Kingdom of Great Britain and Northern Ireland.';

2. Article 7 (1) (b) shall be replaced by the following:

   '(b) the entry into the Community of goods from a third territory, other than the goods covered by (a).';

3. in Article 7 (3):

   — in the first subparagraph '(a), (b), (c) and (d)' shall be added after 'Article 16 (1) (B)',
   — the second subparagraph shall be replaced by the following:

     'Similarly, when goods referred to in paragraph 1 (b) are placed, on entry into the Community, under one of the procedures referred to in Article 33a (1) (b) or (c), the place of import shall be the Member State within whose territory this procedure ceases to apply.';

4. Article 8 (1) (c) shall be replaced by the following:

   '(c) in the case of goods supplied on board ships, aircraft or trains during the part of a transport of passengers effected in the Community: at the point of the departure of the transport of passengers.

   For the purposes of applying this provision:

   — "part of a transport of passengers effected in the Community" shall mean the part of the transport effected, without a stop in a third territory, between the point of departure and the point of arrival of the transport of passengers,
   — "the point of departure of the transport of passengers" shall mean the first point of passenger embarkation foreseen within the Community, where relevant after a leg outside the Community,
   — "the point of arrival of the transport of passengers" shall mean the last point of disembarkation of passengers fore-

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seen within the Community of passengers who embarked in the Community, where relevant before a leg outside the Community.

In the case of a return trip, the return leg shall be considered to be a separate transport.

The Commission shall, by 30 June 1993 at the latest, submit to the Council a report accompanied, if necessary, by appropriate proposals on the place of taxation of goods supplied for consumption and services, including restaurant services, provided for passengers on board ships, aircraft or trains.

By 31 December 1993, after consulting the European Parliament, the Council shall take a unanimous decision on the Commission proposal.

Until 31 December 1993, Member States may exempt or continue to exempt goods supplied for consumption on board whose place of taxation is determined in accordance with the above provisions, with the right to deduct the value added tax paid at an earlier stage.';

5. Article 11 (B) (1) shall be replaced by the following:

'1. The taxable amount shall be the value for customs purposes, determined in accordance with the Community provisions in force; this shall also apply for the import of goods referred to in Article 7 (1) (b).';

6. Article 12 (1) (b) shall be replaced by the following:

'(b) in the cases provided for in the second and third subparagraphs of Article 10 (3), the rate applicable shall be that in force at the time when the tax becomes chargeable.';

7. Article 12 (3) (a) shall be replaced by the following:

'3. (a) The standard rate of value added tax shall be fixed by each Member State as a percentage of the taxable amount and shall be the same for the supply of goods and for the supply of services. From 1 January 1993 until 31 December 1996, this percentage may not be less than 15 %.

On the basis of the report on the operation of the transitional arrangements and proposals on the definitive arrangements to be submitted by the Commission pursuant to Article 281, the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate to be applied after 31 December 1996 with regard to the standard rate.

Member States may also apply either one or two reduced rates. These rates shall be fixed as a percentage of the taxable amount which may not be less than 5 % and shall apply only to supplies of the categories of goods and services specified in Annex H.';

8. in Article 14 (1):

— (c) shall be deleted,

— the following shall be added to (d):

'This exemption shall also apply to the import of goods, within the meaning of Article 7 (1) (b), which would be capable of benefiting from the exemption set out above if they had been imported within the meaning of Article 7 (1) (a).';

9. in Article 15:

— the following subparagraphs shall be added to (2):

'The Commission shall submit to the Council as soon as possible proposals to establish Community fiscal rules specifying the scope of and pratical arrangements for implementing this exemption for supplies made at the retail stage of goods to