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SECOND COUNCIL DIRECTIVE

of 11 April 1967

on the harmonisation of legislation of Member States concerning turnover taxes Structure and procedures for application of the common system of value added tax

(67/228/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof;

Having regard to the First Council Directive of 11 April 1967[1] on the harmonisation of legislation of Member States concerning turnover taxes;

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 replacement of the turnover taxes in force in Member States by a common system of value added tax is intended as a means of attaining the objectives set out in the First Directive;

Whereas, until the abolition of the imposition of tax on importation and the remission of tax on exportation, it is possible to grant Member States substantial autonomy in determining the rate or differential rates of tax;

Whereas it is also possible to accept on a transitional basis certain differences in the procedure for applying the tax in Member States; whereas it is, however, necessary to make provision for appropriate procedures to ensure neutrality in competition between Member States and to restrict progressively or to abolish the differences in question, so that national systems of value added tax may be brought into alignment, thereby preparing the way for the attainment of the objective set out in Article 4 of the First Directive;

Whereas, in order to enable the system to be applied in a simple and neutral manner, and to keep the standard rate of tax within reasonable limits, it is necessary to limit special systems and exceptional measures;

Whereas the system of value added tax makes it possible, where appropriate, for social and economic reasons, to effect reductions or increases in the tax burden on certain goods and services by means of a differentiation in the rates, but the introduction of zero rates gives rise to difficulties, so that it is highly desirable to limit strictly the number of exemptions and to make the reductions considered necessary by applying reduced rates which are high enough to permit in normal circumstances the deduction of the tax paid at the preceding stage, which moreover achieves in general the same result as that at present obtained by the application of exemptions in cumulative multistage systems;

Whereas it has proved possible to leave Member States themselves to make rules concerning the numerous services whose cost has no influence on the prices of goods, and the systems to be applied in the case of small undertakings, subject, as regards the latter, to prior consultation;

Whereas it has proved necessary to provide for special systems for the application of the value added tax to the agricultural sector and to request the Commission to submit to the Council, as soon as possible proposals to this effect;

Whereas it is necessary to provide for a rather large number of special provisions covering interpretation, derogations and certain detailed application procedures, and to establish a list of the services com-

[1] OJ No 71, 14.4.1967, p. 1301.

pulsorily subject to the common system; and whereas these provisions and this list should appear in the Annexes forming an integral part of this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall introduce, in accordance with a common system, a tax on turnover (hereinafter called 'value added tax').

The structure of, and procedures for applying this tax shall be established by Member States in accordance with the provisions of the following Articles and of Annexes A and B.

Article 2

The following shall be subject to the value added tax:

(a) The supply of goods and the provision of services within the territory of the country by a taxable person against payment;

(b) the importation of goods.

Article 3

'Territory of the country' means the territory in which the State concerned applies the value added tax; this territory shall, as a general rule, include the whole of the national territory, including territorial waters.

Article 4

'Taxable person' means any person who independently and habitually engages in transactions pertaining to the activities of producers, traders or persons providing services, whether or not for gain.

Article 5

1. 'Supply of goods' means the transfer of the right to dispose of tangible property as owner.

2. The following shall also be considered as supply within the meaning of paragraph 1:

(a) the actual handing over of goods, under a contract which provides for the hiring of goods for a certain period, or the sale on deferred terms of goods, in both cases subject to a clause to the effect that ownership shall pass at the latest upon payment of the final instalment due;

(b) the transfer, by order of a public authority, of ownership in goods against payment of compensation;

(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale;

(d) the delivery of moveable property produced under a contract for work, that is to say the handing over by a contractor to his customer of moveable property which he has made from materials and objects entrusted to him by the customer for this purpose, whether or not the contractor has provided a part of the products used;

(e) the delivery up of works of construction, including those in which moveable property is incorporated in immoveable property.

3. The following shall be treated as supply against payment:

(a) the appropriation by a taxable person, from his undertaking, of goods which he applies to his own private use or transfers free of charge;

(b) the use for the needs of his undertaking, by a taxable person, of goods produced or extracted by him or by another person on his behalf.

4. The place of supply shall be deemed as being:

(a) in cases where the goods are dispatched or transported either by the supplier or by the consignee, or by a third person: the place where the goods were at the time when the dispatch or transport to the consignee began;

(b) in cases where the goods are not dispatched or transported: the place where the goods were at the time of supply.

5. The chargeable event shall occur at the moment when delivery is effected. In the case, however, of supply involving payments on account before delivery, it may be provided that the chargeable event shall already have occurred at the moment of issue of the invoice or, at the latest, at the moment of receipt of the payment, in respect of the whole of the amount invoiced or received.

Article 6

1. 'Provision of services' means any transaction which does not constitute a supply of goods within the meaning of Article 5.

2. The rules laid down in this Directive as regards the taxation of the provision of services shall be compulsorily applicable only to services listed in Annex B.

3. The place of the provision of service shall, as a general rule, be regarded as being the place where the services provided, the right transferred or granted, or the object hired, is used or enjoyed.

4. The chargeable event shall occur at the moment when the service is provided. In the case, however, of the provision of services of indeterminate length or exceeding a certain period or involving payments on account, it may be provided that the chargeable event shall already have occurred at the moment of issue of the invoice or, at the latest, at the moment of the receipt of the payment on account, in respect of the whole of the amount invoiced or received.

Article 7

1. 'Importation of goods' means the entry of such goods into the 'territory of the country' within the meaning of Article 3.

2. At importation, the chargeable event shall occur at the time of such entry. Member States may, however, link the chargeable event and the date when payment of value added tax falls due with the chargeable event and the date when payment of customs duties or other import taxes, charges and levies falls due.

The same link may be established, as regards the chargeable event and the date when payment of value added tax falls due, in respect of the supply of imported goods placed under a system of suspension of customs duties or other taxes, charges or levies.

Article 8

The basis of assessment shall be:

(a) in the case of supply of goods and of the provision of services, everything which makes up the consideration for the supply of the goods or the provision of services, including all expenses and taxes except the value added tax itself;

(b) in the case of the transactions referred to in Article 5 (3) (a) and (b), the purchase price of the goods or of like goods or, if there is no purchase price, the cost price;

(c) in the case of importation of goods, the customs value, plus all duties, taxes, charges and levies due by reason of importation, except the value added tax itself. The same basis of assessment shall apply when the goods are exempt from customs duties or are not subject to *ad valorem* customs duties.

In the case of importation of goods, each Member State may add to the basis of assessment the incidental expenses (packing, transport, insurance, etc.) arising up to the place of destination which have not been included in that basis.

Article 9

1. The standard rate of value added tax shall be fixed by each Member State at a percentage of the basis of assessment which shall be the same for the supply of goods and for the provision of services.

2. In certain cases, the supply of goods and the provision of services may, however, be subject to increased rates or to reduced rates. Each reduced rate shall be determined in such a manner that the amount of value added tax resulting from the application of this rate shall normally permit the deduction of the whole of the value added tax which is deductible under Article 11.

3. The rate applicable to importation of goods shall be that which is applied in the territory of the country to the supply of like goods.

Article 10

1. The following shall be exempted from value added tax on conditions laid down by each Member State:

(a) the supply of goods consigned or transported to places outside the territory in which the State concerned applies value added tax;

(b) the provision of services relating to goods covered by (a) or in transit.

2. The provision of services relating to importations of goods may, subject to the consultations mentioned in Article 16, be exempted from value added tax.

3. Each Member State may, subject to the consultations mentioned in Article 16, determine the other exemptions which it considers necessary.

Article 11

1. Where goods and services are used for the purposes of his undertaking, the taxable person shall be authorised to deduct from the tax for which he is liable:

(a) the value added tax invoiced to him in respect of goods supplied to him or in respect of services rendered to him;

(b) the value added tax paid in respect of imported goods;

(c) the value added tax which he has paid in respect of the use of goods referred to in Article 5 (3) (b).

2. Value added tax on goods and services used in non-taxable or exempt transactions shall not be deductible.

The taxable person shall however be authorised to make the deduction if the supply of goods or the provision of services takes place abroad or is exempt under Article 10 (1) or (2).

As regards goods and services which are used both in transactions giving entitlement to deduction and in transactions which do not give entitlement to deduction, deduction shall only be allowed for that part of the value added tax which is proportional to the amount relating to the transactions giving entitlement to deduction *(pro rata rule)*.

3. The deduction shall be made from the value added tax due for the period during which deductible tax is invoiced in the case of paragraph 1 (a) or paid in the case of paragraph 1 (b) and (c) (immediate deductions).

In the case of a partial deduction under paragraph 2 the amount of the deduction shall be provisionally determined in accordance with criteria established by each Member State and finally adjusted after the end of the year when the *pro rata* figure for the year of acquisition has been calculated.

As regards capital goods, the adjustment shall be effected on the basis of the variations of the *pro rata* figure which have occurred during a period of five years including the year during which the goods were acquired; the adjustment shall apply each year to only one-fifth of the tax borne by capital goods.

4. Certain goods and services may be excluded from the deduction system, in particular those capable of being exclusively or partially used for the private needs of the taxable person or of his staff.

Article 12

1. Every taxable person shall keep sufficiently detailed accounts to permit application of the value added tax and inspection by the tax authorities.

2. Every taxable person shall issue an invoice in respect of goods supplied and services provided by him to another taxable person.

3. Every taxable person shall each month lodge a declaration showing, in respect of transactions carried out during the preceding month, all the information required to calculate the tax and the deductions to be made. Every taxable person shall pay the amount of the value added tax when lodging the declaration.

Article 13

Should a Member State consider that, in exceptional cases, special measures should be adopted in order to simplify the charging procedure in respect of the tax or to prevent certain frauds, it shall so inform the Commission and the other Member States.

Should there, within one month, be objections from one or more States or from the Commission, the request for derogation shall be brought before the Council, which shall act on a proposal from the Commission within three months.

Should it appear from the conclusion of the Commission that only a simplification of the charging procedure or a measure designed to prevent fraud is involved, the Council shall act by a qualified majority on the derogation requested.

Should it appear, on the contrary, from those conclusions that the proposed measure might be prejudicial to the very principles of the system introduced by this Directive, and in particular to neutrality in competition between Member States, the Council shall act unanimously.

In either case, the Council shall act in accordance with the same procedure as regards the period of application of such measures.

The State concerned may not apply the proposed measures until the period for entering objections has expired or, where there have been objections, until after the Council's decision, if such decision is favourable.

These provisions shall cease to be applicable when the imposition of tax on importation and the remission of tax on exportation are abolished in trade between Member States.

Article 14

Each Member State may, subject to the consultations mentioned in Article 16, apply to small undertakings