

International VAT Monitor

**Sixth
VAT Directive
2006-2**



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CONTENTS

Sixth VAT Directive	page
Article 1	Entry into Force 1
Article 2	Scope of VAT 1
Article 3	Territory 2
Article 4	Taxable Persons 2
Article 5	Taxable Event (goods) 3
Article 6	Taxable Event (services) 4
Article 7	Taxable Event (imports) 5
Article 8	Place of Supply (goods) 5
Article 9	Place of Supply (services) 7
Article 10	Time of Taxation 10
Article 11	Taxable Amount 11
Article 12	VAT Rates 13
Article 13	Exemptions 14
Article 14	Exemptions on Importation 16
Article 15	Zero Rates 17
Article 16	Warehousing 19
Article 17	Input Tax Deduction 21
Article 18	Input Tax Deduction 22
Article 19	Input Tax Apportionment 23
Article 20	Input Tax Adjustment 23
Article 21	Person Liable for Payment 24
Article 22	Administrative Obligations 25
Article 22a	Article 22bis Administrative Obligations 30
Article 23	Administrative Obligations 31
Article 24	Small Businesses 31
Article 24a	Article 24bis Small Businesses 32
Article 25	Flat-Rate Farmers 32
Article 26	Travel Agents 33
Article 26a	Article 26bis Margin Scheme 34
Article 26b(A)	Article 26ter, A Investment Gold 37
Article 26b(B)	Article 26ter, B 16, 17, 37
Article 26b(C)	Article 26ter, C 16, 37
Article 26b(D)	Article 26ter, D 22, 37
Article 26b(E)	Article 26ter, E 30, 37
Article 26b(F)	Article 26ter, F 24, 38
Article 26b(G)	Article 26ter, G 38
Article 26c	Article 26quater Electronic Services 38
Article 27	Simplifications 39
Article 28	Transition 40
Article 28a(1)	Article 28bis, 1 Taxable Acquisitions 1
Article 28a(1a)	Article 28bis, 1bis Special Customers 1
Article 28a(2)	Article 28bis, 2 New Means of Transport 1
Article 28a(3)	Article 28bis, 3 Intra-Comm. Acquisitions 5
Article 28a(4)	Article 28bis, 4 New Means of Transport 3, 22
Article 28a(5)	Article 28bis, 5 Deemed Supplies 4
Article 28a(6)	Article 28bis, 6 Deemed Acquisitions 5
Article 28a(7)	Article 28bis, 7 5
Article 28b(A)	Article 28ter, A Place of Acquisition 10
Article 28b(B)	Article 28ter, B Distance Selling 6
Article 28b(C)	Article 28ter, C Intra-Comm. Transport 9
Article 28b(D)	Article 28ter, D Ancillary Services 9
Article 28b(E)	Article 28ter, E Intermediaries 9
Article 28b(F)	Article 28ter, F Work on Goods 10
Article 28c(A)	Article 28quater, A Intra-Comm. Supplies 19
Article 28c(B)	Article 28quater, B Exempt Acquisitions 17

CONTENTS

Sixth VAT Directive	page
Article 28c(C)	19
Article 28c(D)	17
Article 28c(E)(1)	19
Article 28c(E)(2)	20
Article 28c(E)(3)	19
Article 28d	11
Article 28e(1)	12
Article 28e(2)	13
Article 28e(3)	14
Article 28e(4)	14
Article 28f(1)	21
Article 28f(2)	22
Article 28f(3)	23
Article 28g	24
Article 28h	25
Article 28i	31
Article 28j(1)	32
Article 28j(2)	33
Article 28j(3)	33
Article 28k	21
Article 28l	42
Article 28m	47
Article 28n	43
Article 28o	44
Article 28p	45
Article 29	46
Article 29a	46
Article 30	47
Article 31	47
Article 32	47
Article 33	47
Article 33a	47
Article 34	48
Article 35	48
Article 36	48
Article 37	48
Article 38	48
ANNEX A	49
ANNEX B	49
ANNEX C	50
ANNEX D	50
ANNEX E	51
ANNEX F	51
ANNEX G	52
ANNEX H	53
ANNEX I	54
ANNEX J	54
ANNEX K	55
ANNEX L	55
Practical information:	
RATES OF CONVERSION (EUA, ECU, euro)	56
THRESHOLDS and TAX RATES	57

CONTENTS

Implementing Regulation	page
Article 2	VAT status of European Economic Interest Groupings (EEIGs) 2
Article 3	Qualification of the granting of options 4, 15
Article 3	Qualification of the assembly of machines 4, 6
Article 4	Place of supply of the organization of funerals 7
Article 5	Place of supply of the assembly of machines 7, 10
Article 6	Place of supply of translation services 7
Article 7	Place of supply of the assignment of television broadcasting rights in respect of football matches 7
Article 8	Place of supply of applying for and receiving Eighth Directive VAT refunds 8
Article 9	Definition of intermediary services 8
Article 10	Definition of means of transport 8
Articles 11 and 12 . .	Definition and non-exhaustive lists of e-services and services not qualifying as e-services (including Annex L) 8, 55
Article 13	Definition of the taxable amount in the case of payments made with credit or debit cards 11
Article 14	Exemption for vocational training and retraining services 14
Article 15	Exclusion of platinum nobles from exemption 15
Article 16	Definition of means of transport for private use 17
Article 17	Calculation of the value of goods exported in the personal luggage of travellers 17
Article 18	Definition of import documents to include electronic versions thereof 22
Article 19	Definition of investment gold 37
Article 20	Explanation of the special scheme for non-EU providers of e-services 39
Article 21	Treatment of supplies made to non-registered entities in excess of the intra-Community acquisition threshold 1
Article 22	Clarification of the distance selling threshold 7

Introduction to Sixth VAT Directive 2006-2

This edition sets out the current text of Directive 77/388/EEC of 17 May 1977 ("the Sixth Directive") as amended by the Directives, Treaties of Accession and Regulations listed on the following pages and, from 1 July 2006, to be interpreted in accordance with Implementing Regulation (EC) No. 1777/2005.

The text of the legal provisions included in this publication is identical to the texts as they were published in the Official Journal of the European Union with the exception of:

- the layout of the Articles;
- headings (including the subheading of the Articles 11, 13, 26a, 26b and 28b) are consistently printed in bold;
- (a)'s, (b)'s etc. preceding subparagraphs are shown as: a., b. etc.;
- where reference is made to the subsections A, B or C of the Articles 11 and 13, the subsection referred to is consistently presented between brackets, e.g. Article 13(B)(d) instead of 13B(d);
- quotation marks are always shown as "...";
- the source of newly introduced Articles and of amendments to existing Articles is indicated in small print between square brackets [...];
- errors in the official texts, other than mistakes of a linguistic nature, have been corrected (e.g. Annex G refers to "the right of option referred to in Article 38(3)(c)", which should be: "the right of option referred to in Article 28(3)(c)").

The historic "European Unit of Account/EUA" (Article 24) and the "European Currency Unit/ECU" (Articles 15, 22, 28a and 28b) have been replaced by the "euro" (EUR). The rates of conversion are presented on page 56. An overview of thresholds and VAT rates is presented on the following page.

The "Transitional arrangements" and the provisions regarding the special scheme for investment gold have been logically grouped together with the corresponding provisions of the "original" Directive. Some Articles have been (partly) reproduced at several places; other Articles (e.g. Article 28e) have been split up.

The Table of Contents also indicates the Latin numbering of the Articles used in the French, Italian, Spanish and Dutch text versions of the Directive.

This user-friendly edition is of course unofficial in nature, but it will hopefully facilitate your daily work in the field of VAT, especially since the subsequent simplification measures have considerably complicated the structure of Community VAT legislation. The editor welcomes any comments which may contribute to improvements in future editions.

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SIXTH COUNCIL DIRECTIVE

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

(77/388/EEC)

(OJ L 145 of 13 June 1977)

as amended by:

NINTH COUNCIL DIRECTIVE (78/583/EEC)

of 26 June 1978

on the harmonization of the laws of the Member States relating to turnover taxes

(OJ L 194 of 19 July 1978)

TREATY OF ACCESSION of Greece of 24 May 1979

(OJ L 291 of 19 November 1979)

ELEVENTH COUNCIL DIRECTIVE (80/368/EEC)

of 26 March 1980

on the harmonization of the laws of the Member States relating to turnover taxes – Exclusion of the French overseas departments from the scope of Directive 77/388/EEC

(OJ L 90 of 3 April 1980)

Member States must comply with this Directive on 1 January 1979.

COUNCIL REGULATION (EEC, Euratom) No. 3308/80

of 16 December 1980

(OJ L 345 of 20 December 1980)

This regulation entered into force on 1 January 1981 and is binding in its entirety and directly applicable in all Member States.

TREATY OF ACCESSION of Spain and Portugal

(OJ L 302 of 15 November 1985)

TENTH COUNCIL DIRECTIVE (84/386/EEC)

of 31 July 1984

on the harmonization of the laws of the Member States relating to turnover taxes, amending Directive 77/388/EEC – Application of value added tax to the hiring out of movable tangible property

(OJ L 208 of 3 August 1984)

Member States must comply with this Directive on 1 July 1985.

EIGHTEENTH COUNCIL DIRECTIVE (89/465/EEC)

of 18 July 1989

on the harmonization of the laws of the Member States relating to turnover taxes – Abolition of certain derogations provided for in Article 28(3) of the Sixth Directive, 77/388/EEC (Annexes D, E, F and G)

(OJ L 226 of 3 August 1989)

Member States must comply with this Directive on respectively 1 January 1990, 1 January 1991, 1 January 1992 and 1 January 1993.

COUNCIL DIRECTIVE (91/680/EEC)

of 16 December 1991

supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers

(OJ L 376 of 31 December 1991)

Member States must comply with this Directive on 1 January 1993.

COUNCIL DIRECTIVE 92/77/EEC

of 19 October 1992

supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates)

(OJ L 316 of 31 October 1992)

Member States must comply with this Directive by 31 December 1992.

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 of 30 December 1992)

Member States must comply with this Directive on 1 January 1993.

COUNCIL DIRECTIVE 94/4/EC

of 14 February 1994

amending Directives 69/169/EEC and 77/388/EEC and increasing the level of allowances for travellers from third countries and the limits on tax-free purchases in intra-Community travel

(OJ L 60 of 3 March 1994)

This Directive entered into force on 3 March 1994; Member States must comply with it on 1 April 1994.

COUNCIL DIRECTIVE 94/5/EC

of 14 February 1994

supplementing the common system of value added tax and amending Directive 77/388/EEC – Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques

(OJ L 60 of 3 March 1994)

Member States must comply with this Directive on 1 January 1995.

COUNCIL DIRECTIVE 94/75/EC

of 22 December 1994

amending Directive 94/4/EC and introducing temporary derogation measures applicable to Austria and to Germany

(OJ L 365 of 31 December 1994)

This Directive entered into force on 1 January 1995.

COUNCIL DIRECTIVE 94/76/EC

of 22 December 1994
amending Directive 77/388/EEC by the introduction of transitional measures applicable, in the context of the enlargement of the European Union on 1 January 1995, as regards value added tax (OJ L 365 of 31 December 1994)

This Directive entered into force on 1 January 1995; Member States must comply with it on 1 January 1995.

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 implementing them (OJ L 102 of 5 May 1995)

This Directive entered into force on 25 May 1995; Member States must comply with it on 1 January 1996.

COUNCIL DIRECTIVE 96/42/EC

of 25 June 1996
amending Directive 77/388/EEC on the common system of value added tax (OJ L 170 of 9 July 1996)

Member States must comply with this Directive on 1 January 1995.

COUNCIL DIRECTIVE 96/95/EC

of 20 December 1996
amending Directive 77/388/EEC on the common system of Value Added Tax (level of the standard rate) (OJ L 338 of 28 December 1996)

Member States must comply with this Directive on 1 January 1997.

COUNCIL REGULATION (EC) No. 1103/97

of 17 June 1997
on certain provisions relating to the introduction of the euro (OJ L 162 of 19 June 1997)

This regulation entered into force on 18 June 1997 and is binding in its entirety and directly applicable in all Member States.

AMSTERDAM TREATY,

signed on 2 October 1997
(OJ C 340 of 10 November 1997)

This treaty has come into effect on 1 May 1999.

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 (OJ L 281 of 17 October 1998)

This Directive entered into force on 17 October 1998; Member States must comply with it on 1 January 2000.

COUNCIL DIRECTIVE 1999/49/EC

of 25 May 1999
amending, with regard to the level of the standard rate, Directive 77/388/EEC on the common system of value added tax (OJ L 139 of 2 June 1999)

This Directive entered into force on 9 June 1999; Member States must comply with it by 1 January 1999.

COUNCIL DIRECTIVE 1999/59/EC

of 17 June 1999
amending Directive 77/388/EEC as regards the value added tax arrangements applicable to telecommunications services (OJ L 162 of 26 June 1999)

This Directive entered into force on 26 June 1999; Member States must comply with it by 1 January 2000.

COUNCIL DIRECTIVE 1999/85/EC

of 22 October 1999
amending Directive 77/388/EEC as regards the possibility of applying on an experiment basis a reduced VAT rate on labour-intensive services (OJ L 277 of 28 October 1999)

This Directive entered into force on 28 October 1999.

COUNCIL DIRECTIVE 2000/17/EC

of 30 March 2000
amending Directive 77/388/EEC on the common system of value added tax – Transitional provisions granted to the Republic of Austria and the Portuguese Republic (OJ L 84 of 5 April 2000)

This Directive entered into force on 5 April 2000; Portugal and Austria must comply with it from 1 January 1999.

COUNCIL DIRECTIVE 2000/65/EC

of 17 October 2000
amending Directive 77/388/EEC as regards the determination of the person liable for payment of value added tax (OJ L 269 of 21 October 2000)

This Directive entered into force on 21 October 2000; Member States must comply with it no later than 31 December 2001.

COUNCIL DIRECTIVE 2001/4/EC

of 19 January 2001
amending the Sixth Directive (77/388/EEC) on the common system of value added tax, with regard to the length of time during which the minimum standard rate is to be applied (OJ L 22/17 of 24 January 2001, and L 26/40 of 27 January 2001)

This Directive entered into force on 27 January 2001; the Directive must apply from 1 January 2001.

COUNCIL DIRECTIVE 2001/115/EC

of 20 December 2001
amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (OJ L 15 of 17 January 2002)

This Directive entered into force on 6 February 2002; Member States must comply with it with effect from 1 January 2004.

COUNCIL DIRECTIVE 2002/38/EC

of 7 May 2002
amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (OJ L 128 of 15 May 2002)

This Directive entered into force on 15 May 2002; Member States must comply with it with effect from 1 July 2003.

Sixth VAT Directive – preamble

COUNCIL DIRECTIVE 2002/93/EC

of 3 December 2002

amending Directive 77/388/EEC to extend the facility allowing Member States to apply reduced rates of VAT to certain labour-intensive services

(OJ L 331 of 7 December 2002 and OJ L 18 of 23 January 2003)

This Directive entered into force on 7 December 2002.

ACCESSION 2004

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, signed on 16 April 2003.

(OJ L 236 of 23 September 2003)

Effective from 1 May 2004.

COUNCIL DIRECTIVE 2003/92/EC

of 7 October 2003

amending Directive 77/388/EEC as regards the rules on the place of supply of gas and electricity

(OJ L 260 of 11 October 2003)

This Directive entered into force on 11 October 2003; Member States must comply with it on 1 January 2005.

COUNCIL DIRECTIVE 2004/7/EC

of 20 January 2004

amending Directive 77/388/EEC concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations

(OJ L 27 of 30 January 2004)

This Directive entered into force on 19 February 2004.

COUNCIL DIRECTIVE 2004/15/EC

of 10 February 2004

amending Directive 77/388/EEC to extend the facility allowing Member States to apply reduced rates of VAT to certain labour-intensive services

(OJ L 52 of 21 February 2004)

This Directive entered into force on 10 February 2004 and applies from 1 January 2004.

COUNCIL DIRECTIVE 2004/66/EC

of 26 April 2004

adapting [...] Council Directive 77/388/EEC [...], in the field of [...] taxation, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia

(OJ L 168 of 1 May 2004)

This Directive entered into force only subject to and on the date of the entry into force of the Treaty of Accession, i.e. on 1 May 2004.

COUNCIL REGULATION (EC) No. 1777/2005

of 17 October 2005

laying down implementing measures for Directive 77/388/EEC on the common system of value added tax

(OJ L 288 of 29 October 2005)

This Directive will enter into force on 1 July 2006. Article 13 is applicable from 1 January 2006.

COUNCIL DIRECTIVE 2005/92/EC

of 12 December 2005

amending Directive 77/388/EEC with regard to the length of time during which the minimum standard rate of VAT is to be applied

(OJ L 345 of 28 December 2005)

This Directive entered into force on 28 December 2005. Member States must comply with it with effect from 1 January 2006.

COUNCIL DIRECTIVE 2006/18/EC

of 14 February 2006

amending Directive 77/388/EEC with regard to reduced rates of value added tax

(OJ L 51 of 22 February 2006)

This Directive entered into force on 22 February 2006 and is applicable from 1 January 2006.

[The preambles to the Directives included in this integrated text are not reproduced here.]

TITLE I**INTRODUCTORY PROVISIONS****Article 1**

Member States shall modify their present value added tax systems in accordance with the following Articles.

They shall adopt the necessary laws, regulations and administrative provisions so that the systems as modified enter into force at the earliest opportunity and by 1 January 1978 at the latest ¹⁾.

¹⁾ Editor's note: Under Article 1 of the Ninth Council Directive, by way of derogation from Article 1 of Directive 77/388/EEC, Denmark, Germany, France, Ireland, Italy, Luxembourg and the Netherlands are authorized to implement the said Directive by 1 January 1979 at the latest.

TITLE II**SCOPE****Article 2**

The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;
2. the importation of goods.

Article 28a(1), (1a) and (2)

[Article 1(22) of Directive 91/680/EEC]

1. The following shall also be subject to value added tax:
 - a. intra-Community acquisitions of goods¹⁾ for consideration within the territory of the country by a taxable person acting as such or by a non-taxable legal person where the vendor is a taxable person acting as such who is not eligible for the tax exemption provided for in Article 24 and who is not covered by the arrangements laid down in the second sentence of Article 8(1)(a) or in Article 28b(B)(1).

By way of derogation from the first subparagraph, intra-Community acquisitions of goods made under the conditions set out in paragraph 1a by a taxable person or non-taxable legal person shall not be subject to value added tax.

Member States shall grant taxable persons and non-taxable legal persons eligible under the second subparagraph the right to opt for the general scheme laid down in the first subparagraph. Member States shall determine the detailed rules for the exercise of that option which shall in any case apply for two calendar years;

- a. intra-Community acquisitions of new means of transport¹⁾ effected for consideration within the country by taxable persons or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of (a) or by any other non-taxable person;

- c. the intra-Community acquisition of goods¹⁾ which are subject to excise duties effected for consideration within the territory of the country by a taxable person or a non-taxable legal person who qualifies for the derogation referred to in the second subparagraph of point (a), and for which the excise duties become chargeable within the territory of the country pursuant to Directive 92/12/EEC. [Article 1(10) of Directive 92/111/EEC]

¹⁾ Under Article 21 of Regulation (EC) 1777/2005, where an intra-Community acquisition of goods within the meaning of Article 28a has taken place, the Member State in which the dispatch or transport ends shall exercise its power of taxation irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began. Any request by a supplier of goods for a correction in the tax invoiced by him and reported by him to the Member State where the dispatch or transport of the goods began shall be treated by that State in accordance with its own domestic rules.

- 1a. The following shall benefit from the derogation set out in the second subparagraph of paragraph 1(a):
 - a. intra-Community acquisitions of goods whose supply within the territory of the country would be exempt pursuant to Article 15(4) to (10);
 - b. intra-Community acquisitions of goods other than those at (a), made:
 - by a taxable person for the purpose of his agricultural, forestry or fisheries undertaking, subject to the flat-rate scheme set out in Article 25, by a taxable person who carries out only supplies of goods or services in respect of which value added tax is not deductible, or by a non-taxable legal person,
 - for a total amount not exceeding, during the current calendar year, a threshold which the Member States shall determine but which may not be less than the equivalent in national currency of EUR 10,000, [Article 2 of Regulation (EC) 1103/97]
- and
- provided that the total amount of intra-Community acquisitions of goods did not, during the previous calendar year, exceed the threshold referred to in the second indent.

The threshold which serves as the reference for the application of the above shall consist of the total amount, exclusive of value added tax due or paid in the Member State from which the goods are dispatched or transported, of intra-Community acquisitions of goods other than new means of transport and other than goods subject to excise duty.

[Article 1(10) of Directive 92/111/EEC]

2. For the purposes of this Title ¹⁾:

¹⁾ Editor's note: "this Title" is Title XVIa.

- a. the following shall be considered as "means of transport": vessels exceeding 7,5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7,2 kilowatts, intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15(5) and (6);

- b. the means of transport referred to in (a) shall not be considered to be "new" where both of the following conditions are simultaneously fulfilled:
- they were supplied more than three months after the date of first entry into service. However, this period shall be increased to six months for the motorized land vehicles defined in (a),
 - they have travelled more than 6,000 kilometres in the case of land vehicles, sailed for more than 100 hours in the case of vessels, or flown for more than 40 hours in the case of aircraft.

Member States shall lay down the conditions under which the above facts can be regarded as established.
[Article 1(6) of Directive 94/5/EC]

TITLE III

TERRITORIAL APPLICATION

Article 3

1. For the purposes of this Directive:
 - "territory of a Member State" shall mean the territory of the country as defined in respect of each Member State in paragraphs 2 and 3,
 - "Community" and "territory of the Community" shall mean the territory of the Member States as defined in respect of each Member State in paragraphs 2 and 3,
 - "third territory" and "third country" shall mean any territory other than those defined in paragraphs 2 and 3 as the territory of a Member State.
2. For the purposes of this Directive, the "territory of the country" shall be the area of application of the Treaty establishing the European Economic Community as defined in respect of each Member State in Article 299.
[Amsterdam Treaty]
3. The following territories of individual Member States shall be excluded from the territory of the country:
 - Federal Republic of Germany:
the Island of Heligoland,
the territory of Büsingen,
 - Kingdom of Spain:
Ceuta,
Melilla,
[Annex I(V)(2) to the Treaty of Accession of Spain and Portugal]
 - Republic of Italy:
Livigno,
Campione d'Italia,
the Italian waters of Lake Lugano.

The following territories of individual Member States shall also be excluded from the territory of the country:

- Kingdom of Spain:
Canary Islands,
- French Republic:

the overseas departments,
[Article 1 of Directive 80/368/EEC]

- Hellenic Republic:
Άγιο Όρος ¹⁾.

¹⁾ Editor's note: Mount Athos.

4. By way of derogation from paragraph 1, in view of:
 - the conventions and treaties which the Principality of Monaco and the Isle of Man have concluded respectively with the French Republic and the United Kingdom of Great Britain and Northern Ireland,
 - the Treaty concerning the Establishment of the Republic of Cyprus,

the Principality of Monaco, the Isle of Man and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be treated for the purpose of the application of this Directive as third territories.

[Accession 2004]

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.
[Article 1(1) of Directive 92/111/EEC]
- the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for the Republic of Cyprus.
[Accession 2004]

5. If the Commission considers that the provisions laid down in paragraphs 3 and 4 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council.

[Article 1(1) of Directive 91/680/EEC]

TITLE IV

TAXABLE PERSONS

Article 4

1. "Taxable person"¹⁾ shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

¹⁾ Under Article 2 of Regulation (EC) 1777/2005, a European Economic Interest Grouping (EEIG) constituted in accordance with Regulation (EEC) No. 2137/85 which supplies goods or services for consideration to its members or to third parties shall be a taxable person.
2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

3. Member States may also treat as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in paragraph 2 and in particular one of the following:

- a. the supply before first occupation of buildings or parts of buildings and the land on which they stand; Member States may determine the conditions of application of this criterion to transformations of buildings and the land on which they stand.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply or the period elapsing between the date of first occupation and the date of subsequent supply, provided that these periods do not exceed five years and two years respectively.

"A building" shall be taken to mean any structure fixed to or in the ground;

- b. the supply of building land.

"Building land" shall mean any unimproved or improved land defined as such by the Member States.

4. The use of the word "independently" in paragraph 1 shall exclude employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Subject to the consultations provided for in Article 29, each Member State may 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.

5. 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.

However, when they engage in such activities or transactions, they 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.

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

Member States may consider activities of these bodies which are exempt under Articles 13 or 28 as activities which they engage in as public authorities.

Article 28a(4)

[Article 1(22) of Directive 91/680/EEC]

4. Any person who from time to time supplies a new means of transport under the conditions laid down in Article 28c(A) shall also be regarded as a taxable person.

[...]

Member States shall lay down detailed rules for the implementation of these provisions.

TITLE V

TAXABLE TRANSACTIONS

Article 5

Supply of goods

1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.
2. Electric current, gas, heat, refrigeration and the like shall be considered tangible property.
3. Member States may consider the following to be tangible property:
 - a. certain interests in immovable property;
 - b. rights in rem giving the holder thereof a right of user over immovable property;
 - c. shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof.
4. The following shall also be considered supplies within the meaning of paragraph 1:
 - a. the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;
 - b. the actual handing over of goods, pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms, which provides that in the normal course of events ownership shall pass at the latest upon payment of the final instalment;
 - c. the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.
5. Member States may consider the handing over of certain works of construction to be supplies within the meaning of paragraph 1.

[Article 1(1) of Directive 95/7/EC]
6. The application by a taxable person of goods forming part of his business assets for his private use or that of his staff, or the disposal thereof free of charge or more generally their application for purposes other than those of his business, where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible, shall be treated as supplies made for consideration. However, applications for the giving of samples or the

making of gifts of small value for the purposes of the taxable person's business shall not be so treated.

7. Member States may treat as supplies made for consideration:

- a. the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the value added tax on such goods, had they been acquired from another taxable person, would not be wholly deductible;
- b. the application of goods by a taxable person for the purposes of a non-taxable transaction, where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a);
- c. except in those cases mentioned in paragraph 8, the retention of goods by a taxable person or his successors when he ceases to carry out a taxable economic activity where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a).

8. In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and in that event the recipient shall be treated as the successor to the transferor. Where appropriate, Member States may take the necessary measures to prevent distortion of competition in cases where the recipient is not wholly liable to tax.

Article 28a(5)

[Article 1(22) of Directive 91/680/EEC]

5. The following shall be treated as supplies of goods effected for consideration

- a. [deleted: Article 1(6) of Directive 95/7/EC]
- b. the transfer by a taxable person of goods from his undertaking to another Member State.

The following shall be regarded as having been transferred to another Member State: any tangible property dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community for the purposes of his undertaking, other than the purposes of one of the following transactions:

- the supply of the goods in question by the taxable person within the territory of the Member State of arrival of the dispatch or transport under the conditions laid down in the second sentence of Article 8(1)(a) and in Article 28b(B)(1),
- the supply of the goods in question by the taxable person under the conditions laid down in Article 8(1)(c),
- the supply of the goods in question by the taxable person within the territory of the country under the conditions laid down in Article 15 or in Article 28c(A),
- [deleted: Article 1(6) of Directive 95/7/EC]

- 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,

[Article 1(6) of Directive 95/7/EC]

- temporary use of the goods in question within the territory of the Member State of arrival of the dispatch or transport of the goods for the purposes of the supply of services by the taxable person established within the territory of the Member State of departure of the dispatch or transport of the goods,

- temporary use of the goods in question, for a period not exceeding 24 months, within the territory of another Member State in which the import of the same goods from a third country with a view to temporary use would be eligible for the arrangements for the temporary importation with full exemption from import duties,

- the supply of gas through the natural gas distribution system, or of electricity, under the conditions set out in Article 8(1)(d) or (e).

[Article 1(7) of Directive 2003/92/EC]

However, when one of the conditions to which the benefit of the above is subordinated is no longer met, the goods shall be considered as having been transferred to a destination in another Member State. In this case, the transfer is carried out at the moment that the conditions is [sic] no longer met.

[Article 1(10) of Directive 92/111/EEC]

Article 6

Supply of services

1. "Supply of services" shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

Such transaction may include inter alia²⁾:

²⁾ Under Article 3(1) of Regulation (EC) 1777/2005, the sale of an option, where such a sale is a transaction within the scope of Article 13(B)(d)(5), shall be a supply of services within the meaning of Article 6(1). That supply of services shall be distinct from the underlying operations to which the services relate. Under Article 3(2) of Regulation (EC) 1777/2005, where a taxable person only assembles the different parts of a machine all of which were provided to him by his customer, that transaction shall be a supply of services within the meaning of Article 6(1).

- assignments of intangible property whether or not it is the subject of a document establishing title,
- obligations to refrain from an act or to tolerate an act or situation,
- the performances of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.

2. The following shall be treated as supplies of services for consideration:

- a. the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;
- b. supplies of services carried out free of charge by the taxable person for his own private use or that of his staff or more generally for purposes other than those of his business.

Member States may derogate from the provisions of this paragraph provided that such derogation does not lead to distortion of competition.

3. In order to prevent distortion of competition and subject to the consultations provided for in Article 29, Member States may treat as a supply of services for consideration the supply by a taxable person of a service for the purposes of his undertaking where the value added tax on such a service, had it been supplied by another taxable person, would not be wholly deductible.
4. Where a taxable person acting in his own name but on behalf of another takes part in a supply of services, he shall be considered to have received and supplied those services himself.
5. Article 5(8) shall apply in like manner to the supply of services.

Article 7

Imports

1. "Importation of goods" shall mean:
 - a. the entry into the Community of goods which do not fulfil the conditions laid down in Articles 23 and 24 of the Treaty establishing the European Economic Community or, where the goods are covered by the Treaty establishing the European Coal and Steel Community, are not in free circulation;
[Amsterdam Treaty]
 - b. the entry into the Community of goods from a third territory, other than the goods covered by (a).
[Article 1(2) of Directive 92/111/EEC]
2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.
3. Notwithstanding paragraph 2, where goods referred to in paragraph 1(a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d), under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by these arrangements.

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.

[Article 1(2) of Directive 91/680/EEC and Article 1(3) of Directive 92/111/EEC]

Article 28a(3), (6) and (7)

[Article 1(22) of Directive 91/680/EEC]

3. "Intra-Community acquisition of goods" shall mean acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods to a Member State other than that from which the goods are dispatched or transported.

Where goods acquired by a non-taxable legal person are dispatched or transported from a third territory and imported by that non-taxable legal person into a Member State other than the Member State of arrival of the goods dispatched or transported, the goods shall be deemed to have been dispatched or transported from the Member State of import. That Member State shall grant the importer as defined in Article 21(4) a refund of the value added tax paid in connection with the importation of the goods in so far as the importer establishes that his acquisition was subject to value added tax in the Member State of arrival of the goods dispatched or transported.

[Article 1(6)(b) of Directive 2000/65/EC]

4. (ref. page 3)
5. (ref. page 4)
6. The intra-Community acquisition of goods for consideration shall include the use by a taxable person for the purposes of his undertaking of goods dispatched or transported by or on behalf of that taxable person from another Member State within the territory of which the goods were produced, extracted, processed, purchased, acquired as defined in paragraph 1 or imported by the taxable person within the framework of his undertaking into that other Member State.

The following shall also be deemed to be an intra-Community acquisition of goods effected for consideration: the appropriation of goods by the forces of a State party to the North Atlantic Treaty, for their use or for the use of the civilian staff accompanying them, which they have not acquired subject to the general rules governing taxation on the domestic market of one of the Member States, when the importation of these goods could not benefit from the exemption set out in Article 14(1)(g).

[Article 1(10) of Directive 92/111/EEC]

7. Member States shall take measures to ensure that transactions which would have been classed as "supplies of goods" as defined in paragraph 5 or Article 5 if they had been carried out within the territory of the country by a taxable person acting as such are classed as "intra-Community acquisitions of goods".

TITLE VI

PLACE OF TAXABLE TRANSACTIONS

Article 8

Supply of goods

1. The place of supply of goods shall be deemed to be:

- a. in the case of goods dispatched or transported either by the supplier or by the person to whom they are supplied or by a third person: the place where the goods are at the time when dispatch or transport to the person to whom they are supplied begins. Where the goods are installed or assembled⁷⁾, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled. In cases where the installation or assembly is carried out in a Member State other than that of the supplier, the Member State within the territory of which the installation or assembly is carried out shall take any necessary steps to avoid double taxation in that State;

[Article 1(3) of Directive 91/680/EEC]

⁷⁾ Under Article 3(2) of Regulation (EC) 1777/2005, where a taxable person only assembles the different parts of a machine all of which were provided to him by his customer, that transaction shall be a supply of services within the meaning of Article 6(1).

- b. in the case of goods not dispatched or transported: the place where the goods are when the supply takes place.
- 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.

[Article 1(3) of Directive 91/680/EEC]

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 foreseen 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.

[Article 1(4) of Directive 92/111/EEC]

- d. in the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer:

the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

"Taxable dealer" for the purposes of this provision means a taxable person whose principal activity in respect of purchases of gas and electricity is reselling such products and whose own consumption of these products is negligible.

[Article 1(1) of Directive 2003/92/EC]

- e. in the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by point (d): the place where the customer has effective use and consumption of the goods. Where all or part of the goods are not in fact consumed by this customer, these non consumed goods are deemed to have been used and consumed at the place where he has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, he is deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.

[Article 1(1) of Directive 2003/92/EC]

2. By way of derogation from paragraph 1(a), where the place of departure of the consignment or transport of goods is in a third territory, the place of supply by the importer as defined in Article 21(4) and the place of any subsequent supplies shall be deemed to be within the Member State of import of the goods.

[Article 1(3) of Directive 91/680/EEC and Article 1(6)(b) of Directive 2000/65/EC]

Article 28b(B)

[Article 1(22) of Directive 91/680/EEC]

B. Place of supply of goods

1. By way of derogation from Article 8(1)(a) and (2), the place of the supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that of arrival of the dispatch or transport shall be deemed to be the place where the goods are when dispatch or transport to the purchaser ends, where the following conditions are fulfilled:

- the supply of goods is effected for a taxable person eligible for the derogation provided for in the second subparagraph of Article 28a(1)(a), for a non-taxable legal person who is eligible for the same derogation or for any other non-taxable person,
- the supply is of goods other than new means of transport and other than goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

Where the goods thus supplied are dispatched or transported from a third territory and imported by the supplier into a Member State other than the Member State of arrival of the goods dispatched or transported to the purchaser, they shall be regarded as having been dispatched or transported from the Member State of import.

2. However, where the supply is of goods other than products subject to excise duty, paragraph 1 shall not apply to

supplies of goods dispatched or transported to the same Member State of arrival of the dispatch or transport where:

- the total value of such supplies, less value added tax, does not in one calendar year exceed the equivalent in national currency of EUR 100,000¹⁾,
[Article 2 of Regulation (EC) No. 1103/97]

and

- the total value, less value added tax, of the supplies of goods other than products subject to excise duty effected under the conditions laid down in paragraph 1 in the previous calendar year did not exceed the equivalent in national currency of EUR 100,000¹⁾.
[Article 2 of Regulation (EC) No. 1103/97]

The Member State within the territory of which the goods are when dispatch or transport to the purchaser ends may limit the thresholds referred to above to the equivalent in national currency of EUR 35,000 where that Member State fears that the thresholds¹⁾ of EUR 100,000 referred to above would lead to serious distortions of the conditions of competition. Member States which exercise this option shall take the measures necessary to inform the relevant public authorities in the Member State of dispatch or transport of the goods.
[Article 2 of Regulation (EC) No. 1103/97]

¹⁾ Under Article 22 of Regulation (EC) 1777/2005, where in the course of a calendar year the threshold applied by a Member State in accordance with Article 28b(B)(2) is exceeded, Article 28b(B) shall not modify the place of supplies of goods other than products subject to excise duty carried out in the course of the same calendar year which are made before the threshold applied by the Member State for the calendar year then current is exceeded provided that the supplier:

- a. has not exercised the option under Article 28b(B)(3) and
- b. did not exceed the threshold in the course of the preceding calendar year.

However, Article 28b(B) shall modify the place of the following supplies to the Member State in which the dispatch or transport ends:

- a. the supply by which the threshold applied by the Member State for the calendar year then current was exceeded in the course of the same calendar year;
- b. any subsequent supplies within that Member State in that calendar year;
- c. supplies within that Member State in the calendar year following the calendar year in which the event referred to in point (a) occurred.

Before 31 December 1994, the Commission shall report to the Council on the operation of the special EUR 35,000 thresholds provided for in the preceding subparagraph. In that report the Commission may inform the Council that the abolition of the special thresholds will not lead to serious distortions of the conditions of competition. Until the Council takes a unanimous decision on a Commission proposal, the preceding subparagraph shall remain in force.
[Article 2 of Regulation (EC) No. 1103/97]

3. The Member State within the territory of which the goods are at the time of departure of the dispatch or transport shall grant those taxable persons who effect supplies of goods eligible under paragraph 2 the right to choose that the place of such supplies shall be determined in accordance with paragraph 1.

The Member States concerned shall determine the detailed rules for the exercise of that option, which shall in any case apply for two calendar years.

Article 9

Supply of services

1. The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides¹⁾.

¹⁾ Under Article 4 of Regulation (EC) 1777/2005, insofar as they constitute a single service, services supplied in the framework of organising a funeral shall fall within the scope of Article 9(1).

2. However:
 - a. the place of the supply of services connected with immovable property, including the services of estate agents and experts, and of services for preparing and coordinating construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is situated;
 - b. the place where transport services are supplied shall be the place where transport takes place, having regard to distances covered;
 - c. the place of the supply of services relating to:
 - cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organizers of such activities, and where appropriate, the supply of ancillary services,
 - ancillary transport activities such as loading, unloading, handling and similar activities,
 - valuations of movable tangible property,
 - work on movable tangible property¹⁾,

¹⁾ Under Article 5 of Regulation (EC) 1777/2005, except where the goods being assembled become part of immovable property, the place of the supply of services, in the case a taxable person only assembles the different parts of a machine all of which were provided to him by his customer, shall be established in accordance with Article 9(2)(c) or Article 28b(F).

shall be the place where those services are physically carried out;

- d. [deleted; Article 1(1) of Directive 84/386/EEC]
- e. the place where the following services are supplied when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides¹⁾:

¹⁾ Under Article 6 of Regulation (EC) 1777/2005, the service of translation of texts shall be covered by Article 9(2)(e).

- transfers and assignments of copyrights, patents, licences, trade marks and similar rights¹⁾,

¹⁾ Under Article 7 of Regulation (EC) 1777/2005, where a body established in a third country assigns television broadcasting rights in respect of football matches to taxable

persons established in the Community, that transaction shall be covered by the first indent of Article 9(2)(e).

- advertising services,
 - services of consultants, engineers, consultancy bureaux, lawyers, accountants, and other similar services, as well as data processing and the supplying of information⁷⁾,
-
- ⁷⁾ Under Article 8 of Regulation (EC) 1777/2005, the supply of services which consist in applying for or receiving refunds under Directive 79/1072/EEC shall be covered by the third indent of Article 9(2)(e).
- obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this point (e),
 - banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes,
 - the supply of staff,
 - the services of agents⁷⁾ who act in the name and for the account of another, when they procure for their principal the services referred to in this point (e),

⁷⁾ Under Article 9 of Regulation (EC) 1777/2005, the supply of services of agents as referred to in the seventh indent of Article 9(2)(e) shall cover the services of agents acting in the name and for the account of the recipient of the service procured and services performed by the agents acting in the name and for the account of the provider of the service procured.

- the hiring out of movable tangible property, with the exception of all forms of transport⁷⁾;
[Article 1(2) of Directive 84/386/EEC]
-
- ⁷⁾ Under Article 10 of Regulation (EC) 1777/2005, trailers and semi-trailers, as well as railway wagons, shall be forms of transport for the purposes of the eighth indent of Article 9(2)(e).
- the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services.
[Article 1(2) of Directive 2003/92/EC]
 - Telecommunications. Telecommunications services shall be deemed to be services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception. Telecommunications services within the meaning of this provision shall also include provision of access to global information networks,
[Article 1(1) of Directive 1999/59/EC]
 - radio and television broadcasting services,
[Article 1(1)(a) of Directive 2002/38/EC; 1 July 2003-1 July 2006]
 - electronically supplied services⁷⁾, inter alia, those described in Annex L.
[Article 1(1)(a) of Directive 2002/38/EC; 1 July 2003-1 July 2006]

⁷⁾ Under Article 11 of Regulation (EC) 1777/2005, 'electronically supplied services' shall include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially

automated and involving minimal human intervention, and in the absence of information technology is impossible to ensure. Where they are delivered over the Internet or an electronic network, the following services shall be electronically supplied services:

- a. the supply of digitised products generally, including software and changes to or upgrades of software;
- b. services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;
- c. services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient;
- d. the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an on-line market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer;
- e. Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e. packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports; playgrounds; website hosting; access to on-line debates; etc.);
- f. the services listed in Annex I [see Annex L]

Under Article 12 of Regulation (EC) 1777/2005, in particular the following services shall not be 'electronically supplied services':

1. radio and television broadcasting services as referred to in the eleventh indent of Article 9(2)(e);
2. telecommunications services, within the meaning of the tenth indent of Article 9(2)(e);
3. supplies of the following goods and services:
 - a. goods, where the order and processing is done electronically;
 - b. CD-ROMs, floppy disks and similar tangible media;
 - c. printed matter, such as books, newsletters, newspapers or journals;
 - d. CDs, audio cassettes;
 - e. video cassettes, DVDs;
 - f. games on a CD-ROM;
 - g. services of professionals such as lawyers and financial consultants, who advise clients by e-mail;
 - h. teaching services, where the course content is delivered by a teacher over the Internet or an electronic network, (namely via a remote link);
 - i. off-line physical repair services of computer equipment;
 - j. off-line data warehousing services;
 - k. advertising services, in particular as in newspapers, on posters and on television;
 - l. telephone helpdesk services;
 - m. teaching services purely involving correspondence courses, such as postal courses;
 - n. conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made;
 - o. telephone services with a video component, otherwise known as videophone services;
 - p. access to the Internet and World Wide Web;
 - q. telephone services provided through the Internet.

- f. the place where services referred to in the last indent of subparagraph (e) are supplied when performed for non-taxable persons who are established, have their permanent address or usually reside in a Member State, by a taxable person who has established his business or has a fixed establishment from which the service is supplied outside the Community or, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, has his permanent address or usually resides.
[Article 1(1)(b) of Directive 2002/38/EC; 1 July 2003-1 July 2006]

3. In order to avoid double taxation, non-taxation or the distortion of competition, the Member States may, with regard to the supply of services referred to in paragraph 2(e), except for the services referred to in the last indent when supplied to non-taxable persons, and also with regard to the hiring out of forms of transport consider:

[Article 1(3) of Directive 84/386/EEC, Article 1(1)(c) of Directive 2002/38/EC; 1 July 2003-1 July 2006]

- a. the place of supply of services, which under this Article would be situated within the territory of the country, as being situated outside the Community where the

effective use and enjoyment of the services take place outside the Community;

- b. the place of supply of services, which under this Article would be situated outside the Community, as being within the territory of the country where the effective use and enjoyment of the services take place within the territory of the country.

4. In the case of telecommunications services and radio and television broadcasting services referred to in paragraph 2(e) when performed for non-taxable persons who are established, have their permanent address or usually reside in a Member State, by a taxable person who has established his business or has a fixed establishment from which the service is supplied outside the Community, or in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, Member States shall make use of paragraph 3(b).

[Article 1(1)(d) of Directive 1999/59/EC, Article 1(4) of Directive 2002/38/EC; 1 July 2003-1 July 2006]

Article 28b(C), (D), (E) and (F)

[Article 1(22) of Directive 91/680/EEC]

C. Place of the supply of services in the intra-Community transport of goods

1. By way of derogation from Article 9(2)(b), the place of the supply of services in the intra-Community transport of goods shall be determined in accordance with paragraphs 2, 3 and 4. For the purposes of this Title the following definitions shall apply:

- "the intra-Community transport of goods" shall mean transport where the place of departure and the place of arrival are situated within the territories of two different Member States.

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,

[Article 1(7) of Directive 95/7/EC]

- "the place of departure" shall mean the place where the transport of goods actually starts, leaving aside distance actually travelled to the place where the goods are,
- "the place of arrival" shall mean the place where the transport of goods actually ends.

2. The place of the supply of services in the intra-Community transport of goods shall be the place of departure.
3. However, by way of derogation from paragraph 2, the place of the supply of services in the intra-Community transport of goods rendered to customers identified for purposes of value added tax in a Member State other than that of the departure of the transport shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

4. Member States need not apply the tax to that part of the transport corresponding to journeys made over waters which do not form part of the territory of the Community as defined in Article 3.

D. Place of the supply of services ancillary to the intra-Community transport of goods

By way of derogation from Article 9(2)(c), the place of the supply of services involving activities ancillary to the intra-Community transport of goods, rendered to customers identified for purposes of value added tax in a Member State other than that within the territory of which the services are physically performed, shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

E. Place of the supply of services rendered by intermediaries

1. By way of derogation from Article 9(1), the place of the supply of services rendered by intermediaries, acting in the name and for the account of other persons, where they form part of the supply of services in the intra-Community transport of goods, shall be the place of departure.

However, where the customer for whom the services rendered by the intermediary are performed is identified for purposes of value added tax in a Member State other than that of the departure of the transport, the place of the supply of services rendered by an intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

2. By way of derogation from Article 9(1), the place of the supply of services rendered by intermediaries acting in the name and for the account of other persons, where they form part of the supply of services the purpose of which is activities ancillary to the intra-Community transport of goods, shall be the place where the ancillary services are physically performed.

However, where the customer of the services rendered by the intermediary is identified for purposes of value added tax in a Member State other than that within the territory of which the ancillary service is physically performed, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him by the intermediary.

3. By way of derogation from Article 9(1), the place of the supply of services rendered by intermediaries acting in the name and for the account of other persons, when such services form part of transactions other than those referred to in paragraph 1 or 2 or in Article 9(2)(e), shall be the place where those transactions are carried out.

However, where the customer is identified for purposes of value added tax in a Member State other than that within the territory of which those transactions are carried out, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax

identification number under which the service was rendered to him by the intermediary.

- the obligations for declaration set out in the last subparagraph of Article 22(6)(b) have been satisfied by the acquirer.

[Article 1(11) of Directive 92/111/EEC]

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 property⁷⁾, 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.

⁷⁾ Under Article 5 of Regulation (EC) 1777/2005, except where the goods being assembled become part of immovable property, the place of the supply of services, in the case a taxable person only assembles the different parts of a machine all of which were provided to him by his customer, shall be established in accordance with Article 9(2)(c) or Article 28b(F).

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.

[Article 1(7) of Directive 95/7/EC]

Article 28b(A)

[Article 1(22) of Directive 91/680/EEC]

A. Place of the intra-Community acquisition of goods

1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends.
2. Without prejudice to paragraph 1, the place of the intra-Community acquisition of goods referred to in Article 28a(1)(a) shall, however, be deemed to be within the territory of the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that this acquisition has been subject to tax in accordance with paragraph 1.

If, however, the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, the taxable amount shall be reduced accordingly in the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition.

For the purposes of applying the first subparagraph, the intra-Community acquisition of goods shall be deemed to have been subject to tax in accordance with paragraph 1 when the following conditions have been met:

- the acquirer establishes that he has effected this intra-Community acquisition for the needs of a subsequent supply effected in the Member State referred to in paragraph 1 and for which the consignee has been designated as the person liable for the tax due in accordance with Article 28c(E)(3),

TITLE VII

CHARGEABLE EVENT AND CHARGEABILITY OF TAX

Article 10

1. a. "Chargeable event" shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled.
- b. The tax becomes "chargeable" when the tax authority becomes entitled under the law at a given moment, to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.
2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. Deliveries of goods other than those referred to in Article 5(4)(b) and supplies of services which give rise to successive statements of account or payments shall be regarded as being completed at the time when the periods to which such statements of account or payments pertain expire. Member States may in certain cases provide that continuous supplies of goods and services which take place over a period of time shall be regarded as being completed at least at intervals of one year.

However, where a payment is to be made on account before the goods are delivered or the services are performed, the tax shall become chargeable on receipt of the payment and on the amount received.

By way of derogation from the above provisions, Member States may provide that the tax shall become chargeable, for certain transactions or for certain categories of taxable person either:

- no later than the issue of the invoice;
- or
- no later than receipt of the price;
- or
- where an invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

[Article 4(1) of Directive 2001/115/EC]

3. The chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7(3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by these arrangements.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and the tax shall become chargeable when the chargeable event for those Community duties occurs and those duties become chargeable.

Where imported goods are not subject to any of those Community duties, Member States shall apply the provisions in force governing customs duties as regards the occurrence of the chargeable event and the moment when the tax becomes chargeable.

[Article 1(6) of Directive 91/680/EEC, Article 4(4) of Directive 2001/115/EC]

Article 28d

[Article 1(22) of Directive 91/680/EEC]

Chargeable event and chargeability of tax

1. The chargeable event shall occur when the intra-Community acquisition of goods is effected. The intra-Community acquisition of goods shall be regarded as being effected when the supply of similar goods is regarded as being effected within the territory of the country.
2. For the intra-Community acquisition of goods, tax shall become chargeable on the 15th day of the month following that during which the chargeable event occurs.
3. By way of derogation from paragraph 2, tax shall become chargeable on the issue of the invoice provided for in the first subparagraph of Article 22(3)(a) where that invoice is issued to the person acquiring the goods before the fifteenth day of the month following that during which the taxable event occurs.
[Article 1(14) of Directive 92/111/EEC, Article 4(4) of Directive 2001/115/EC]
4. By way of derogation from Article 10(2) and (3), tax shall become chargeable, for supplies of goods effected under the conditions laid down in Article 28c(A), on the 15th day of the month following that during which the chargeable event occurred.

However, tax shall become chargeable on the issue of the invoice provided for in the first subparagraph of Article 22(3)(a) where that invoice is issued before the fifteenth day of the month following that during which the taxable event occurs.

[Article 1(15) of Directive 91/680/EEC, Article 4(4) of Directive 2001/115/EC]

TITLE VIII

TAXABLE AMOUNT

Article 11

Taxable amount

A. Within the territory of the country

1. The taxable amount^{*)} shall be:
 - a. in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, 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 including subsidies directly linked to the price of such supplies;

*) Under Article 13 of Regulation (EC) 1777/2005, where a supplier of goods or services, as a condition of accepting payment by credit or debit card, requires the customer to pay an amount to himself or another undertaking, and where the total price payable by that customer is unaffected irrespective of how

payment is accepted, that amount shall constitute an integral part of the taxable amount for the supply of the goods or services.

- b. in respect of supplies referred to in Article 5(6) and (7), the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply;
- c. in respect of supplies referred to in Article 6(2), the full cost to the taxable person of providing the services;
- d. in respect of supplies referred to in Article 6(3), the open market value of the services supplied.

"Open market value" of services shall mean the amount which a customer at the marketing stage at which the supply takes place would have to pay to a supplier at arm's length within the territory of the country at the time of the supply under conditions of fair competition to obtain the services in question.

2. The taxable amount shall include:
 - a. taxes, duties, levies and charges, excluding the value added tax itself;
 - b. incidental expenses such as commission, packing, transport and insurance costs charged by the supplier to the purchaser or customer. Expenses covered by a separate agreement may be considered to be incidental expenses by the Member States.
3. The taxable amount shall not include:
 - a. price reductions by way of discount for early payment;
 - b. price discounts and rebates allowed to the customer and accounted for at the time of the supply;
 - c. the amounts received by a taxable person from his purchaser or customer as repayment for expenses paid out in the name and for the account of the latter and which are entered in his books in a suspense account. The taxable person must furnish proof of the actual amount of this expenditure and may not deduct any tax which may have been charged on these transactions.
4. By way of derogation from paragraphs 1, 2 and 3, Member States which, on 1 January 1993, did not avail themselves of the option provided for in the third subparagraph of Article 12(3)(a) may, where they avail themselves of the option provided for in Title B(6), provide that, for the transactions referred to in the second subparagraph of Article 12(3)(c), the taxable amount shall be equal to a fraction of the amount determined in accordance with paragraphs 1, 2 and 3.

That fraction shall be determined in such a way that the value added tax thus due is, in any event, equal to at least 5% of the amount determined in accordance with paragraphs 1, 2 and 3.

[Article 1(1)(a) of Directive 94/5/EC]

B. Importation of goods

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).

[Article 1(7) of Directive 91/680/EEC and Article 1(5) of Directive 92/111/EEC]

2. [deleted; Article 1(7) of Directive 91/680/EEC]

3. The taxable amount shall include, in so far as they are not already included:

- a. taxes, duties, levies and other charges due outside the importing Member State and those due by reason of importation, excluding the value added tax to be levied;
- b. incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the importing Member State.

"First place of destination" shall mean the place mentioned on the consignment note or any other document by means of which the goods are imported into the importing Member State. In the absence of such an indication, the first place of destination shall be taken to be the place of the first transfer of cargo in the importing Member State.

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.

[Article 1(8) of Directive 91/680/EEC and Article 1(2) of Directive 95/7/EC]

4. The taxable amount shall not include those factors referred to in point A(3)(a) and (b).

5. When goods have been temporarily exported from the Community and are reimported after having undergone outside the Community repair, processing or adaptation, or after having been made up or reworked outside the Community Member States shall take steps to ensure that the treatment of the goods for value added tax purposes is the same as that which would have applied to the goods in question had the above operations been carried out within the territory of the country.

[Article 1(9) of Directive 91/680/EEC]

6. By way of derogation from paragraphs 1 to 4, Member States which, on 1 January 1993, did not avail themselves of the option provided for in the third subparagraph of Article 12(3)(a) may provide that for imports of the works of art, collectors' items and antiques defined in Article 26a(A)(a), (b) and (c), the taxable amount shall be equal to a fraction of the amount determined in accordance with paragraphs 1 to 4.

That fraction shall be determined in such a way that the value added tax thus due on the import is, in any event, equal to at least 5% of the amount determined in accordance with paragraphs 1 to 4.

[Article 1(1)(b) of Directive 94/5/EC]

C. Miscellaneous provisions

1. In the case of cancellation, refusal or total or partial non-payment or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly

under conditions which shall be determined by the Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.

2. Where information for determining the taxable amount on importation is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate shall be determined in accordance with the Community provisions governing the calculation of the value for customs purposes.

Where information for the determination of the taxable amount of a transaction other than an import transaction is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate applicable shall be the latest selling rate recorded, at the time the tax becomes chargeable, on the most representative exchange market or markets of the Member State concerned, or a rate determined by reference to that or those markets, in accordance with the procedures laid down by that Member State. However, for some of those transactions or for certain categories of taxable person, Member States may continue to apply the exchange rate determined in accordance with the Community provisions in force governing the calculation of the value for customs purposes.

[Article 1(10) of Directive 91/680/EEC]

3. As regards returnable packing costs, Member States may:

- either exclude them from the taxable amount and take the necessary measures to see that this amount is adjusted if the packing is not returned,
- or include them in the taxable amount and take the necessary measures to see that this amount is adjusted where the packing is in fact returned.

Article 28e(1) and (2)

[Article 1(22) of Directive 91/680/EEC]

Taxable amount

1. In the case of the intra-Community acquisition of goods, the taxable amount shall be established on the basis of the same elements as those used in accordance with Article 11(A) to determine the taxable amount for supply of the same goods within the territory of the country. In particular, in the case of the intra-Community acquisition of goods referred to in Article 28a(6), the taxable amount shall be determined in accordance with Article 11(A)(1)(b) and paragraphs 2 and 3.

Member States shall take the measures necessary to ensure that the excise duty due or paid by the person effecting the intra-Community acquisition of a product subject to excise duty is included in the taxable amount in accordance with Article 11(A)(2)(a). When, after the moment the intra-Community acquisition of goods was effected, the acquirer obtains the refund of excise duties paid in the Member State from which the goods were dispatched or transported, the taxable amount shall be reduced accordingly in the Member State where the intra-Community acquisition took place.

[Article 1(16) of Directive 92/111/EEC]

2. For the supply of goods referred to in Article 28c(A)(d), the taxable amount shall be determined in accordance with Article 11(A)(1)(b) and paragraphs 2 and 3.
[Article 1(17) of Directive 92/111/EEC]

decision within three months of the receipt of the information a risk of distortion of competition is deemed not to exist.
[Article 1(1) of Directive 92/77/EEC and Article 1(1)(a) of Directive 2006/18/EC]

TITLE IX

RATES

Article 12

1. The rate applicable to taxable transactions shall be that in force at the time of the chargeable event.

Where they avail themselves of this option, Member States may also apply the reduced rate to supplies of works of art, within the meaning of Article 26a(A)(a):

However:

- effected by their creator or his successors in title,
- effected on an occasional basis by a taxable person other than a taxable dealer, where these works of art have been imported by the taxable person himself or where they have been supplied to him by their creator or his successors in title or where they have entitled him to full deduction of value-added tax.

- a. in the cases provided for in the second and third subparagraphs of Article 10(2), the rate to be used shall be that in force when the tax becomes chargeable;

[Article 1(1) of Directive 92/77/EEC and Article 1(2)(a) of Directive 94/5/EC]

- 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.

[Article 1(6) of Directive 92/111/EEC]

2. In the event of change in the rates, Member States may:

- effect adjustments in the cases provided for in paragraph 1(a) in order to take account of the rate applicable at the time when the goods or services were supplied,
- adopt all appropriate transitional measures.

d. [deleted; Article 1(1) of Directive 96/42/EC]

e. [deleted; Article 2 of Directive 98/80/EC]

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 2006 until 31 December 2010, the standard rate may not be less than 15%.

4. Each reduced rate shall be so fixed that the amount of value added tax resulting from the application thereof shall be such as in the normal way to permit the deduction therefrom of the whole of the value added tax deductible under the provisions of Article 17.

[Article 1(2) of Directive 92/77/EEC]

[Article 1 of Directive 2005/92/EC]

The Council shall decide, in accordance with Article 93 of the Treaty, on the level of the standard rate to be applied after 31 December 2010.

On the basis of a report from the Commission, the Council shall, starting in 1994, review the scope of the reduced rates every two years. The Council, acting unanimously on a proposal from the Commission, may decide to alter the list of goods and services in Annex H.

[Article 1(3) of Directive 92/77/EEC]

[Article 1 of Directive 2005/92/EC]

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.

By 30 June 2007 at the latest the Commission shall present to the European Parliament and the Council an overall assessment report on the impact of reduced rates applying to locally supplied services, including restaurant services, notably in terms of job creation, economic growth and the proper functioning of the internal market, based on a study carried out by an independent economic think-tank.

[Article 1(1)(b) of Directive 2006/18/EC]

[Article 1(1) of Directive 92/77/EEC, Article 1(7) of Directive 92/111/EEC, Article 1 of Directive 96/95/EC, Article 1 of Directive 1999/49/EC and Article 1 of Directive 2001/4/EC]

The third subparagraph shall not apply to the services referred to in the last indent of Article 9(2)(e).

[Article 1(2) of Directive 2002/38/EC; 1 July 2003-1 July 2006]

5. Subject to paragraph 3(c), the rate applicable on the importation of goods shall be that applied to the supply of like goods within the territory of the country.

[Article 1(2)(b) of Directive 94/5/EC]

- b. Member States may apply a reduced rate to supplies of natural gas, electricity and district heating provided that no risk of distortion of competition exists. A Member State intending to apply such a rate must inform the Commission before doing so. The Commission shall give a decision on the existence of a risk of distortion of competition. If the Commission has not taken that

6. The Portuguese Republic may apply to transactions carried out in the autonomous regions of the Azores and Madeira and to direct imports to those regions, reduced rates in comparison to those applying on the mainland.

[Annex I(V)(2) to the Treaty of Accession of Spain and Portugal]

Article 28e(3) and (4)

[Article 1(22) of Directive 91/680/EEC]

..... rate applicable

3. The tax rate applicable to the intra-Community acquisition of goods shall be that in force when the tax becomes chargeable.

[Article 1(17) of Directive 92/111/EEC]

4. The tax rate applicable to the intra-Community acquisition of goods shall be that applied to the supply of like goods within the territory of the country.

[Article 1(17) of Directive 92/111/EEC]

TITLE X

EXEMPTIONS

Article 13

Exemptions within the territory of the country

A. Exemptions for certain activities in the public interest

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:

- a. the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;
- b. hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognized establishments of a similar nature;
- c. the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;
- d. supplies of human organs, blood and milk;
- e. services supplied by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians;
- f. services supplied by independent groups of persons whose activities are exempt from or are not subject to value added tax, for the purpose of rendering their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition;
- g. the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organizations recognized as charitable by the Member States concerned;

h. the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organizations recognized as charitable by the Member States concerned;

i. children's or young people's education, school or university education, vocational training or retraining¹⁾, including the supply of services and of goods closely related thereto, provided by bodies governed by public law having such as their aim or by other organizations defined by the Member States concerned as having similar objects;

¹⁾ Under Article 14 of Regulation (EC) 1777/2005, vocational training or retraining services provided under the conditions set out in Article 13(A)(1)(i) shall include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes. The duration of a vocational training or retraining course shall be irrelevant for this purpose.

j. tuition given privately by teachers and covering school or university education;

k. certain supplies of staff by religious or philosophical institutions for the purpose of subparagraphs (b), (g), (h) and (i) of this Article and with a view to spiritual welfare;

l. supply of services and goods closely linked thereto for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit-making organizations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

m. certain services closely linked to sport or physical education supplied by non-profit-making organizations to persons taking part in sport or physical education;

n. certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by other cultural bodies recognized by the Member State concerned;

o. the supply of services and goods by organizations whose activities are exempt under the provisions of subparagraphs (b), (g), (h), (i), (l), (m) and (n) above in connection with fund-raising events organized exclusively for their own benefit provided that exemption is not likely to cause distortion of competition. Member States may introduce any necessary restrictions in particular as regards the number of events or the amount of receipts which give entitlement to exemption;

p. the supply of transport services for sick or injured persons in vehicles specially designed for the purpose by duly authorized bodies;

q. activities of public radio and television bodies other than those of a commercial nature.

2. a. Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1)(b), (g), (h), (i), (l), (m) and (n) of this Article subject in each individual case to one or more of the following conditions:

- they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed but shall be assigned to the continuance or improvement of the services supplied,
 - they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,
 - they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax,
 - exemption of the services concerned shall not be likely to create distortion of competition such as to place at a disadvantage commercial enterprises liable to value added tax.
- b. The supply of services or goods shall not be granted exemption as provided for in (1)(b), (g), (h), (i), (l), (m) and (n) above if:
- it is not essential to the transactions exempted,
 - its basic purpose is to obtain additional income for the organization by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax.

B. Other exemptions

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 the exemptions and of preventing any possible evasion, avoidance or abuse:

- a. insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;
- b. the leasing or letting of immovable property excluding:
 1. the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites;
 2. the letting of premises and sites for parking vehicles;
 3. lettings of permanently installed equipment and machinery;
 4. hire of safes.

Member States may apply further exclusions to the scope of this exemption;
- c. supplies of goods used wholly for an activity exempted under this Article or under Article 28(3)(b) when these goods have not given rise to the right to deduction, or of goods on the

acquisition or production of which, by virtue of Article 17(6), value added tax did not become deductible;

- d. the following transactions:
 1. the granting and the negotiation of credit and the management of credit by the person granting it;
 2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;
 3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;
 4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items; "collectors' items" shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest³⁾;

³⁾ Under Article 15 of Regulation (EC) 1777/2005, the exemption referred to in Article 13(B)(d)(4) shall not apply to platinum nobles.

5. transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities⁴⁾, excluding:

⁴⁾ Under Article 3(1) of Regulation (EC) 1777/2005, the sale of an option, where such a sale is a transaction within the scope of Article 13(B)(d)(5), shall be a supply of services within the meaning of Article 6(1). That supply of services shall be distinct from the underlying operations to which the services relate.

- documents establishing title to goods,
 - the rights or securities referred to in Article 5(3);
6. management of special investment funds as defined by Member States;
 - e. the supply at face value of postage stamps valid for use for postal services within the territory of the country, fiscal stamps and other similar stamps;
 - f. betting, lotteries and other forms of gambling, subject to conditions and limitations laid down by each Member State;
 - g. the supply of buildings or parts thereof, and of the land on which they stand, other than as described in Article 4(3)(a);
 - h. the supply of land which has not been built on other than building land as described in Article 4(3)(b).

C. Options

Member States may allow taxpayers a right of option for taxation in cases of:

- a. letting and leasing of immovable property;
- b. the transactions covered in B(d), (g) and (h) above.

Member States may restrict the scope of this right of option and shall fix the details of its use.

Article 26b(B) and (C)

[Article 1 of Directive 98/80/EC]

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 A¹⁾ a right of option for taxation of supplies of investment gold to another taxable person which would otherwise be exempt under B.

¹⁾ See page 37.

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.

Article 14**Exemptions on importation**

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 exemption and of preventing any possible evasion, avoidance or abuse:
 - a. final importation of goods of which the supply by a taxable person would in all circumstances be exempted within the country;
 - b. [deleted; Article 1(11) of Directive 91/680/EEC]
 - c. [deleted; Article 1(11) of Directive 91/680/EEC and Article 1(8) of Directive 92/111/EEC]
 - d. final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff. However, Member States shall

have the option of not granting an exemption where this would be liable to have a serious effect on conditions of competition.

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).

[Article 1(11) of Directive 91/680/EEC and Article 1(8) of Directive 92/111/EEC]

- e. reimportation by the person who exported them of goods in the state in which they were exported, where they qualify for exemption from customs duties;

[Article 1(11) of Directive 91/680/EEC]
- f. [deleted; Article 1(11) of Directive 91/680/EEC]
- g. importation of goods:
 - under diplomatic and consular arrangements, which qualify for exemption from customs duties,
 - by international organizations recognized as such by the public authorities of the host country, and by members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements,
 - into the territory of Member States which are parties to the North Atlantic Treaty by the armed forces of other States which are parties to that Treaty for the use of such forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort;

[Article 1(11) of Directive 91/680/EEC]
 - the exemptions set out in the third indent shall extend to imports by and supplies of goods and services to the forces of the United Kingdom stationed in the island of Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus, dated 16 August 1960, which are for the use of the forces or the civilian staff accompanying them or for supplying their messes or canteens.

[Accession 2004]
- h. importation into ports by sea fishing undertakings of their catches, unprocessed or after undergoing preservation for marketing but before being supplied;
- i. the supply of services, in connection with the importation of goods where the value of such services is included in the taxable amount in accordance with Article 11(B)(3)(b);
- j. importation of gold by Central Banks;
- k. import of gas through the natural gas distribution system, or of electricity.

[Article 1(3) of Directive 2003/92/EC]
2. The Commission shall submit to the Council at the earliest opportunity proposals designed to lay down Community tax rules clarifying the scope of the exemptions referred to in paragraph 1 and detailed rules for their implementation.

Until the entry into force of these rules, Member States may:

- maintain their national provisions in force on matters related to the above provisions,
- adapt their national provisions to minimize distortion of competition and in particular the non-imposition or double imposition of value added tax within the Community,
- use whatever administrative procedures they consider most appropriate to achieve exemption.

Member States shall inform the Commission, which shall inform the other Member States, of the measures they have adopted and are adopting pursuant to the preceding provisions.

Article 28c(D)

[Article 1(22) of Directive 91/680/EEC]

D. Exempt importation of goods

Where goods dispatched or transported from a third territory are imported into a Member State other than that of arrival of the dispatch or transport, Member States shall exempt such imports where the supply of such goods by the importer as defined in Article 21(4) is exempt in accordance with paragraph A¹⁾.

¹⁾ See page 19.

Member States shall lay down the conditions governing this exemption with a view to ensuring its correct and straightforward application and preventing any evasion, avoidance or abuse.

Article 26b(B)

[Article 1 of Directive 98/80/EC]

B. Special arrangements applicable to investment gold transactions

Member States shall exempt from value added tax the [...] 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.

[...]

Article 28c(B)

[Article 1(22) of Directive 91/680/EEC]

B. Exempt intra-Community acquisitions of goods

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- a. the intra-Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within the territory of the country;

- b. the intra-Community acquisition of goods the importation of which would in all circumstances be exempt under Article 14(1);
- c. the intra-Community acquisition of goods where, pursuant to Article 17(3) and (4), the person acquiring the goods would in all circumstances be entitled to full reimbursement of the value added tax due under Article 28a(1).

Article 15

Exemption of exports from the Community and like transactions and international transport

[Article 1(12) of Directive 91/680/EEC]

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 evasion, avoidance or abuse:

1. the supply of goods dispatched or transported to a destination outside the Community by or on behalf of the vendor;
[Article 1(13) of Directive 91/680/EEC]
2. the supply of goods dispatched or transported to a destination outside the Community by or on behalf of a purchaser not established within the territory of the country, with the exception of goods transported by the purchaser himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use^{*)}.

^{*)} Under Article 16 of Regulation (EC) 1777/2005, 'means of transport for private use' shall include means of transport used for non-business purposes by persons other than natural persons, such as bodies governed by public law within the meaning of Article 4(5) and associations.

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 EUR 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.

[Article 1(3) of Directive 95/7/EC and Article 2 of Regulation (EC) No. 1103/97]

^{*)} Under Article 17 of Regulation (EC) 1777/2005, in order to determine whether the threshold has been exceeded, the calculation shall be based on the invoice value. The aggregate value of several goods may be used only if all those goods are included on the same invoice issued by the same taxable person supplying goods to the same customer.

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 purpose 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.

[Article 1(3) of Directive 95/7/EC]

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 State.

[Article 1(3) of Directive 95/7/EC]

3. the supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory of the Community, and dispatched or transported out of the Community by the person providing the services or by the customer if not established within the territory of the country or on behalf of either of them;

[Article 1(14) of Directive 91/680/EEC and Article 1(9) of Directive 92/111/EEC]

4. the supply of goods for the fuelling and provisioning of vessels:

- a. used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities;
- b. used for rescue or assistance at sea, or for inshore fishing, with the exception, for the latter, of ships' provisions;
- c. of war, as defined in Subheading 89.01 A of the Common Customs Tariff, leaving the country and bound for foreign ports or anchorages.

The Commission shall submit to the Council as soon as possible proposals to establish Community fiscal rules specifying the scope of and practical arrangements for implementing this exemption and the exemptions provided for in (5) to (9). Until these rules come into force, Member States may limit the extent of the exemption provided for in this paragraph.

[Article 1(9) of Directive 92/111/EEC]

5. the supply, modification, repair, maintenance, chartering and hiring of the seagoing vessels referred to in paragraph 4(a) and (b) and the supply, hiring, repair and maintenance of equipment – including fishing equipment – incorporated or used therein;
6. the supply, modification, repair, maintenance, chartering and hiring of aircraft used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used therein;
7. the supply of goods for the fuelling and provisioning of aircraft referred to in paragraph 6;
8. the supply of services other than those referred to in paragraph 5, to meet the direct needs of the seagoing vessels referred to in that paragraph or of their cargoes;

9. the supply of services other than those referred to in paragraph 6, to meet the direct needs of aircraft referred to in that paragraph or of their cargoes;

10. supplies of goods and services:

- under diplomatic and consular arrangements,
- to international organizations recognized as such by the public authorities of the host country, and to members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements,
- effected within a Member State which is a party to the North Atlantic Treaty and intended either for the use of the forces of other States which are parties to that Treaty or of the civilian staff accompanying them, or for supplying their messes or canteens which such forces take part in the common defence effort,
- to another Member State and intended for the forces of any Member State which is a party to the North Atlantic Treaty, other than the Member State of destination itself, for the use of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort.

[Article 1(15) of Directive 91/680/EEC]

This exemption shall be subject to limitations laid down by the host Member State until Community tax rules are adopted.

In cases where the goods are not dispatched or transported out of the country, and in the case of services, the benefit of the exemption may be given by means of a refund of the tax.

[Article 1(16) of Directive 91/680/EEC and Article 1(9) of Directive 92/111/EEC]

11. supplies of gold to Central Banks;
 12. goods supplied to approved bodies which export them from the Community as part of their humanitarian, charitable or teaching activities outside the Community. This exemption may be implemented by means of a refund of the tax;
- [Article 1(17) of Directive 91/680/EEC]
13. the supply of services, including transport and ancillary operations, but excluding the supply of services exempted in accordance with Article 13, where these are directly connected with the export of goods or imports of goods covered by the provisions of Article 7(3) or Article 16(1), Title A;
- [Article 1(18) of Directive 91/680/EEC and Article 1(9) of Directive 92/111/EEC]
14. services supplied by brokers and other intermediaries, acting in the name and for account of another person, where they form part of transactions specified in this Article or of transactions carried out outside the Community.

This exemption does not apply to travel agents who supply in the name and for account of the traveller services which are supplied in other Member States.

[Article 1(19) of Directive 91/680/EEC]

15. The Portuguese Republic may treat sea and air transport between the islands making up the autonomous regions of

the Azores and Madeira and between those regions and the mainland in the same way as international transport.

[Annex 1(V)(2) to the Treaty of Accession of Spain and Portugal]

Article 28c(A) and (C)

[Article 1(22) of Directive 91/680/EEC]

A. Exempt supplies of goods

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- a. supplies of goods, as defined in Article 5, dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods.

[Article 1(8) of Directive 95/7/EC]

This exemption shall not apply to supplies of goods by taxable persons exempt from tax under Article 24 or to supplies of goods effected for taxable persons or non-taxable legal persons who qualify for the derogation in the second subparagraph of Article 28a(1)(a);

- b. supplies of new means of transport, dispatched or transported to the purchaser by or on behalf of the vendor or the purchaser out of the territory referred to in Article 3 but within the Community, effected for taxable persons or non-taxable legal persons who qualify for the derogation in the second subparagraph of Article 28a(1)(a) or for any other non-taxable person;
- c. the supply of goods subject to excise duty dispatched or transported to the purchaser, by the vendor, by the purchaser or on his behalf, outside the territory referred to in Article 3 but inside the Community, effected for taxable persons or non-taxable legal persons who qualify for the derogation set out in the second subparagraph of Article 28a(1)(a), when the dispatch or transport of the goods is carried out in accordance with Article 7(4) and (5), or Article 16 of Directive 92/12/EEC.

This exemption shall not apply to supplies of goods subject to excise duty effected by taxable persons who benefit from the exemption from tax set out in Article 24;

- d. the supply of goods, within the meaning of Article 28a(5)(b), which benefit from the exemptions set out above if they have been made on behalf of another taxable person.

[Article 1(12) of Directive 92/111/EEC]

C. Exempt transport services

Member States shall exempt the supply of intra-Community transport services involved in the dispatch or transport of goods to and from the islands making up the autonomous regions of the Azores and Madeira as well as the dispatch or transport of goods between those islands.

Article 28c(E)(3)

[Article 1(22) of Directive 91/680/EEC]

E. Other exemptions

3. Member States shall take specific measures to ensure that value added tax is not charged on the intra-Community acquisition of goods effected, within the meaning of Article 28b(A)(1), within its territory when the following conditions are met:

- the intra-Community acquisition of goods is effected by a taxable person who is not established in the territory of the country but who is identified for value added tax purposes in another Member State,
- the intra-Community acquisition of goods is effected for the purpose of a subsequent supply of goods made by a taxable person in the territory of the country,
- the goods so acquired by this taxable person are directly dispatched or transported from another Member State than that in which he is identified for value added tax purposes and destined for the person for whom he effects the subsequent supply,
- the person to whom the subsequent supply is made is a taxable person or a non-taxable legal person who is identified for value added tax purposes within the territory of the country,
- the person to whom the subsequent supply is made has been designated in accordance with Article 21(1)(c) as the person liable for the tax due on the supplies effected by the taxable person not established within the territory of the country.

[Article 1(13) of Directive 92/111/EEC and Article 1(3) of Directive 2000/65/EC]

Article 16

[Article 28c(E)(1) and (2),

Article 1(22) of Directive 91/680/EEC]

Special exemptions linked to international goods traffic

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 [or] 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;

- d. admitted into territorial waters:
 - in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland,
 - for the fuelling and provisioning of drilling or production platforms;
- e. placed, within the territory of the country, under warehousing arrangements other than customs warehousing.

For the purposes of this Article, warehouses other than customs warehouses shall be taken to be:

- for products subject to excise duty, the places defined as tax warehouses for the purposes of Article 4(b) of Council Directive 92/12/EEC;
- for goods other than those subject to excise duty, the places defined as such by the Member States. However, Member States may not provide for warehousing arrangements other than customs warehousing where the goods in question are intended to be supplied at the retail stage.

Nevertheless, Member States may provide for such arrangements for goods intended for:

- taxable persons for the purposes of supplies effected under the conditions laid down in Article 28k ¹⁾;

¹⁾ Editor's note: Article 28k has lost relevance from 1 July 1999.

- tax-free shops within the meaning of Article 28k ¹⁾, for the purposes of supplies to travellers taking flights or sea crossing to third countries, where those supplies are exempt pursuant to Article 15;

¹⁾ Editor's note: Article 28k has lost relevance from 1 July 1999.

- taxable persons for the purposes of supplies to travellers on board aircraft or vessels during a flight or sea crossing where the place of arrival is situated outside the Community;
- taxable persons for the purposes of supplies effected free of tax pursuant to Article 15(10).

The places referred to in (a), (b), (c) and (d) shall be as defined by the Community customs provisions in force.

- C. supplies of services relating to the supplies of goods referred to in B;
- D. supplies of goods and services carried out:
 - a. in the places listed in B(a), (b), (c) and (d) and still subject to one of the situations specified therein;
 - b. in the places listed in B(e) and still subject, within the territory of the country, to the situation specified therein.

Where they exercise the option provided for in (a) for transactions effected in customs warehouses Member States shall take the measures necessary to ensure that they have defined warehousing arrangements other than customs warehousing which permit the provisions in (b) to be applied to the same transactions concerning goods listed in Annex J which are effected in such warehouses other than customs warehouses;

- E. supplies:
 - of goods referred to in Article 7(1)(a) still subject to arrangements for temporary importation with total exemption from import duty or external transit arrangements,
 - of goods referred to in Article 7(1)(b) still subject to the internal Community transit procedure provided for in Article 33a,

as well as supplies of services related to such supplies.

By way of derogation from the first subparagraph of Article 21(1)(a), the person liable to pay the tax due in accordance with the first subparagraph shall be the person who causes the goods to cease to be covered by the arrangements or situations listed in this paragraph.

When the removal of goods from the arrangements or situations referred to in this paragraph gives rise to importation within the meaning of Article 7(3), the Member State of import shall take the measures necessary to avoid double taxation within the country.
[Article 1(9) of Directive 95/7/EC]

- 1a. Where they exercise the option provided for in paragraph 1, Member States shall take the measures necessary to ensure that intra-Community acquisitions of goods intended to be placed under one of the arrangements or in one of the situations referred to in paragraph 1(B) benefit from the same provisions as supplies of goods effected within the country under the same conditions.
[Article 1(9) of Directive 95/7/EC]
2. Subject to the consultation provided for in Article 29, Member States may opt to exempt intra-Community acquisitions of goods made by a taxable person, imports for and supplies of goods to a taxable person intending to export them outside the Community as they are or after processing, as well as supplies of services linked with his export business, up to a maximum equal to the value of his exports during the preceding 12 months.

When they take up this option the Member States shall, subject to the consultation provided for in Article 29, extend the benefit of this exemption to intra-Community acquisitions of goods by a taxable person, imports for and supplies of goods to a taxable person intending to supply them, as they are or after processing, under the conditions laid down in Article 28c(A), as well as supplies of services relating to such supplies, up to a maximum equal to the value of his supplies of goods effected under the conditions laid down in Article 28c(A) during the preceding twelve months.

Member States may set a common maximum amount for transactions which they exempt under the first and second subparagraphs.
[Article 28c(E)(2) and Article 1(13) of Directive 92/111/EEC]

3. The Commission shall submit to the Council at the earliest opportunity proposals concerning common arrangements for applying value added tax to the transactions referred to in paragraphs 1 and 2.

Article 28k¹⁾

Miscellaneous provisions

¹⁾ Editor's note: Article 28k (provisions regarding tax-free shops) has lost relevance from 1 July 1999.

TITLE XI

DEDUCTIONS

Article 17

Origin and scope of the right to deduct

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.
2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:
 - a. value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;
[Article 1(10) of Directive 95/7/EC]
 - b. value added tax due or paid in respect of imported goods within the territory of the country;
 - c. value added tax due pursuant to Articles 5(7)(a), 6(3) and 28a(6);
 - d. value added tax due pursuant to Article 28a(1)(a).
[Article 28f(1)]
Article 1(22) of Directive 91/680/EEC]
3. Member States shall also grant every taxable person the right to the deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:
 - a. transactions relating to the economic activities referred to in Article 4(2), carried out in another country, which would be deductible if they had been performed within the territory of the country;
 - b. transactions which are exempt pursuant to Article 14(1)(g) and (i), 15, and 16(1)(B), (C), (D) or (E) or (2) or 28c(A) and (C).
[Article 1(18) of Directive 92/111/EEC, Accession 2004, and Chapter V, section 1(c) of the Annex to Directive 2004/66/EC]
 - c. any of the transactions exempt pursuant to Article 13(B)(a) and (d)(1) to (5), when the customer is established outside the Community or when those transactions are directly linked with goods to be exported to a country outside the Community.
[Article 28a(1)]
Article 1(22) of Directive 91/680/EEC]
4. The refund of value added tax referred to in paragraph 3 shall be effected:

- to taxable persons who are not established within the territory of the country but who are established in another Member State in accordance with the detailed implementing rules laid down in Directive 79/1072/EEC;
- to taxable persons who are not established in the territory of the Community, in accordance with the detailed implementing rules laid down in Directive 86/560/EEC.

For the purposes of applying the above:

- a. the taxable persons referred to in Article 1 of Directive 79/1072/EEC shall also be considered for the purposes of applying the said Directive as taxable persons who are not established in the country when, inside the territory of the country, they have only carried out supplies of goods and services to a person who has been designated as the person liable to pay the tax in accordance with Article 21(1)(a) and (c);
[Article 1(2) of Directive 2000/65/EC]
- b. the taxable persons referred to in Article 1 of Directive 86/560/EEC shall also be considered for the purposes of applying the said Directive as taxable persons who are not established in the Community when, inside the territory of the country, they have only carried out supplies of goods and services to a person who has been designated as the person liable to pay the tax in accordance with Article 21(1)(a);
- c. Directives 79/1072/EEC and 86/560/EEC shall not apply to supplies of goods which are, or may be, exempted under Article 28c(A) when the goods supplied are dispatched or transported by the acquirer or for his account.

[Article 28f(1)]

Article 1(22) of Directive 91/680/EEC and Article 1(18) of Directive 92/111/EEC]

5. As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible, and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions.

This proportion shall be determined, in accordance with Article 19, for all the transactions carried out by the taxable person.

However, Member States may:

- a. authorize the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;
- b. compel the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;
- c. authorize or compel the taxable person to make the deduction on the basis of the use of all or part of the goods and services;
- d. authorize or compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph, in respect of all goods and services used for all transactions referred to therein;

- e. provide that where the value added tax which is not deductible by the taxable person is insignificant it shall be treated as nil.
6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously 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, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.

7. Subject to the consultation provided for in Article 29, each Member State may, for cyclical economic reasons, totally or partly exclude all or some capital goods or other goods from the system of deductions. To maintain identical conditions of competition, Member States may, instead of refusing deduction, tax the goods manufactured by the taxable person himself or which he has purchased in the country or imported, in such a way that the tax does not exceed the value added tax which would have been charged on the acquisition of similar goods.

Article 28a(4)

[Article 1(22) of Directive 91/680/EEC]

4. Any person who from time to time supplies a new means of transport under the conditions laid down in Article 28c(A) shall also be regarded as a taxable person.

The Member State within the territory of which the supply is effected shall grant the taxable person the right of deduction on the basis of the following provisions:

- the right of deduction shall arise and may be exercised only at the time of the supply,
- the taxable person shall be authorized to deduct the value added tax included in the purchase price or paid on the importation or intra-Community acquisition of the means of transport, up to an amount not exceeding the tax for which he would be liable if the supply were not exempt.

Member States shall lay down detailed rules for the implementation of these provisions.

Article 26b(D)

[Article 1 of Directive 98/80/EC]

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 G¹⁾;

¹⁾ See page 38.

- b. tax due or paid in respect of supply to them, or intra-Community acquisition or importation by them, of gold other than investment gold which is subsequently transformed by them or on their behalf into investment gold;
- c. tax due or paid in respect of services supplied to them consisting of change of form, weight or purity of gold including investment gold,

if their subsequent supply of this gold is exempt under this Article.

2. Taxable persons who produce investment gold or transform any gold into investment gold, shall be entitled to deduct tax due or paid by them in respect of supplies, or intra-Community acquisition or importation of goods or services linked to the production or transformation of that gold as if their subsequent supply of the gold exempted under this Article were taxable.

Article 18

Rules governing the exercise of the right to deduct

1. To exercise his right of deduction, the taxable person must:
- a. in respect of deductions pursuant to Article 17(2)(a), hold an invoice drawn up in accordance with Article 22(3);
- b. in respect of deductions pursuant to Article 17(2)(b), hold an import document¹⁾ specifying him as consignee or importer and stating or permitting the calculation of the amount of tax due;
- c. in respect of deductions pursuant to Article 17(2)(c), comply with the formalities established by each Member State;
- d. when he is required to pay the tax as a customer or purchaser where Article 21(1) applies, comply with the formalities laid down by each Member State; [Article 1(6)(a) of Directive 2000/65/EC]
- e. in respect of deductions pursuant to Article 17(2)(d), set out in the declaration provided for in Article 22(4) all the information needed for the amount of the tax due on his intra-Community acquisitions of goods to be calculated and hold an invoice in accordance with Article 22(3).

[Article 28f(2)]

Article 1(22) of Directive 91/680/EEC]

2. The taxable person shall effect the deduction by subtracting from the total amount of value added tax due for a given tax period the total amount of the tax in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1.

However, Member States may require that as regards taxable persons who carry out occasional transactions as defined in Article 4(3), the right to deduct shall be exercised only at the time of the supply.

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorized to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2.

3a. Member States may authorize a taxable person who does not hold an invoice in accordance with Article 22(3) to make the deduction referred to in Article 17(2)(d); they shall determine the conditions and arrangements for applying this provision.

[Article 28f(3)]

Article 1(22) of Directive 91/680/EEC]

4. Where for a given tax period the amount of authorized deductions exceeds the amount of tax due, the Member States may either make a refund or carry the excess forward to the following period according to conditions which they shall determine.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.

Article 19

Calculation of the deductible proportion

1. The proportion deductible under the first subparagraph of Article 17(5) shall be made up of a fraction having:
 - as numerator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions in respect of which value added tax is deductible under Article 17(2) and (3),
 - as denominator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible. The Member States may also include in the denominator the amount of subsidies, other than those specified in Article 11(A)(1)(a).

The proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next unit.

2. By way of derogation from the provisions of paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business. Amounts of turnover attributable to transactions specified in Article 13(B)(d), in so far as these are incidental transactions, and to incidental real estate and financial transactions shall also be excluded. Where Member States exercise the option provided under Article 20(5) not to require adjustment in respect of capital goods, they may include disposal of capital goods in the calculation of the deductible proportion.
3. The provisional proportion for a year shall be that calculated on the basis of the preceding year's transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated provisionally, under supervision of the tax authorities, by the taxable person from his own forecasts. However, Member States may retain their current rules.

Deductions made on the basis of such provisional proportion shall be adjusted when the final proportion is fixed during the next year.

Article 20

Adjustments of deductions

1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:
 - a. where that deduction was higher or lower than that to which the taxable person was entitled;
 - b. where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be made in cases of transactions remaining totally or partially unpaid and of destruction, loss or theft of property duly proved or confirmed, nor in the case of applications for the purpose of making gifts of small value and giving samples specified in Article 5(6). However, Member States may require adjustment in cases of transactions remaining totally or partially unpaid and of theft.
2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one fifth of the tax imposed on goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

By way of derogation from the preceding subparagraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used.

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

[Article 1(4) of Directive 95/7/EC]

3. In the case of supply during the period of adjustment capital goods shall be regarded as if they had still been applied for business use by the taxable person until expiry of the period of adjustment. Such business activities are presumed to be fully taxed in cases where the delivery of the said goods is taxed; they are presumed to be fully exempt where the delivery is exempt. The adjustment shall be made only once for the whole period of adjustment still to be covered.

However, in the latter case, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which value added tax is deductible.

4. For the purposes of applying the provisions of paragraphs 2 and 3, Member States may:
 - define the concept of capital goods,
 - indicate the amount of the tax which is to be taken into consideration for adjustment,

- adopt any suitable measures with a view to ensuring that adjustment does not involve any unjustified advantage,
 - permit administrative simplifications.
5. If in any Member State the practical effect of applying paragraphs 2 and 3 would be insignificant, that Member State may subject to the consultation provided for in Article 29 forego application of these paragraphs having regard to the need to avoid distortion of competition, the overall tax effect in the Member State concerned and the need for due economy of administration.
6. Where the taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all necessary measures to ensure that the taxable person neither benefits nor is prejudiced unjustifiably.

TITLE XII

PERSONS LIABLE FOR PAYMENT FOR TAX

Article 21

[Article 28g

Article 1(22) of Directive 91/680/EEC,

Article 1(4) of Directive 2000/65/EC]

Persons liable to pay tax to the authorities

1. Under the internal system, the following shall be liable to pay value added tax:
 - a. the taxable person carrying out the taxable supply of goods or of services, except for the cases referred to in (b), (c) and (f). Where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may, under the conditions determined by them, lay down that the person liable to pay tax is the person for whom the taxable supply of goods or of services is carried out;

[Article 1(4) of Directive 2003/92/EC]
 - b. taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person not established within the territory of the country;

[Article 1(11) of Directive 95/7/EC and Article 1(3) of Directive 1999/59/EC]
 - c. the person to whom the supply of goods is made when the following conditions are met:
 - the taxable operation is a supply of goods made under the conditions laid down in Article 28c(E)(3),
 - the person to whom the supply of goods is made is another taxable person or a non-taxable legal person identified for the purposes of value added tax within the territory of the country,
 - the invoice issued by the taxable person not established within the territory of the country conforms to Article 22(3).

However, Member States may provide a derogation from this obligation, where the taxable person who is not established within the territory of the country has appointed a tax representative in that country;

- d. any person who mentions the value added tax on an invoice;

[Article 4(5) of Directive 2001/115/EC]
- e. any person effecting a taxable intra-Community acquisition of goods;
- f. persons who are identified for value added tax purposes within the territory of the country and to whom goods are supplied under the conditions set out in Article 8(1)(d) or (e), if the supplies are carried out by a taxable person not established within the territory of the country.

[Article 1(5) of Directive 2003/92/EC]

2. By way of derogation from the provisions of paragraph 1:

- a. where the person liable to pay tax in accordance with the provisions of paragraph 1 is a taxable person who is not established within the territory of the country, Member States may allow him to appoint a tax representative as the person liable to pay tax. This option shall be subject to conditions and procedures laid down by each Member State;
- b. where the taxable transaction is effected by a taxable person who is not established within the territory of the country and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC and 77/799/EEC¹⁾ and by Council Regulation (EEC) No. 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT)¹⁾, Member States may take steps to provide that the person liable for payment of the tax shall be a tax representative appointed by the non-established taxable person.

¹⁾ Editor's note: With effect from 1 January 2004, Regulation (EEC) No. 218/92 has been replaced by Council Regulation (EC) No. 1798/2003 of 7 October 2003 (OJ L264 of 15 October 2003). Under Article 2 of Council Directive 2003/93/EC, references made to Directive 77/799/EEC in relation to VAT must be construed as references to Regulation (EC) No. 1798/2003.

3. In the situations referred to in paragraphs 1 and 2, Member States may provide that someone other than the person liable for payment of the tax shall be held jointly and severally liable for payment of the tax.
4. On importation, value added tax shall be payable by the person or persons designated or accepted as being liable by the Member State into which the goods are imported.

Article 26b(F)

[Article 1 of Directive 98/80/EC]

F. Reverse charge procedure

By way of derogation from Article 21(1)(a), as amended by Article 28g, in the case of supplies of gold material or semi-manufactured products of a purity of 325 thousandths or greater, or supplies of investment gold where an option referred to in C¹⁾ of this Article has been exercised, Member States may designate the purchaser as the person liable to pay the tax, according to the

procedures and conditions which they shall lay down. When they exercise this option, Member States shall take the measures necessary to ensure that the person designated as liable for the tax due fulfils the obligations to submit a statement and to pay the tax in accordance with Article 22.

¹⁾ See page 37.

TITLE XIII

OBLIGATIONS OF PERSONS LIABLE FOR PAYMENT

Article 22

[Article 28h

Article 1(22) of Directive 91/680/EEC]

Obligations under the internal system

1. a. Every taxable person shall state when his activity as a taxable person commences, changes or ceases. Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that electronic means are used.
[Article 2(1) of Directive 2002/38/EC]
- b. Without prejudice to (a), every taxable person referred to in Article 28a(1)(a), second subparagraph, shall state that he is effecting intra-Community acquisitions of goods when the conditions for application of the derogation provided for in that Article are not fulfilled.
- c. Member States shall take the measures necessary to identify by means of an individual number:
 - every taxable person, with the exception of those referred to in Article 28a(4), who, within the territory of the country, effects supplies of goods or of services giving him the right of deduction, other than supplies of goods or of services for which tax is payable solely by the customer or the recipient in accordance with Article 21(1)(a), (b), (c) or (f). However, Member States need not identify certain taxable persons referred to in Article 4(3).
[Article 1(20) of Directive 92/111/EEC, Article 1(5) of Directive 2000/65/EC and Article 1(6) of Directive 2003/92/EC]
 - every taxable person referred to in paragraph 1(b) and every taxable person who exercises the option provided for in the third subparagraph of Article 28a(1)(a);
 - every taxable person who, within the territory of the country, effects intra-Community acquisitions of goods for the purposes of his operations relating to the economic activities referred to in Article 4(2) carried out abroad;
[Article 1(20) of Directive 92/111/EEC]
- d. Each individual identification number shall have a prefix in accordance with ISO International Standard No. 3166 – alpha 2 – by which the Member State of issue may be identified. Nevertheless, the Hellenic Republic shall be authorised to use the prefix "EL".
[Article 2(1) of Directive 2001/115/EC]
- e. Member States shall take the measures necessary to ensure that their identification systems distinguish taxable persons referred to in (c) and to ensure the correct application of the transitional arrangements for

the taxation of intra-Community transactions as laid down in this Title.

2. a. Every taxable person shall keep accounts in sufficient detail for value added tax to be applied and inspected by the tax authority.
- b. Every taxable person shall keep a register of the goods he has dispatched or transported or which have been dispatched or transported on his behalf out of the territory defined in Article 3 but within the Community for the purposes of the transactions referred to in the fifth, sixth and seventh indents of Article 28a(5)(b).

Every taxable person shall keep sufficiently detailed accounts to permit the identification of goods dispatched to him from another Member State by or on behalf of a taxable person identified for purposes of value added tax in that other Member State, in connection with which a service has been provided pursuant to the third or fourth indent of Article 9(2)(c).

[Article 1(12) of Directive 95/7/EC]

3. a. Every taxable person shall ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of goods or services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of the supplies of goods referred to in Article 28b(B)(1) and in respect of goods supplied under the conditions laid down in Article 28c(A).

Every taxable person shall likewise ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of any payment on account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment on account made to him by another taxable person or non-taxable legal person before the provision of services is completed.

Member States may impose on taxable persons an obligation to issue an invoice in respect of goods or services other than those referred to in the preceding subparagraphs which they have supplied or rendered on their territory. When they do so, Member States may impose fewer obligations in respect of these invoices than those listed under points (b), (c) and (d).

The Member States may release taxable persons from the obligation to issue an invoice in respect of goods or services which they have supplied or rendered in their territory and which are exempt, with or without refund of the tax paid at the preceding stage, pursuant to Article 13, Article 28(2)(a) and Article 28(3)(b).

Any document or message that amends and refers specifically and unambiguously to the initial invoice is to be treated as an invoice. Member States in whose territory goods or services are supplied or rendered may allow some of the obligatory details to be left out of such documents or messages.

Member States may impose time limits for the issue of invoices on taxable persons supplying goods and services in their territory.

Under conditions to be laid down by the Member States in whose territory goods or services are supplied or rendered, a summary invoice may be drawn up for several separate supplies of goods or services.

Invoices may be drawn up by the customer of a taxable person in respect of goods or services supplied or rendered to him by that taxable person, on condition that there is at the outset an agreement between the two parties, and on condition that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services. The Member States in whose territory the goods or services are supplied or rendered shall determine the terms and conditions of the agreement and of the acceptance procedures between the taxable person and his customer.

Member States may impose further conditions on the issue of invoices by the customers of taxable persons supplying goods or services on their territory. For example, they may require that such invoices be issued in the name and on behalf of the taxable person. Such conditions must always be the same wherever the customer is established.

Member States may also lay down specific conditions for taxable persons supplying goods or services in their territory in cases where the third party, or the customer, who issues invoices is established in a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation ¹⁾ and by Council Regulation (EEC) No. 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) ¹⁾.

¹⁾ Editor's note: With effect from 1 January 2004, Regulation (EEC) No. 218/92 has been replaced by Council Regulation (EC) No. 1798/2003 of 7 October 2003 (OJ L264 of 15 October 2003). Under Article 2 of Council Directive 2003/93/EC, references made to Directive 77/799/EEC in relation to VAT must be construed as references to Regulation (EC) No. 1798/2003.

- b. Without prejudice to the specific arrangements laid down by this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a):

- the date of issue;
- a sequential number, based on one or more series, which uniquely identifies the invoice,
- the VAT identification number referred to in paragraph 1(c) under which the taxable person supplied the goods or services;
- where the customer is liable to pay tax on goods supplied or services rendered or has been supplied with goods as referred to in Article 28c(A), the VAT identification number as referred to in paragraph 1(c) under which the goods were supplied or the services rendered to him;
- the full name and address of the taxable person and of his customer;

- the quantity and nature of the goods supplied or the extent and nature of the services rendered;
- the date on which the supply of goods or of services was made or completed or the date on which the payment on account referred to in the second subparagraph of point (a) was made, insofar as that a date can be determined and differs from the date of issue of the invoice;
- the taxable amount per rate or exemption, the unit price exclusive of tax and any discounts or rebates if they are not included in the unit price;
- the VAT rate applied;
- the VAT amount payable, except where a specific arrangement is applied for which this Directive excludes such a detail;
- where an exemption is involved or where the customer is liable to pay the tax, reference to the appropriate provision of this directive, to the corresponding national provision, or to any indication that the supply is exempt or subject to the reverse charge procedure;
- where the intra-Community supply of a new means of transport is involved, the particulars specified in Article 28a(2);
- where the margin scheme is applied, reference to Article 26 or 26a, to the corresponding national provisions, or to any other indication that the margin scheme has been applied;
- where the person liable to pay the tax is a tax representative within the meaning of Article 21(2), the VAT identification number referred to in paragraph 1(c) of that tax representative, together with his full name and address.

Member States may require taxable persons established on their territory and supplying goods or services on their territory to indicate the VAT identification number referred to in paragraph 1(c) of their customer in cases other than those referred to in the fourth indent of the first subparagraph.

Member States shall not require invoices to be signed.

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of tax to be paid is expressed in the national currency of the Member State where the supply of goods or services takes place, using the conversion mechanism laid down in Article 11(C)(2).

Where necessary for control purposes, Member States may require invoices in respect of goods supplied or services rendered in their territory and invoices received by taxable persons in their territory to be translated into their national languages.

- c. Invoices issued pursuant to point (a) may be sent either on paper or, subject to an acceptance by the customer, by electronic means.

Invoices sent by electronic means shall be accepted by Member States provided that the authenticity of the origin and integrity of the contents are guaranteed:

- by means of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures; Member States may however ask for the advanced electronic signature to be based on a qualified certificate and created by a secure-signature-creation device, within the meaning of Article 2(6) and (10) of the aforementioned Directive;

or

- by means of electronic data interchange (EDI) as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange when the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data; however Member States may, subject to conditions which they lay down, require that an additional summary document on paper is necessary.

Invoices may, however, be sent by other electronic means subject to acceptance by the Member State(s) concerned. The Commission will present, at the latest on 31 December 2008, a report, together with a proposal, if appropriate, amending the conditions on electronic invoicing in order to take account of possible future technological developments in this field.

Member States may not impose on taxable persons supplying goods or services in their territory any other obligations or formalities relating to the transmission of invoices by electronic means. However, they may provide, until 31 December 2005, that the use of such a system is to be subject to prior notification.

Member States may lay down specific conditions for invoices issued by electronic means for goods or services supplied in their territory from a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC and 77/799/EEC ¹⁾ and by Regulation (EEC) No. 218/92 ¹⁾.

¹⁾ Editor's note: With effect from 1 January 2004, Regulation (EEC) No. 218/92 has been replaced by Council Regulation (EC) No. 1798/2003 of 7 October 2003 (OJ L264 of 15 October 2003). Under Article 2 of Council Directive 2003/93/EC, references made to Directive 77/799/EEC in relation to VAT must be construed as references to Regulation (EC) No. 1798/2003.

When batches containing several invoices are sent to the same recipient by electronic means, the details that are common to the individual invoices may be mentioned only once if, for each invoice, all the information is accessible.

- d. Every taxable person shall ensure that copies of invoices issued by himself, by his customer or, in his name and on his behalf, by a third party, and all the invoices which he has received are stored.

For the purposes of this Directive, the taxable person may decide the place of storage provided that he makes the invoices or information stored there available without undue delay to the competent authorities whenever they so request. Member States may, however, require taxable persons established in their territory to notify them of the place of storage, if it is outside their territory. Member States may, in addition, require taxable persons established in their territory to store within the country invoices issued by themselves or by their customers or, in their name and on their behalf, by a third party, as well as all the invoices which they have received, when the storage is not by electronic means guaranteeing full on-line access to the data concerned.

The authenticity of the origin and integrity of the content of the invoices, as well as their readability, must be guaranteed throughout the storage period. As regards the invoices referred to in the third subparagraph of point (c), the information they contain may not be altered; it must remain legible throughout the aforementioned period.

The Member States shall determine the period for which taxable persons must store invoices relating to goods or services supplied in their territory and invoices received by taxable persons established in their territory.

In order to ensure that the conditions laid down in the third subparagraph are met, Member States referred to in the fourth subparagraph may require that invoices be stored in the original form in which they were sent, whether paper or electronic. They may also require that when invoices are stored by electronic means, the data guaranteeing the authenticity of the origin and integrity of the content also be stored.

Member States referred to in the fourth subparagraph may impose specific conditions prohibiting or restricting the storage of invoices in a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC, 77/799/EEC ¹⁾ and by Regulation (EEC) No. 218/92 ¹⁾ and to the right of access by electronic means, download and use referred to in Article 22a.

¹⁾ Editor's note: With effect from 1 January 2004, Regulation (EEC) No. 218/92 has been replaced by Council Regulation (EC) No. 1798/2003 of 7 October 2003 (OJ L264 of 15 October 2003). Under Article 2 of Council Directive 2003/93/EC, references made to Directive 77/799/EEC in relation to VAT must be construed as references to Regulation (EC) No. 1798/2003.

Member States may, subject to conditions which they lay down, require the storage of invoices received by non-taxable persons.

- e. For the purposes of points (c) and (d), transmission and storage of invoices "by electronic means" shall mean transmission or making available to the recipient and storage using electronic equipment for processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means.

For the purposes of this Directive, Member States shall accept documents or messages in paper or electronic form as invoices if they meet the conditions laid down in this paragraph.

[Article 2(2) of Directive 2001/115/EC]

4. a. Every taxable person shall submit a return by a deadline to be determined by Member States. That deadline may not be more than two months later than the end of each tax period. The tax period shall be fixed by each Member State at one month, two months or a quarter. Member States may, however, set different periods provided that they do not exceed one year. Member States shall, subject to conditions which they lay down, allow the taxable person to make such returns by electronic means, and may also require that electronic means are used.

[Article 2(2) of Directive 2002/38/EC]

- b. The return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions relative to such tax and deductions and the value of any exempt transactions.

- c. The return shall also set out:

- on the one hand, the total value, less value added tax, of the supplies of goods referred to in Article 28c(A) on which tax has become chargeable during the period.

The following shall also be added: the total value, less value added tax, of the supplies of goods referred to in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) effected within the territory of another Member State for which tax has become chargeable during the return period where the place of departure of the dispatch or transport of the goods is situated in the territory of the country,

- on the other hand, the total amount, less value added tax of the intra-Community acquisitions of goods referred to in Article 28a(1) and (6) effected within the territory of the country on which tax has become chargeable.

[Article 1(20) of Directive 92/111/EEC]

The following shall also be added: the total value, less value added tax, of the supplies of goods referred to in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) effected in the territory of the country on which tax has become chargeable during the return period, where the place of departure of the dispatch or transport of the goods is situated within the territory of another Member State, and the total amount, less value added tax, of the supplies of goods made within the territory of the country for which the taxable person has been designated as the person liable for the tax in accordance with Article 28c(E)(3) and under which the tax has become payable in the course of the period covered by the declaration.

[Article 1(20) of Directive 92/111/EEC]

5. Every taxable person shall pay the net amount of the value added tax when submitting the regular return. Member States may, however, set a different date for the payment of that amount or may demand an interim payment.
6. a. Member States may require a taxable person to submit a statement, including all the particulars specified in paragraph 4, concerning all transactions carried out in

the preceding year. That statement shall provide all the information necessary for any adjustments. Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that electronic means are used.

[Article 2(3) of Directive 2002/38/EC]

- b. Every taxable person identified for value added tax purposes shall also submit a recapitulative statement of the acquirers identified for value added tax purposes to whom he has supplied goods under the conditions provided for in Article 28c(A)(a) and (d), and of consignees identified for value added tax purposes in the transactions referred to in the fifth subparagraph.

[Article 1(12) of Directive 95/7/EC]

The recapitulative statement shall be drawn up for each calendar quarter within a period and in accordance with procedures to be determined by the Member States, which shall take the measures necessary to ensure that the provisions concerning administrative cooperation in the field of indirect taxation are in any event complied with. Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that electronic means are used.

[Article 2(4) of Directive 2002/38/EC]

The recapitulative statement shall set out:

- the number by which the taxable person is identified for purposes of value added tax in the territory of the country and under which he effected supplies of goods in the conditions laid down in Article 28c(A)(a),

[Article 1(20) of Directive 92/111/EEC]

- the number by which each person acquiring goods is identified for purposes of value added tax in another Member State and under which the goods were supplied to him,

[Article 1(12) of Directive 95/7/EC]

- for each person acquiring goods, the total value of the supplies of goods effected by the taxable person. Those amounts shall be declared for the calendar quarter during which the tax became chargeable.

The recapitulative statement shall also set out:

- for the supplies of goods covered by Article 28c(A)(d), the number by means of which the taxable person is identified for purposes of value added tax in the territory of the country, the number by which he is identified in the Member State of arrival of the dispatch or transport and the total amount of the supplies, determined in accordance with Article 28e(2),

[Article 1(20) of Directive 92/111/EEC]

- the amounts of adjustments made under Article 11(C)(1). Those amounts shall be declared for the calendar quarter during which the person acquiring the goods is notified of the adjustment.

In the cases set out in the third subparagraph of Article 28b(A)(2), the taxable person identified for value added tax purposes within the territory of the country shall mention in a clear way on the recapitulative statement:

- the number by which he is identified for value added tax purposes within the territory of the country and under which he carried out the intra-Community acquisition and the subsequent supply of goods,
- the number by which, within the territory of the Member State of arrival of the dispatch or transport of the goods, the consignee of the subsequent supply by the taxable person is identified,
- and, for each consignee, the total amount, less value added tax, of the supplies made by the taxable person within the territory of the Member State of arrival of the dispatch or transport of the goods. These amounts shall be declared for the calendar quarter during which the tax became chargeable.

[Article 1(20) of Directive 92/111/EEC]

c. By way of derogation from (b), Member States may:

- require recapitulative statements to be filed on a monthly basis;
- require that recapitulative statements give additional particulars.

d. In the case of supplies of new means of transport effected under the conditions laid down in Article 28c(A)(b) by a taxable person identified for purposes of value added tax to a purchaser not identified for purposes of value added tax or by a taxable person as defined in Article 28a(4), Member States shall take the measures necessary to ensure that the vendor communicates all the information necessary for value added tax to be applied and inspected by the tax authority.

e. Member States may require taxable persons who in the territory of the country effect intra-Community acquisitions of goods as defined in Article 28a(1)(a) and (6) to submit statements giving details of such acquisitions provided, however, that such statements may not be required for a period of less than one month.

Member States may also require persons who effect intra-Community acquisitions of new means of transport as defined in Article 28a(1)(b) to provide, when submitting the return referred to in paragraph 4, all the information necessary for value added tax to be applied and inspected by the tax authority.

7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21(1) and (2), are considered to be liable to pay the tax instead of a taxable person not established within the territory of the country comply with the obligations relating to declaration and payment set out in this Article; they shall also take the measures necessary to ensure that those persons who, in accordance with Article 21(3), are held to be jointly and severally liable for payment of the tax comply with the obligations relating to payment set out in this Article.

[Article 1(5)(b) of Directive 2000/65/EC]

8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between

Member States, give rise to formalities connected with the crossing of frontiers.

The option provided for in the first subparagraph cannot be used to impose additional obligations over and above those laid down in paragraph 3.

[Article 2(3) of Directive 2001/115/EC]

9. a. Member States may release from certain or all obligations:

- taxable persons carrying out only supplies of goods or of services which are exempt under Articles 13 and 15,
- taxable persons eligible for the exemption from tax provided for in Article 24 and for the derogation provided for in Article 28a(1)(a), second subparagraph,
- taxable persons carrying out none of the transactions referred to in paragraph 4(c).

Without prejudice to the provisions laid down in point (d), Member States may not, however, release the taxable persons referred to in the third indent from the obligations referred to in Article 22(3).

[Article 2(4) of Directive 2001/115/EC]

b. Member States may release taxable persons other than those referred to in (a) from certain of the obligations referred to in 2(a).

c. Member States may release taxable persons from payment of the tax due where the amount involved is insignificant.

d. Subject to consultation of the Committee provided for in Article 29 and under the conditions which they may lay down, Member States may provide that invoices in respect of goods supplied or services rendered in their territory do not have to fulfil some of the conditions laid down in paragraph 3(b) in the following cases:

- when the amount of the invoice is minor,
- or
- when commercial or administrative practice in the business sector concerned or the technical conditions under which the invoices are issued make it difficult to comply with all the requirements referred to in paragraph 3(b).

In any case, these invoices must contain the following:

- the date of issue,
- identification of the taxable person,
- identification of the type of goods supplied or services rendered,
- the tax due or the information needed to calculate it.

The simplified arrangements provided for in this point may not be applied to transactions referred to in paragraph 4(c).

[Article 2(5) of Directive 2001/115/EC]

- e. In cases where Member States make use of the option provided for in the third indent of point (a) to refrain from allocating a number as referred to in paragraph 1(c) to taxable persons who do not carry out any of the transactions referred to in paragraph 4(c), and where the supplier or the customer have not been allocated an identification number of this type, the invoice should feature instead another number called the tax reference number, as defined by the Member States concerned.

When the taxable person has been allocated an identification number as referred to in paragraph 1(c), the Member States referred to in the first subparagraph may also require the invoice to show:

- for services rendered referred to in Article 28b(C), (D), (E) and (F) and for supplies of goods referred to in Article 28c(A) and (E) point 3, the number referred to in paragraph 1(c) and the tax reference number of the supplier;
- for other supplies of goods and services, only the tax reference number of the supplier or only the number referred to in paragraph 1(c).

[Article 2(6) of Directive 2001/115/EC]

10. Member States shall take measures to ensure that non-taxable legal persons who are liable for the tax payable in respect of intra-Community acquisitions of goods covered by the first subparagraph of Article 28a(1)(a) comply with the above obligations relating to declaration and payment and that they are identified by an individual number as defined in paragraph 1(c), (d) and (e).
11. In the case of intra-Community acquisitions of products subject to excise duty referred to in Article 28a(1)(c) as well as in the case of intra-Community acquisitions of new means of transport covered by Article 28a(1)(b), Member States shall adopt arrangements for declaration and subsequent payment.
- [Article 1(20) of Directive 92/111/EEC]
12. Acting unanimously on a proposal from the Commission, the Council may authorize any Member State to introduce particular measures to simplify the statement obligations laid down in paragraph 6(b). Such simplification measures, which shall not jeopardize the proper monitoring of intra-Community transactions, may take the following forms:
- a. Member States may authorize taxable persons who meet the following three conditions to file one-year recapitulative statements indicating the numbers by which the persons to whom those taxable persons have supplied goods under the conditions laid down in Article 28c(A) are identified for purposes of value added tax in other Member States:
- the total annual value, less value added tax, of their supplies of goods or provisions of services, as defined in Articles 5, 6 and 28a(5), does not exceed by more than EUR 35,000 the amount of the annual turnover which is used as a reference for application of the exemption from tax provided for in Article 24,
- [Article 2 of Regulation (EC) No. 1103/97]
- the total annual value, less value added tax, of supplies of goods effected by them under the

conditions laid down in Article 28c(A) does not exceed the equivalent in national currency of EUR 15,000,

[Article 2 of Regulation (EC) No. 1103/97]

- supplies of goods effected by them under the conditions laid down in Article 28c(A) are other than supplies of new means of transport;
- b. Member States which set at over three months the tax period for which a taxable person must submit the returns provided for in paragraph 4 may authorize such persons to submit recapitulative statements for the same period where those taxable persons meet the following three conditions:
- the overall annual value, less value added tax, of the goods and services they supply, as defined in Articles 5, 6 and 28a(5), does not exceed the equivalent in national currency of EUR 200,000,
- [Article 2 of Regulation (EC) No. 1103/97]
- the total annual value, less value added tax, of supplies of goods effected by them under the conditions laid down in Article 28c(A) does not exceed the equivalent in national currency of EUR 15,000,
- [Article 2 of Regulation (EC) No. 1103/97]
- supplies of goods effected by them under the conditions provided for in Article 28c(A) are other than supplies of new means of transport.

Article 22a

Right of access to invoices stored by electronic means in another Member State

When a taxable person stores invoices which he issues or receives by an electronic means guaranteeing on-line access to the data and when the place of storage is in a Member State other than that in which he is established, the competent authorities in the Member State in which he is established shall have a right, for the purpose of this directive, to access by electronic means, download and use these invoices within the limits set by the regulations of the Member State where the taxable person is established and as far as that State requires for control purposes.

[Article 3 of Directive 2001/115/EC]

Article 26b(E)

[Article 1 of Directive 98/80/EC]

E. Special obligations for traders in investment gold

Member States shall, as a minimum, ensure that traders in investment gold keep account of all substantial transactions in investment gold and keep the documentation to allow identification of the customer in such transactions.

Traders shall keep this information for a period of at least five years.

Member States may accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, to meet the requirements of the first paragraph.

Member States may lay down stricter obligations, in particular on special record keeping or special accounting requirements.

Article 23

Obligations in respect of imports

As regards imported goods, Member States shall lay down the detailed rules for the making of the declarations and payments.

In particular, Member States may provide that the value added tax payable on importation of goods by taxable persons or persons liable to tax or certain categories of these two need not be paid at the time of importation, on condition that the tax is mentioned as such in a return to be submitted under Article 22(4).

TITLE XIV

SPECIAL SCHEMES

Article 24

Special scheme for small undertakings

1. Member States which might encounter difficulties in applying the normal tax scheme to small undertakings by reasons of their activities or structure shall have the option, under such conditions and with such limits as they may set but subject to the consultation provided for in Article 29, of applying simplified procedures such as flat-rate schemes for charging and collecting the tax provided they do not lead to a reduction thereof.
2. Until a date to be fixed by the Council acting unanimously on a proposal from the Commission, but which shall not be later than on which the charging of tax on imports and the remission of tax on exports in trade between the Member States are abolished:
 - a. Member States which have made use of the option under Article 14 of the second Council Directive of 11 April 1967 to introduce exemptions or graduated tax relief may retain them and the arrangements for applying them if they conform with the value added tax system.

Those Member States which apply an exemption from tax to taxable persons whose annual turnover is less than the equivalent in national currency of EUR 5,000 at the conversion rate of the day on which this Directive is adopted, may increase this exemption up to EUR 5,000.

[Article 1 of Regulation (EEC, Euratom) No. 3308/80 and Article 2 of Regulation (EC) No. 1103/97]

Member States which apply graduated tax relief may neither increase the ceiling of the graduated tax reliefs nor render the conditions for the granting of it more favourable;

- b. Member States which have not made use of this option may grant an exemption from tax to taxable persons whose annual turnover is at the maximum equal to the equivalent in national currency of EUR 5,000 at the conversion rate of the day on which this Directive is adopted; where appropriate, they may grant graduated tax relief to taxable persons whose annual turnover

exceeds the ceiling fixed by the Member States for the application of exemption;

[Article 1 of Regulation (EEC, Euratom) No. 3308/80 and Article 2 of Regulation (EC) No. 1103/97]

- c. Member States which apply an exemption from tax to taxable persons whose annual turnover is equal to or higher than the equivalent in national currency of EUR 5,000 at the conversion rate of the day on which this Directive is adopted, may increase it in order to maintain its value in real terms.

[Article 1 of Regulation (EEC, Euratom) No. 3308/80 and Article 2 of Regulation (EC) No. 1103/97]

3. The concepts of exemption and graduated tax relief shall apply to the supply of goods and services by small undertakings.

Member States may exclude certain transactions from the arrangements provided for in paragraph 2. The provisions of paragraph 2 shall not, in any case, apply to the transactions referred to in Article 4(3).

In all circumstances supplies of new means of transport effected under the conditions laid down in Article 28c(A) as well as supplies of goods and services effected by a taxable person who is not established in the territory of the country shall be excluded from the exemption from tax under paragraph 2.

[Article 28i

Article 1(22) of Directive 91/680/EEC and Article 1(21) of Directive 92/111/EEC]

4. The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount, exclusive of value added tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28(2), and the amount of the transactions exempted pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13(B)(d) and insurance services, unless these transactions are ancillary transactions.

However, disposals of tangible or intangible capital assets of an undertaking shall not be taken into account for the purposes of calculating turnover.

5. Taxable persons exempt from tax shall not be entitled to deduct tax in accordance with the provisions of Article 17, nor to show the tax on their invoices.

[Article 4(2) of Directive 2001/115/EC]
6. Taxable persons eligible for exemption from tax may opt either for the normal value added tax scheme or for the simplified procedures referred to in paragraph 1. In this case they shall be entitled to any graduated tax relief which may be laid down by national legislation.
7. Subject to the application of paragraph 1, taxable persons enjoying graduated relief shall be treated as taxable persons subject to the normal value added tax scheme.
8. At four-yearly intervals, and for the first time on 1 January 1982, and after consultation of the Member States, the Commission shall report to the Council on the application of the provisions of this Article. It shall as far as may be necessary, and taking into account the need to ensure the long-term convergence of national regulations, attach to this report proposals for:

- a. improvements to be made to the special scheme for small undertakings;
- b. the adaptation of national systems as regards exemptions and graduated value added tax relief;
- c. the adaptation of the limit of EUR 5,000 mentioned in paragraph 2.
[Article 1 of Regulation (EEC, Euratom) No. 3308/80 and Article 2 of Regulation (EC) No. 1103/97]
9. The Council will decide at the appropriate time whether the realization of the objective referred to in Article 4 of the first Council Directive of 11 April 1967 requires the introduction of a special scheme for small undertakings and will, if appropriate, decide on the limits and common implementing conditions of this scheme. Until the introduction of such a scheme, Member States may retain their own special schemes which they will apply in accordance with the provisions of this Article and of subsequent acts of the Council.

Article 24a

In implementing Article 24(2) to (6), the following Member States may grant an exemption from value added tax to taxable persons whose annual turnover is less than the equivalent in national currency at the conversion rate on the date of their accession:

- in the Czech Republic: EUR 35,000;
- in Estonia: EUR 16,000;
- in Cyprus: EUR 15,600;
- in Latvia: EUR 17,200;
- in Lithuania: EUR 29,000;
- in Hungary: EUR 35,000;
- in Malta: EUR 37,000 when the economic activity consists principally in the supply of goods, EUR 24,300 when the economic activity consists principally in the supply of services with a low value added (high inputs), and EUR 14,600 in other cases, namely service providers with a high value added (low inputs);
- in Poland: EUR 10,000;
- in Slovenia: EUR 25,000;
- in Slovakia: EUR 35,000.

[Accession 2004, Chapter V, section 1(a) of the Annex to Directive 2004/66/EC]

Article 25

Common flat-rate scheme for farmers

1. Where the application to farmers of the normal value added tax scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the value added tax charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

2. For the purposes of this Article, the following definitions shall apply:

- "farmer": a taxable person who carries on his activity in one of the undertakings defined below,
- "agricultural, forestry or fisheries undertakings": an undertaking considered to be such by each Member State within the framework of the production activities listed in Annex A,
- "flat-rate farmer": a farmer subject to the flat-rate scheme provided for in paragraphs 3 et seq.,
- "agricultural products": goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex A,
- "agricultural service": any service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him,
- "value added tax charge on inputs": the amount of the total value added tax attaching to the goods and services purchased by all agricultural, forestry and fisheries undertakings of each Member State subject to the flat-rate scheme where such tax would be deductible under Article 17 by a farmer subject to the normal value added tax scheme,
- "flat-rate compensation percentages": the percentages fixed by Member States in accordance with paragraph 3 and applied by them in the cases specified in paragraph 5 to enable flat-rate farmers to offset at a fixed rate the value added tax charge on inputs,
- "flat-rate compensation": the amount arrived at by applying the flat-rate compensation percentage provided for in paragraph 3 to the turnover of the flat-rate farmer in the cases referred to in paragraph 5.

3. Member States shall fix the flat-rate compensation percentages, where necessary, and shall notify the Commission before applying them. Such percentages shall be based on macro-economic statistics for flat-rate farmers alone for the preceding three years. They may not be used to obtain for flat-rate farmers refunds greater than the value added tax charges on inputs. Member States shall have the option of reducing such percentages to a nil rate. The percentage may be rounded up or down to the nearest half point.

Member States may fix varying flat-rate compensation percentages for forestry, for the different sub-divisions of agriculture and for fisheries.

4. Member States may release flat-rate farmers from the obligations imposed upon taxable persons by Article 22.

When they exercise this option, Member States shall take the measures necessary to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions as laid down in Title XVIa.

[Article 28j(1)]

Article 1(22) of Directive 91/680/EEC]

5. The flat-rate percentages provided for in paragraph 3 shall be applied to the prices, exclusive of tax, of:
- agricultural products supplied by flat-rate farmers to taxable persons other than those eligible within the territory of the country for the flat-rate scheme provided for in this Article;
 - agricultural products supplied by flat-rate farmers, under the conditions laid down in Article 28c(A), to non-taxable legal persons not eligible, in the Member State of arrival of the dispatch or transport of the agricultural products thus supplied, for the derogation provided for in Article 28a(1)(a), second subparagraph;
 - agricultural services supplied by flat-rate farmers to taxable persons other than those eligible within the territory of the country for the flat-rate scheme provided for in this Article.

This compensation shall exclude any other form of deduction.

[Article 28j(2)]

Article 1(22) of Directive 91/680/EEC]

6. In the case of supplies of agricultural products and of agricultural services referred to in paragraph 5, Member States shall provide for the flat-rate compensation to be paid either:
- by the purchaser or customer. In that event, the taxable purchaser or customer shall be authorized, as provided for in Article 17 and in accordance with the procedures laid down by the Member States, to deduct from the tax for which he is liable within the territory of the country the amount of the flat-rate compensation he has paid to flat-rate farmers.

Member States shall refund to the purchaser or customer the amount of the flat-rate compensation he has paid to flat-rate farmers in respect of any of the following transactions:
 - supplies of agricultural products effected under the conditions laid down in Article 28c(A) to taxable persons, or to non-taxable legal persons acting as such in another Member State within which they are not eligible for the derogation provided for in the second subparagraph of Article 28a(1)(a),
 - supplies of agricultural products effected under the conditions laid down in Article 15 and in Article 16(1)(B), (D) and (E) to taxable purchasers established outside the Community, provided that the products are used by those purchasers for the purposes of the transactions referred to in Article 17(3)(a) and (b) or for the purposes of services which are deemed to be supplied within the territory of the country and on which tax is payable solely by the customers under Article 21(1)(b),
[Article 1(6)(a) of Directive 2000/65/EC]
 - supplies of agricultural services to taxable customers established within the Community but in another Member State or to taxable customers established outside the Community, provided that the services are used by those customers for the purposes of the transactions referred to in Article 17(3)(a) and (b) and for the purposes of services which are deemed

to be supplied within the territory of the country and on which tax is payable solely by the customers under Article 21(1)(b).

[Article 1(6)(a) of Directive 2000/65/EC]

Member States shall determine the method by which the refunds are to be made. In particular, they may apply Article 17(4);

or

- by the public authorities.

[Article 28j(2)]

Article 1(22) of Directive 91/680/EEC]

- Member States shall make all necessary provisions to check properly the payment of the flat-rate compensation to the flat-rate farmers.
- As regards all supplies of agricultural products and agricultural services other than those covered by paragraph 5, the flat-rate compensation is deemed to be paid by the purchaser or customer.
- Each Member State may exclude from the flat-rate scheme certain categories of farmers and farmers for whom the application of the normal value added tax scheme, or the simplified scheme provided for in Article 24(1), would not give rise to administrative difficulties.

Whenever they exercise the option provided for in this Article, Member States shall take all measures necessary to ensure that the same method of taxation is applied to supplies of agricultural products effected under the conditions laid down in Article 28b(B)(1), whether the supply is effected by a flat-rate farmer or by a taxable person other than a flat-rate farmer.

[Article 28j(3)]

Article 1(22) of Directive 91/680/EEC]

- Every flat-rate farmer may opt, subject to the rules and conditions to be laid down by each Member State, for application of the normal value added tax scheme or, as the case may be, the simplified scheme provided for in Article 24(1).
- The Commission shall, before the end of the fifth year following the entry into force of this Directive, present to the Council new proposals concerning the application of the value added tax to transactions in respect of agricultural products and services.
- When they take up the option provided for in this Article the Member States shall fix the uniform basis of assessment of the value added tax in order to apply the scheme of own resources using the common method of calculation in Annex C.

Article 26

Special scheme for travel agents

- Member States shall apply value added tax to the operations of travel agents in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies and services of other taxable persons in the provision of travel facilities. This Article shall not apply to travel agents who are acting only as intermediaries and accounting for tax in accordance with

Article 11(A)(3)(c). In this Article travel agents include tour operators.

2. All transactions performed by the travel agent in respect of a journey shall be treated as a single service supplied by the travel agent to the traveller. It shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has provided the services. The taxable amount and the price exclusive of tax, within the meaning of Article 22(3)(b), in respect of this service shall be the travel agent's margin, that is to say, the difference between the total amount to be paid by the traveller, exclusive of value added tax, and the actual cost to the travel agent of supplies and services provided by other taxable persons where these transactions are for the direct benefit of the traveller.
3. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as an exempted intermediary activity under Article 15(14). Where these transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.
4. Tax charged to the travel agent by other taxable persons on the transactions described in paragraph 2 which are for the direct benefit of the traveller, shall not be eligible for deduction or refund in any Member State.

Article 26a

[Article 1(3) of Directive 94/5/EC]

Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques

A. Definitions

For the purposes of this Article, and without prejudice to other Community provisions:

- a. "works of art" shall mean the objects referred to in (a) of Annex I.

However, Member States shall have the option of not considering as "works of art" the items mentioned in the final three indents in (a) in Annex I;
- b. "collectors' items" shall mean the objects referred to in (b) of Annex I;
- c. "antiques" shall mean the objects referred to in (c) of Annex I;
- d. "second-hand goods" shall mean tangible movable property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones as defined by the Member States;
- e. "taxable dealer" shall mean a taxable person who, in the course of his economic activity, purchases or acquires for the purposes of his undertaking, or imports with a view to resale, second-hand goods and/or works of art, collectors' items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale;

- f. "organizer of a sale by public auction" shall mean any taxable person who, in the course of his economic activity, offers goods for sale by public auction with a view to handing them over to the highest bidder;
- g. "principal of an organizer of a sale by public auction" shall mean any person who transmits goods to an organizer of a sale by public auction under a contract under which commission is payable on a sale subject to the following provisions:
 - the organizer of the sale by public auction offers the goods for sale in his own name but on behalf of his principal,
 - the organizer of the sale by public auction hands over the goods, in his own name but on behalf of his principal, to the highest bidder at the public auction.

B. Special arrangements for taxable dealers

1. In respect of supplies of second-hand goods, works of art, collectors' items and antiques effected by taxable dealers, Member States shall apply special arrangements for taxing the profit margin made by the taxable dealer, in accordance with the following provisions.
 2. The supplies of goods referred to in paragraph 1 shall be supplies, by a taxable dealer, of second-hand goods, works of art, collectors' items or antiques supplied to him within the Community:
 - by a non-taxable person,
 - or
 - by another taxable person, in so far as the supply of goods by that other taxable person is exempt in accordance with Article 13(B)(c),
 - or
 - by another taxable person in so far as the supply of goods by that other taxable person qualifies for the exemption provided for in Article 24 and involves capital assets,
 - or
 - by another taxable dealer, in so far as the supply of goods by that other taxable dealer was subject to value added tax in accordance with these special arrangements.
 3. The taxable amount of the supplies of goods referred to in paragraph 2 shall be the profit margin made by the taxable dealer, less the amount of value added tax relating to the profit margin. That profit margin shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.
- For the purposes of this paragraph, the following definitions shall apply:
- "selling price" shall mean everything which constitutes the consideration, which has been, or is to be, obtained by the taxable dealer from the purchaser or a third party, including subsidies directly linked to that transaction,

taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the purchaser but excluding the amounts referred to in Article 11(A)(3),

- "purchase price" shall mean everything which constitutes the consideration defined in the first indent, obtained, or to be obtained, from the taxable dealer by his supplier.

4. Member States shall entitle taxable dealers to opt for application of the special arrangements to supplies of:
 - a. works of art, collectors' items or antiques which they have imported themselves;
 - b. works of art supplied to them by their creators or their successors in title;
 - c. works of art supplied to them by a taxable person other than a taxable dealer where the supply by that other taxable person was subject to the reduced rate pursuant to Article 12(3)(c).

Member States shall determine the detailed rules for exercising this option which shall in any event cover a period at least equal to two calendar years.

If the option is taken up, the taxable amount shall be determined in accordance with paragraph 3. For supplies of works of art, collectors' items or antiques which the taxable dealer has imported himself, the purchase price to be taken into account in calculating the margin shall be equal to the taxable amount on importation, determined in accordance with Article 11(B), plus the value added tax due or paid on importation.

5. Where they are effected in the conditions laid down in Article 15, the supplies of second-hand goods, works of art, collectors' item or antiques subject to the special arrangements for taxing the margin shall be exempt.
6. Taxable persons shall not be entitled to deduct from the tax for which they are liable the value added tax due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the special arrangements for taxing the margin.
7. In so far as goods are used for the purpose of supplies by him subject to the special arrangements for taxing the margin, the taxable dealer shall not be entitled to deduct from the tax for which he is liable:
 - a. the value added tax due or paid in respect of works of art, collectors' items or antiques which he has imported himself;
 - b. the value added tax due or paid in respect of works of art which have been, or are to be, supplied to him by their creators or their successors in title;
 - c. the value added tax due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a taxable dealer.
8. Where he is led to apply both the normal arrangements for value added tax and the special arrangements for taxing the margin, the taxable dealer must follow separately in his accounts the transactions falling under each of these

arrangements, according to rules laid down by the Member States.

9. The taxable dealer may not indicate separately on the invoices which he issues, tax relating to supplies of goods which he makes subject to the special arrangements for taxing the margin.

[Article 4(2) of Directive 2001/115/EC]

10. In order to simplify the procedure for charging the tax and subject to the consultation provided for in Article 29, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount of supplies of goods subject to the special arrangements for taxing the margin shall be determined for each tax period during which the taxable dealer must submit the return referred to in Article 22(4).

In that event, the taxable amount for supplies of goods to which the same rate of value added tax is applied shall be the total margin made by the taxable dealer less the amount of value added tax relating to that margin.

The total margin shall be equal to the difference between:

- the total amount of supplies of goods subject to the special arrangements for taxing the margin effected by the taxable dealer during the period; that amount shall be equal to the total selling prices determined in accordance with paragraph 3,
- and
- the total amount of purchases of goods as referred to in paragraph 2 effected, during that period, by the taxable dealer; that amount shall be equal to the total purchase prices determined in accordance with paragraph 3.

Member States shall take the necessary measures to ensure that the taxable persons concerned do not enjoy unjustified advantages or sustain unjustified loss.

11. The taxable dealer may apply the normal value added tax arrangements to any supply covered by the special arrangements pursuant to paragraph 2 or 4.

Where the taxable dealer applies the normal value added tax arrangements to:

- a. the supply of a work of art, collectors' item or antique which he has imported himself, he shall be entitled to deduct from his tax liability the value added tax due or paid on the import of those goods;
- b. the supply of a work of art supplied to him by its creator or his successors in title, he shall be entitled to deduct from his tax liability the value added tax due or paid for the work of art supplied to him;
- c. the supply of a work of art supplied to him by a taxable person other than a taxable dealer, he shall be entitled to deduct from his tax liability the value added tax due or paid for the work of art supplied to him.

This right to deduct shall arise at the time when the tax due for the supply in respect of which the taxable dealer opts for application of the normal value added tax arrangements become chargeable.

C. Special arrangements for sales by public auction

1. By way of derogation from B, Member States may determine, in accordance with the following provisions, the taxable amount of supplies of second-hand goods, works of art, collectors' items or antiques effected by an organizer of sales by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of:

- a non-taxable person,
- or
- another taxable person, in so far as the supply of goods, within the meaning of Article 5(4)(c), by that other taxable person is exempt in accordance with Article 13(B)(c),
- or
- another taxable person, in so far as the supply of goods, within the meaning of Article 5(4)(c), by that other taxable person qualifies for the exemption provided for in Article 24 and involves capital assets,
- or
- a taxable dealer, in so far as the supply of goods, within the meaning of Article 5(4)(c), by that other taxable dealer,

is subject to tax in accordance with the special arrangements for taxing the margin provided for in B.

2. The taxable amount of each supply of goods referred to in paragraph 1 shall be the total amount invoiced in accordance with paragraph 4 to the purchaser by the

organizer of the sale by public auction, less:

- the net amount paid or to be paid by the organizer of the sale by public auction to his principal, determined in accordance with paragraph 3,
- and
- the amount of the tax due by the organizer of the sale by public auction in respect of his supply.

3. The net amount paid or to be paid by the organizer of the sale by public auction to his principal shall be equal to the difference between:

- the price of the goods at public auction,
- and
- the amount of the commission obtained or to be obtained by the organizer of the sale by public auction from his principal, under the contract whereby commission is payable on the sale.

4. The organizer of the sale by public auction must issue to the purchaser an invoice itemizing:

- the auction price of the goods,
- taxes, dues, levies and charges,

- incidental expenses such as commission, packing, transport and insurance costs charged by the organizer to the purchaser of the goods.

That invoice must not indicate any value added tax separately.

[Article 4(3) of Directive 2001/115/EC]

5. The organizer of the sale by public auction to whom the goods were transmitted under a contract whereby commission is payable on a public auction sale must issue a statement to his principal.

That statement must itemize the amount of the transaction, i.e. the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.

A statement so drawn up shall serve as the invoice which the principal, where he is a taxable person, must issue to the organizer of the sale by public auction in accordance with Article 22(3).

6. Organizers of sales by public auction who supply goods under the conditions laid down in paragraph 1 must indicate in their accounts, in suspense accounts:

- the amounts obtained or to be obtained from the purchaser of the goods,
- the amount reimbursed or to be reimbursed to the vendor of the goods.

These amounts must be duly substantiated.

7. The supply of goods to a taxable person who is an organizer of sales by public auction shall be regarded as being effected when the sale of those goods by public auction is itself effected.

D. Transitional arrangements for the taxation of trade between Member States

During the period referred to in Article 28I, Member States shall apply the following provisions:

- a. supplies of new means of transport, within the meaning of Article 28a(2), effected within the conditions laid down in Article 28c(A) shall be excluded from the special arrangements provided for in B and C;
- b. by way of derogation from Article 28a(1)(a), intra-Community acquisitions of second-hand goods, works of art, collectors' items or antiques shall not be subject to value added tax where the vendor is a taxable dealer acting as such and the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport, in accordance with the special arrangements for taxing the margin provided for in B, or where the vendor is an organizer of sales by public auction acting as such and the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport, in accordance with the special arrangements provided for in C;
- c. Articles 28b(B) and 28c(A)(a), (c) and (d) shall not apply to supplies of goods subject to value added tax in accordance with either of the special arrangements laid down in B and C.

Article 26b

[Article 1 of Directive 98/80/EC]

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 markets¹⁾, 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;

¹⁾ Under Article 19(1) of, and Annex II to, Regulation (EC) 1777/2005, 'weights accepted by the bullion market' at least cover the following units and weights: 12.5 and 1 Kg, 500, 250, 100, 50, 20, 10, 5, 2.5 and 2 grammes, 100, 10, 5, 1, 0.5 and 0.25 ounces (1 oz. = 31.1035 g), 10, 5 and 1 tael (1 tael = 1.193 oz.) and 10 tola (10 tolas = 3.75 oz.)

- (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 price²⁾ which does not exceed the open market value²⁾ of the gold contained in the coins by more than 80 %.

²⁾ Under Article 19(2) of Regulation (EC) 1777/2005, for the purposes of establishing the list referred to in the third subparagraph of Article 26b(A), "price" and "open market value" shall be the price and open market value on 1 April of each year. If 1 April does not fall on a day on which those values are fixed, the values of the next day on which they are fixed shall be used.

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 Communities¹⁾ 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.

¹⁾ Editor's notes: the list valid for the year 2006 was published in OJ C 300 of 30 November 2005. With effect from 1 February 2003, the Official Journal's name changed into Official Journal of the European Union.

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;
 - b. tax due or paid in respect of supply to them, or intra-Community acquisition or importation by them, of gold other than investment gold which is subsequently transformed by them or on their behalf into investment gold;
 - c. tax due or paid in respect of services supplied to them consisting of change of form, weight or purity of gold including investment gold,

if their subsequent supply of this gold is exempt under this Article.
2. Taxable persons who produce investment gold or transform any gold into investment gold, shall be entitled to deduct tax due or paid by them in respect of supplies, or intra-Community acquisition or importation of goods or services linked to the production or transformation of that gold as if their subsequent supply of the gold exempted under this Article were taxable.

E. Special obligations for traders in investment gold

Member States shall, as a minimum, ensure that traders in investment gold keep account of all substantial transactions in investment gold and keep the documentation to allow identification of the customer in such transactions.

Traders shall keep this information for a period of at least five years.

Member States may accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, to meet the requirements of the first paragraph.

Member States may lay down stricter obligations, in particular on special record keeping or special accounting requirements.

F. Reverse charge procedure

By way of derogation from Article 21(1)(a), as amended by Article 28g, in the case of supplies of gold material or semi-manufactured products of a purity of 325 thousandths or greater, or supplies of investment gold where an option referred to in C of this Article has been exercised, Member States may designate the purchaser as the person liable to pay the tax, according to the procedures and conditions which they shall lay down. When they exercise this option, Member States shall take the measures necessary to ensure that the person designated as liable for the tax due fulfils the obligations to submit a statement and to pay the tax in accordance with Article 22.

G. Procedure for transactions on a regulated gold bullion market

1. A Member State may, subject to consultation provided for under Article 29, disapply the exemption for investment gold provided for by this special scheme in respect of specific transactions, other than intra-Community supplies or exports, concerning investment gold taking place in that Member State:

- a. between taxable persons who are members of a bullion market regulated by the Member State concerned, and
- b. where the transaction is between a member of a bullion market regulated by the Member State concerned and another taxable person who is not a member of that market.

Under these circumstances, these transactions shall be taxable and the following shall apply.

2. a. For transactions under 1(a), for the purpose of simplification, the Member State shall authorise suspension of the tax to be collected as well as dispense with the recording requirements of value added tax.
- b. For transactions under 1(b), the reverse charge procedure under F shall be applicable. Where a non-member of the bullion market would not, other than for these transactions, be liable for registration for VAT in the relevant Member State, the member shall fulfil the fiscal obligations on behalf of the non-member, according to the provisions of that Member State.

Article 26c

Special scheme for non-established taxable persons supplying electronic services to non-taxable persons

[Article 1(3) of Directive 2002/38/EC; 1 July 2003-1 July 2006]

A. Definitions

For the purposes of this Article, the following definitions shall apply without prejudice to other Community provisions:

- a. "non-established taxable person" means a taxable person who has neither established his business nor has a fixed establishment within the territory of the Community and who is not otherwise required to be identified for tax purposes under Article 22;
- b. "electronic services" and "electronically supplied services" means those services referred to in the last indent of Article 9(2)(e);
- c. "Member State of identification" means the Member State which the non-established taxable person chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Article;
- d. "Member State of consumption" means the Member State in which the supply of the electronic services is deemed to take place according to Article 9(2)(f);
- e. "value added tax return" means the statement containing the information necessary to establish the amount of tax that has become chargeable in each Member State.

B. Special scheme for electronically supplied services

1. Member States shall permit a non-established taxable person supplying electronic services to a non-taxable person who is established or has his permanent address or usually resides in a Member State to use a special scheme in accordance with the following provisions. The special scheme shall apply to all those supplies within the Community.
2. The non-established taxable person shall state to the Member State of identification when his activity as a taxable person commences, ceases or changes to the extent that he no longer qualifies for the special scheme. Such a statement shall be made electronically.

The information from the non-established taxable person to the Member State of identification when his taxable activities commence shall contain the following details for the identification: name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax purposes within the Community. The non-established taxable person shall notify the Member State of identification of any changes in the submitted information.

3. The Member State of identification shall identify the non-established taxable person by means of an individual number. Based on the information used for this identification, Member States of consumption may keep their own identification systems.

The Member State of identification shall notify the non-established taxable person by electronic means of the identification number allocated to him.

4. The Member State of identification shall exclude⁷⁾ the non-established taxable person from the identification register if:

⁷⁾ Under Article 20(1) of Regulation (EC) 1777/2005, where, in the course of a calendar quarter, a non-established taxable person using the special scheme meets at least one of the following criteria for exclusion, the Member State of identification shall exclude that non-established taxable person from the special scheme. In such cases the non-established taxable person may subsequently be excluded from the special scheme at any time during that quarter. In respect of electronic services supplied prior to exclusion but during the calendar quarter in which exclusion occurs, the non-established taxable person shall submit a return for the entire quarter in accordance with Article 26c(B)(5). The requirement to submit this return shall have no effect on the requirement, if any, to register under the normal rules in a Member State.

- a. he notifies that he no longer supplies electronic services,
 or
 b. it otherwise can be assumed that his taxable activities have ended,
 or
 c. he no longer fulfils the requirements necessary to be allowed to use the special scheme,
 or
 d. he persistently fails to comply with the rules concerning the special scheme.

5. The non-established taxable person shall submit by electronic means to the Member State of identification a value added tax return for each calendar quarter whether or not electronic services have been supplied. The return shall be submitted within 20 days following the end of the reporting period to which the return refers.

The value added tax return shall set out the identification number and, for each Member State of consumption where tax has become due, the total value, less value added tax, of supplies of electronic services for the reporting period and total amount of the corresponding tax⁷⁾. The applicable tax rates and the total tax due shall also be indicated.

⁷⁾ Under Article 20(2) of Regulation (EC) 1777/2005, a Member State of identification which receives a payment in excess of that resulting from the return shall reimburse the overpaid amount directly to the taxable person concerned.
 Where the Member State of identification has received an amount pursuant to a return subsequently found to be incorrect, and that Member State has already distributed that amount among the Member States of consumption, those Member States shall directly reimburse the overpayment to the non-established taxable person and inform the Member State of identification of the adjustment to be made.

Under Article 20(3) of Regulation (EC) 1777/2005, any return period (quarter) shall be a separate return period. Once a return has been rendered, any subsequent changes to the figures contained therein may be made only by means of an amendment to that return and not by an adjustment to a subsequent return.
 Amounts of value added tax paid under Article 26c(B)(7) shall be specific to that return. Any subsequent amendments to the amounts paid may be effected only by reference to that return and may not be allocated to another return, or adjusted on a subsequent return.

Under Article 20(4) of Regulation (EC) 1777/2005, amounts on value added tax returns made under the special scheme shall not be rounded up or down to the nearest whole monetary unit. The exact amount of value added tax shall be reported and remitted.

6. The value added tax return shall be made in euro. Member States which have not adopted the euro may require the tax return to be made in their national currencies. If the supplies have been made in other currencies, the exchange rate valid

for the last date of the reporting period shall be used when completing the value added tax return. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

7. The non-established taxable person shall pay the value added tax when submitting the return. Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.
8. Notwithstanding Article 1(1) of Directive 86/560/EEC, the non-established taxable person making use of this special scheme shall, instead of making deductions under Article 17(2) of this Directive, be granted a refund according to Directive 86/560/EEC. Articles 2(2), 2(3) and 4(2) of Directive 86/560/EEC shall not apply to the refund related to electronic supplies covered by this special scheme.
9. The non-established taxable person shall keep records of the transactions covered by this special scheme in sufficient detail to enable the tax administration of the Member State of consumption to determine that the value added tax return referred to in paragraph 5 is correct. These records should be made available electronically on request to the Member State of identification and to the Member State of consumption. These records shall be maintained for a period of 10 years from the end of the year when the transaction was carried out.
10. Article 21(2)(b) shall not apply to a non-established taxable person who has opted for this special scheme.

TITLE XV

SIMPLIFICATION PROCEDURES

Article 27

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.
2. A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required. Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.
3. Within three months of giving the notification referred to in the last sentence of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4. In any event, the procedure set out in paragraphs 2 and 3 shall be completed within eight months of receipt of the application by the Commission.
[Article 1(1) of Directive 2004/7/EC]
5. Those Member States which apply on 1 January 1977 special measures of the type referred to in paragraph 1 above may retain them providing they notify the Commission of them before 1 January 1978 and providing that where such derogations are designed to simplify the procedure for charging tax they conform with the requirement laid down in paragraph 1 above.

TITLE XVI

TRANSITIONAL PROVISIONS

Article 28

1. Any provisions brought into force by the Member States under the provisions of the first four indents of Article 17 of the second Council Directive of 11 April 1967 shall cease to apply, in each Member State, as from the respective dates on which the provisions referred to in the second paragraph of Article 1 of this Directive come into force.
- 1a. Until a date which may not be later than 30 June 1999, the United Kingdom of Great Britain and Northern Ireland may, for imports of works of art, collectors' items or antiques which qualified for an exemption on 1 January 1993, apply Article 11(B)(6) in such a way that the value added tax due on importation is, in any event, equal to 2,5% of the amount determined in accordance with Article 11(B)(1) to (4).
[Article 1(4) of Directive 94/5/EC]
2. Notwithstanding Article 12(3), the following provisions shall apply during the transitional period referred to in Article 28I.
[Article 1(4) of Directive 92/77/EEC]
- a. Exemptions with refund of the tax paid at the preceding stage and reduced rates lower than the minimum rate laid down in Article 12(3) in respect of the reduced rates, which were in force on 1 January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967 may be maintained.
- Member States shall adopt the measures necessary to ensure the determination of own resources relating to these operations.
- In the event that the provisions of this paragraph create for Ireland distortions of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorized by the Commission to apply a reduced rate to such supplies, in accordance with Article 12(3). In that case, Ireland shall submit its request to the Commission together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorized to apply the proposed reduced rates.
[Article 1(4) of Directive 92/77/EEC]
- b. Member States which, at 1 January 1991 in accordance with Community law, applied exemptions with refund of tax paid at the preceding stage, or reduced rates lower than the minimum laid down in Article 12(3) in respect of the reduced rates, to goods and services other than those specified in Annex H, may apply the reduced rate or one of the two reduced rates provided for in Article 12(3) to any such supplies.
[Article 1(4) of Directive 92/77/EEC]
- c. Member States which under the terms of Article 12(3) will be obliged to increase their standard rate as applied at 1 January 1991 by more than 2%, may apply a reduced rate lower than the minimum laid down in Article 12(3) in respect of the reduced rate to supplies of categories of goods and services specified in Annex H. Furthermore, those Member States may apply such a rate to restaurant services, children's clothing, children's footwear and housing. Member States may not introduce exemptions with refund of the tax at the preceding stage on the basis of this paragraph.
[Article 1(4) of Directive 92/77/EEC]
- d. Member States which at 1 January 1991 applied a reduced rate to restaurant services, children's clothing, children's footwear and housing, may continue to apply such a rate to such supplies.
[Article 1(4) of Directive 92/77/EEC]
- e. Member States which at 1 January 1991 applied a reduced rate to supplies of goods and services other than those specified in Annex H may apply the reduced rate or one of the two reduced rates provided for in Article 12(3) to such supplies provided that the rate is not lower than 12%.
[Article 1(4) of Directive 92/77/EEC]
- This provision may not apply to supplies of second-hand goods, works of art, collectors' items or antiques subject to value added tax in accordance with one of the special arrangements provided for in [sic] Article 26a(B) and (C).
[Article 1(5) of Directive 94/5/EC]
- f. The Hellenic Republic may apply VAT rates up to 30% lower than the corresponding rates applied in mainland Greece in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the following islands in the Aegean: Thasos, Northern Sporades, Samothrace and Skiros.
[Article 1(4) of Directive 92/77/EEC]
- g. On the basis of a report from the Commission, the Council shall, before 31 December 1994, re-examine the provisions of subparagraphs (a) to (f) above in relation to the proper functioning of the internal market in particular. In the event of significant distortions of competition arising, the Council, acting unanimously on a proposal from the Commission, shall adopt appropriate measures.
[Article 1(4) of Directive 92/77/EEC]
- 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.

[Article 1(5) of Directive 95/7/EC]

- i. Member States may apply a reduced rate to supplies of live plants (including bulbs, roots, and the like, cut flowers and ornamental foliage) and wood for the use as firewood.

[Article 1(2) of Directive 96/42/EC]

- j. the Republic of Austria may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) to the letting of immovable property for residential use, provided that the rate is not lower than 10%;

[Article 1 of Directive 2000/17/EC]

- k. the Portuguese Republic may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) to restaurant services, provided that the rate is not lower than 12%.

[Article 1 of Directive 2000/17/EC]

3. During the transitional period referred to in paragraph 4, Member States may:

- a. continue to subject to tax the transactions exempt under Article 13 or 15 set out in Annex E to this Directive;
- b. continue to exempt the activities set out in Annex F under conditions existing in the Member State concerned;
- c. grant to taxable persons the option for taxation of exempt transactions under the conditions set out in Annex G;
- d. continue to apply provisions derogating from the principle of immediate deduction laid down in the first Paragraph of Article 18(2);
- e. continue to apply measures derogating from the provisions of Articles 6(4) and 11(A)(3)(c);
[Article 1(8) of Directive 94/5/EC]
- f. provide that for supplies of buildings and building land purchased for the purpose of resale by a taxable person for whom tax on the purchase was not deductible, the taxable amount shall be the difference between the selling price and the purchase price;
- g. by way of derogation from Articles 17(3) and 26(3), continue to exempt without repayment of input tax the services of travel agents referred to in Article 26(3). This derogation shall also apply to travel agents acting in the name and on account of the traveller.

- 3a. Pending a decision by the Council, which, under Article 3 of Directive 89/465/EEC, is to act on the abolition of the transitional derogations provided for in paragraph 3, Spain shall be authorized to exempt the transactions referred to in point 2 of Annex F in respect of services rendered by authors and the transactions referred to in points 23 and 25 of Annex F.

[Article 1(21) of Directive 91/680/EEC]

4. The transitional period shall last initially for five years as from 1 January 1978. At the latest six months before the end of this period, and subsequently as necessary, the Council shall review the situation with regard to the derogations set out in

paragraph 3 on the basis of a report from the Commission and shall unanimously determine on a proposal from the Commission, whether any or all of these derogations shall be abolished.

5. 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 unanimously on a proposal from the Commission.

6. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply until 31 December 2010 at the latest the reduced rates provided for in the third subparagraph of Article 12(3)(a) to services listed in a maximum of two of the categories set out in Annex K. In exceptional cases, a Member State may be authorised to apply the reduced rates to services belonging to three of the aforementioned categories.

[Article 1 of Directive 2002/93/EC, Article 1 of Directive 2004/15/EC and Article 1(2)(a) of Directive 2006/18/EC]

The services concerned must satisfy the following requirements:

- a. they must be labour-intensive;
- b. they must be largely provided direct to final consumers;
- c. they must be mainly local and not likely to create distortions of competition;
- d. there must be a close link between the lower prices resulting from the rate reduction and the foreseeable increase in demand and employment.

The application of a reduced rate must not prejudice the smooth functioning of the internal market.

Any Member State wishing to apply for the first time after 31 December 2005 a reduced rate to one or more of the services mentioned in the first subparagraph pursuant to this provision shall inform the Commission before 31 March 2006. It shall communicate to it before that date all relevant particulars concerning the new measures it wishes to introduce, and in particular the following:

- a. scope of the measure and detailed description of the services concerned;
- b. particulars showing that the conditions laid down in the second and third subparagraphs have been met;
- c. particulars showing the budgetary cost of the measure envisaged.

[Article 1(2)(b) of Directive 2006/18/EC]

Those Member States authorised to apply the reduced rate referred to in the first subparagraph shall, before 1 October 2002, draw up a detailed report containing an overall assessment of the measure's effectiveness in terms notably of job creation and efficiency.

Before 31 December 2002 the Commission shall forward a global evaluation report to the Council and Parliament accompanied, if necessary, by a proposal for appropriate measures for a final decision on the VAT rate applicable to labour-intensive services.

[Article 1(1) of Directive 1999/85/EC]

TITLE XVIa

[Article 1(22) of Directive 91/680/EEC]

TRANSITIONAL ARRANGEMENTS FOR THE TAXATION OF TRADE BETWEEN MEMBER STATES

Article 28a

1. [Paragraph 1 is reproduced on page 1.]
- 1a. [Paragraph 1a is reproduced on page 1.]
2. [Paragraph 2 is reproduced on page 1.]
3. [Paragraph 3 is reproduced on page 5.]
4. [Paragraph 4 is reproduced on pages 3 and 22.]
5. [Paragraph 5 is reproduced on page 4.]
6. [Paragraph 6 is reproduced on page 5.]
7. [Paragraph 7 is reproduced on page 5.]

Article 28b

- A. [Section A is reproduced on page 10.]
- B. [Section B is reproduced on page 6.]
- C. [Section C is reproduced on page 9.]
- D. [Section D is reproduced on page 9.]
- E. [Section E is reproduced on page 9.]
- F. [Section F is reproduced on page 10.]

Article 28c

- A. [Section A is reproduced on page 19.]
- B. [Section B is reproduced on page 17.]
- C. [Section C is reproduced on page 19.]
- D. [Section D is reproduced on page 17.]
- E. [Section E(1) replaces Article 16(1) and adds paragraph 1a to Article 16.]
[Section E(2) amends Article 16(2) and adds two paragraphs to Article 16(2).]
[Section E(3) is reproduced on page 19.]

Article 28d

1. [Paragraph 1 is reproduced on page 11.]
2. [Paragraph 2 is reproduced on page 11.]
3. [Paragraph 3 is reproduced on page 11.]
4. [Paragraph 4 is reproduced on page 11.]

Article 28e

1. [Paragraph 1 is reproduced on page 12.]
2. [Paragraph 2 is reproduced on page 13.]
3. [Paragraph 3 is reproduced on page 14.]
4. [Paragraph 4 is reproduced on page 14.]

Article 28f

1. [Paragraph 1 replaces Article 17(2), (3) and (4).]
2. [Paragraph 2 replaces Article 18(1).]
3. [Paragraph 3 has been inserted into Article 18 (paragraph 3a).]

Article 28g

[Article 28g replaces Article 21.]

Article 28h

[Article 28h replaces Article 22.]

Article 28i

[Article 28i has been added to Article 24(3).]

Article 28j

1. [Paragraph 1 has been added to Article 25(4).]
2. [Paragraph 2 replaces Article 25(5) and (6).]
3. [Paragraph 3 has been added to Article 25(9).]

Article 28k

[Article 28k (provisions regarding "Tax-free" shops) has lost relevance from 1 July 1999.]

Article 28l

Period of application

The transitional arrangements provided for in this Title shall enter into force on 1 January 1993. Before 31 December 1994 the Commission shall report to the Council on the operation of the transitional arrangements and submit proposals for a definitive system.

The transitional arrangements shall be replaced by a definitive system for the taxation of trade between Member States based in principle on the taxation in the Member State of origin of the goods or services supplied.

To that end, after having made a detailed examination of that report and considering that the conditions for transition to the definitive system have been fulfilled satisfactorily, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall decide before 31 December 1995 on the arrangements necessary for the entry into force and operation of the definitive system.

The transitional arrangements shall enter into force for a period of four years and shall accordingly apply until 31 December 1996. The period of application of the transitional arrangements shall be extended automatically until the date of entry into force of the definitive system and in any event until the Council has decided on the definitive system.

[Article 1(22) of Directive 91/680/EEC]

Article 28m

[Article 28m is reproduced on page 47.]

Article 28n

Transitional measures

1. When goods:

- entered the territory of the country within the meaning of Article 3 before 1 January 1993,

and

- were placed, on entry into the territory of that country, under one of the regimes referred to in Article 14(1)(b) or (c)¹⁾, or Article 16(1)(A),

¹⁾ Editor's note: Article 14(1)(b) and (c) has been deleted; Article 1(11) of Directive 91/680/EEC and Article 1(8) of Directive 92/111/EEC respectively.

and

- have not left that regime before 1 January 1993,

the provisions in force at the moment the goods were placed under that regime shall continue to apply for the period, as determined by those provisions, the goods remain under that regime.

2. The following shall be deemed to be an import of goods within the meaning of Article 7(1):

- a. the removal, including irregular removal, of goods from the regime referred to in Article 14(1)(c)¹⁾ under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;

¹⁾ Editor's note: Article 14(1)(c) has been deleted; Article 1(8) of Directive 92/111/EEC.

- b. the removal, including irregular removal, of goods from the regime referred to in Article 16(1)(A) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;
- c. the termination of a Community internal transit operation started before 1 January 1993 in the Community for the purpose of supply of goods for consideration made before 1 January 1993 in the Community by a taxable person acting as such;
- d. the termination of an external transit operation started before 1 January 1993;
- e. any irregularity or offence committed during an external transit operation started under the conditions set out in (c) or any Community external transit operation referred to in (d);

- f. the use within the country, by a taxable or non-taxable person, of goods which have been supplied to him, before 1 January 1993, within another Member State, where the following conditions are met:

- the supply of these goods has been exempted, or was likely to be exempted, pursuant to Article 15(1) and (2),
- the goods were not imported within the country before 1 January 1993.

For the purpose of the application of (c), the expression "Community internal transit operation" shall mean the dispatch of transport of goods under the cover of the internal Community transit arrangement or under the cover of a T2 L document or the intra-Community movement carnet, or the sending of goods by post.

- 3. In the cases referred to in paragraph 2(a) to (e), the place of import, within the meaning of Article 7(2), shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before 1 January 1993.

- 4. By way of derogation from Article 10(3), the import of the goods within the meaning of paragraph 2 of this Article shall terminate without the occurrence of a chargeable event when:

- a. the imported goods are dispatched or transported outside the Community within the meaning of Article 3;

or

- b. the imported goods, within the meaning of paragraph 2(a), are other than a means of transport and are dispatched or transported to the Member State from which they were exported and to the person who exported them;

or

- c. the imported goods, within the meaning of paragraph 2(a), are means of transport which were acquired or imported before 1 January 1993, in accordance with the general conditions of taxation in force on the domestic market of a Member State, within the meaning of Article 3, and/or have not been subject by reason of their exportation to any exemption from or refund of value added tax.

This condition shall be deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1985 or when the amount of tax due because of the importation is insignificant.

[Article 1(22) of Directive 92/111/EEC]

TITLE XVIIb

[Article 1(7) of Directive 94/5/EC]

TRANSITIONAL PROVISIONS APPLICABLE IN THE FIELD OF SECOND-HAND GOODS, WORKS OF ART, COLLECTORS' ITEMS AND ANTIQUES**Article 28o**

1. Member States which at 31 December 1992 were applying special tax arrangements other than those provided for in Article 26a(B) to supplies of second-hand means of transport effected by taxable dealers may [sic] continue to apply those arrangements during the period referred to in Article 28l in so far as they comply with, or are adjusted to comply with, the following conditions:

- a. the special arrangements shall apply only to supplies of the means of transport referred to in Article 28a(2)(a) and regarded as second-hand goods within the meaning of Article 26a(A)(d), effected by taxable dealers within the meaning of Article 26a(A)(e), and subject to the special tax arrangements for taxing the margin pursuant to Article 26a(B)(1) and (2). Supplies of new means of transport within the meaning of Article 28a(2)(b) that are carried out under the conditions specified in Article 28c(A) shall be excluded from these special arrangements;
- b. the tax due in respect of each supply referred to in (a) is equal to the amount of tax that would be due if that supply had been subject to the normal arrangements for value added tax, less the amount of value added tax regarded as being incorporated in the purchase price of the means of transport by the taxable dealer;
- c. the tax regarded as being incorporated in the purchase price of the means of transport by the taxable dealer shall be calculated according to the following method:
 - the purchase price to be taken into account shall be the purchase price within the meaning of Article 26a(B)(3),
 - that purchase price paid by the taxable dealer shall be deemed to include the tax that would have been due if the taxable dealer's supplier had subjected the supply to the normal value added tax arrangements,
 - the rate to be taken into account shall be the rate applicable within the meaning of Article 12(1), in the Member State within which the place of the supply to the taxable dealer, determined in accordance with Article 8, is deemed to be situated;
- d. the tax due in respect of each supply as referred to in (a), determined in accordance with the provisions of (b), may not be less than the amount of tax that would be due if that supply had been subject to the special arrangements for taxing the margin in accordance with Article 26a(B)(3).

For the application of the above provisions, the Member States have the option of providing that if the supply had been subject to the special arrangements for taxation of the margin, that margin would not have been less than 10% of the selling price, within the meaning of B(3);

- e. the taxable dealer shall not be entitled to indicate separately on the invoices he issues, tax relating to supplies which he is subjecting to the special arrangements;

[Article 4(6) of Directive 2001/115/EC]

- f. taxable persons shall not be entitled to deduct from the tax for which they are liable tax due or paid in respect of second-hand means of transport supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the tax arrangements in accordance with (a);
 - g. by way of derogation from Article 28a(1)(a), intra-Community acquisitions of means of transport are not subject to value added tax where the vendor is a taxable dealer acting as such and the second-hand means of transport acquired has been subject to the tax, in the Member State of departure of the dispatch or transport, in accordance with (a);
 - h. Articles 28b(B) and 28c(A)(a) and (d) shall not apply to supplies of second-hand means of transport subject to tax in accordance with (a).
2. By way of derogation from the first sentence of paragraph 1, the Kingdom of Denmark shall be entitled to apply the special tax arrangements laid down in paragraph 1(a) to (h) during the period referred to in Article 28l.
 3. Where they apply the special arrangements for sales by public auction provided for in Article 26a(C), Member States shall also apply these special arrangements to supplies of second-hand means of transport effected by an organizer of sales by public auction acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of a taxable dealer, in so far as the supply of the second-hand means of transport, within the meaning of Article 5(4)(c), by that other taxable dealer, is subject to tax in accordance with paragraphs 1 and 2.
 4. For supplies by a taxable dealer of works of art, collectors' items or antiques that have been supplied to him under the conditions provided for in Article 26a(B)(2), the Federal Republic of Germany shall be entitled, until 30 June 1999, to provide for the possibility for taxable dealers to apply either the special arrangements for taxable dealers, or the normal VAT arrangements according to the following rules:
 - a. for the application of the special arrangements for taxable dealers to these supplies of goods, the taxable amount shall be determined in accordance with Article 11(A)(1), (2) and (3);
 - b. in so far as the goods are used for the needs of his operations which are taxed in accordance with (a), the taxable dealer shall be authorized to deduct from the tax for which he is liable:
 - the value added tax due or paid for works of art, collectors' items or antiques which are or will be supplied to him by another taxable dealer, where the supply by that other taxable dealer has been taxed in accordance with (a),
 - the value added tax deemed to be included in the purchase price of the works of art, collectors' items or antiques which are or will be supplied to him by

another taxable dealer, where the supply by that other taxable dealer has been subject to value added tax in accordance with the special arrangements for the taxation of the margin provided for in Article 26a(B), in the Member State within whose territory the place of that supply, determined in accordance with Article 8, is deemed to be situated.

This right to deduct shall arise at the time when the tax due for the supply taxed in accordance with (a) becomes chargeable;

- c. for the application of the provisions laid down in the second indent of (b), the purchase price of the works of art, collectors' items or antiques the supply of which by a taxable dealer is taxed in accordance with (a) shall be determined in accordance with Article 26a(B)(3) and the tax deemed to be included in this purchase price shall be calculated according to the following method:
- the purchase price shall be deemed to include the value added tax that would have been due if the taxable margin made by the supplier had been equal to 20% of the purchase price,
 - the rate to be taken into account shall be the rate applicable, within the meaning of Article 12(1), in the Member State within whose territory the place of the supply that is subject to the special arrangements for taxation of the profit margin, determined in accordance with Article 8, is deemed to be situated;
- d. where he applies the normal arrangements for value added tax to the supply of a work of art, collectors' item or antique which has been supplied to him by another taxable dealer and where the goods have been taxed in accordance with (a), the taxable dealer shall be authorized to deduct from his tax liability the value added tax referred to in (b);
- e. the category of rates applicable to these supplies of goods shall be that which was applicable on 1 January 1993;
- f. for the application of the fourth indent of Article 26a(B)(2), the fourth indent of Article 26a(C)(1) and Article 26a(D)(b) and (c), the supplies of works of art, collectors' items or antiques, taxed in accordance with (a), shall be deemed by Member States to be supplies subject to value added tax in accordance with the special arrangements for taxation of the profit margin provided for in Article 26a(B);
- g. where the supplies of works of art, collectors' items or antiques taxed in accordance with (a) are effected under the conditions provided for in Article 28c(A), the invoice issued in accordance with Article 22(3) shall contain an endorsement indicating that the special taxation arrangements for taxing the margin provided for in Article 28o(4) have been applied.

TITLE XVIc

[Article 1 of Directive 94/76/EC]

TRANSITIONAL MEASURES APPLICABLE IN THE CONTEXT OF THE ACCESSION TO THE EUROPEAN UNION OF AUSTRIA, FINLAND AND SWEDEN ON 1 JANUARY 1995 AND OF THE CZECH REPUBLIC, ESTONIA, CYPRUS, LATVIA, LITHUANIA, HUNGARY, MALTA, POLAND, SLOVENIA AND SLOVAKIA ON 1 MAY 2004

[Accession 2004]

Article 28p

1. For the purposes of applying this Article:
 - "the Community" shall mean the territory of the Community as defined in Article 3 before accession;
 - "new Member States" shall mean the territory of the Member States acceding to the European Union on 1 January 1995 and on 1 May 2004, as defined for each of those Member States in Article 3 of this Directive; [Accession 2004]
 - "enlarged Community" shall mean the territory of the Community as defined in Article 3, after accession.
2. When goods:
 - entered the territory of the Community or of one of the new Member States before the date of accession,

and

 - were placed, on entry into the territory of the Community or of one of the new Member States, under a temporary admission procedure with full exemption from import duties, under one of the regimes referred to in Article 16(1)(B)(a) to (d) or under a similar regime in one of the new Member States,

and

 - have not left that regime before the date of accession,

the provisions in force at the moment the goods were placed under that regime shall continue to apply until the goods leave this regime, after the date of accession.
3. When goods:
 - were placed, before the date of accession, under the common transit procedure or under another customs transit procedure,

and

 - have not left that procedure before the date of accession,

the provisions in force at the moment the goods were placed under that procedure shall continue to apply until the goods leave this procedure, after the date of accession.

For the purposes of the first indent, "common transit procedure" shall mean the measures for the transport of goods in transit between the Community and the countries of the European Free Trade Association (EFTA) and between

the EFTA countries themselves, as provided for in the Convention of 20 May 1987 on a common transit procedure.

4. The following shall be deemed to be an importation of goods within the meaning of Article 7(1) where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

- a. the removal, including irregular removal, of goods from a temporary admission procedure under which they were placed before the date of accession under the conditions set out in paragraph 2;
- b. the removal, including irregular removal, of goods either from one of the regimes referred to in Article 16(1)(B)(a) to (d) or from a similar regime under which they were placed before the date of accession under the conditions set out in paragraph 2;
- c. the termination of one of the procedures referred to in paragraph 3 which was started before the date of accession in one of the new Member States for the purposes of a supply of goods for consideration effected before that date in that Member State by a taxable person acting as such;
- d. any irregularity or offence committed during one of the procedures referred to in paragraph 3 under the conditions set out at (c).

5. The use after the date of accession within a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the Community or one of the new Member States shall also be deemed to be an importation of goods within the meaning of Article 7(1) where the following conditions are met:

- the supply of those goods has been exempted, or was likely to be exempted, either under Article 15(1) and (2) or under a similar provision in the new Member States;
- the goods were not imported into one of the new Member States or into one of the new Member States or into the Community before the date of accession.

6. In the cases referred to in paragraph 4, the place of import within the meaning of Article 7(3) shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before the date of accession.

7. By way of derogation from Article 10(3), the importation of goods within the meaning of paragraphs 4 and 5 of this Article shall terminate without the occurrence of a chargeable event when:

- a. the imported goods are dispatched or transported outside the enlarged Community;
- or
- b. the imported goods within the meaning of paragraph 4(a) are other than means of transport and are redispached or transported to the Member States from which they were exported and to the person who exported them;
- or

- c. the imported goods within the meaning of paragraph 4(a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Community and/or have not been subject by reason of their exportation to any exemption from or refund of value added tax.

This condition shall be deemed to be fulfilled in the following cases:

- when, in respect of Austria, Finland and Sweden, the date of the first use of the means of transport was before 1 January 1987;
- when, in respect of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the date of the first use of the means of transport was before 1 May 1996;
- when the amount of tax due by reason of the importation is insignificant.

[Accession 2004]

TITLE XVII

VALUE ADDED TAX COMMITTEE

Article 29

1. An Advisory Committee on value added tax, hereinafter called "the Committee", is hereby set up.
2. The Committee shall consist of representatives of the Member States and of the Commission.

The chairman of the Committee shall be a representative of the Commission.

Secretarial services for the Committee shall be provided by the Commission.

3. The Committee shall adopt its own rules of procedure.
4. In addition to points subject to the consultation provided for under this Directive, the Committee shall examine questions raised by its chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of the Community provisions on value added tax.

Article 29a

Implementing measures

The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.

[Article 1(2) of Directive 2004/7/EC]

TITLE XVIII**MISCELLANEOUS****Article 30****International Agreements**

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country or an international organisation an agreement which may contain derogations from this Directive.
2. A Member State wishing to conclude such an agreement shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required. Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.
3. Within three months of giving the notification referred to in the last sentence of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.
4. In any event, the procedure set out in paragraphs 2 and 3 shall be completed within eight months of receipt of the application by the Commission.

[Article 1(3) of Directive 2004/7/EC]

Article 31**Unit of account**

1. The Unit of account used in this Directive shall be the euro.
[Article 1 of Regulation (EEC, Euratom) No. 3308/80 and Article 2 of Regulation (EC) No. 1103/97]
2. When converting this Unit of account into national currencies, Member States shall have the option of rounding the amounts resulting from this conversion either upwards or downwards by up to 10%.

Article 28m**Rate of conversion**

To determine the equivalents in their national currencies of amounts expressed in euros in this Title ¹⁾ Member States shall use the rate of exchange applicable on 16 December 1991. However, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia shall use the rate of exchange applicable on the date of their accession ²⁾.

[Article 1(22) of Directive 91/680/EEC], Article 2 of Regulation (EC) No. 1103/97, and Chapter V, section 1(b) of the Annex to Directive 2004/66/EC]

¹⁾ Editor's note: "this Title" is Title XVIa.

²⁾ Editor's note: The official date of accession was Saturday 1 May 2004, for which the ECB has not published a rate of conversion. The rate of conversion show on page 56 is that of 3 May 2004 published in OJ C 128 of 4 May 2004.

Article 32**Second-hand goods**

[Deleted;
Article 1(9) of Directive 94/5/EC]

Article 33

1. Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes, provided however those taxes, duties or charges do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.
2. Any reference in this Directive to products subject to excise duty shall apply to the following products as defined by current Community provisions:

- mineral oils,
- alcohol and alcoholic beverages,
- manufactured tobacco.

[Article 1(23) of Directive 91/680/EEC]

Article 33a

[Article 1(24) of Directive 91/680/EEC]

1. Goods referred to in Article 7(1)(b) entering the Community from a territory which forms part of the customs territory of the Community but which is considered as a third territory for the purposes of applying this Directive shall be subject to the following provisions:
 - a. the formalities relating to the entry of such goods into the Community shall be the same as those laid down by the Community customs provisions in force for the import of goods into the customs territory of the Community;
 - b. when the place of arrival of the dispatch or transport of these goods is situated outside the Member State where they enter the Community, they shall circulate in the Community under the internal Community transit procedure laid down by the Community customs provisions in force, in so far as they have been the subject of a declaration placing them under this regime when the goods entered the Community;
 - c. when at the moment of their entry into the Community the goods are found to be in one of the situations which would qualify them, if they were imported within the meaning of Article 7(1)(a), to benefit from one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d), or under a temporary arrangement in full exemption from import duties, the Member States shall take measures ensuring that the goods may remain in the Community under the same conditions as those laid down for the application of such arrangements.

2. Goods not referred to in Article 7(1)(a) dispatched or transported from a Member State to a destination in a territory that forms parts of the customs territory of the Community but which is considered as a third territory for the purposes of applying this Directive shall be subject to the following provisions:

- a. the formalities relating to the export of those goods outside the territory of the Community shall be the same as the Community customs provisions in force in relation to export of goods outside the customs territory of the Community;
- b. for goods which are temporarily exported outside the Community, in order to be reimported, the Member States shall take the measures necessary to ensure that, on reimportation into the Community, such goods may benefit from the same provisions as if they had been temporarily exported outside the customs territory of the Community.

[Article 1(23) of Directive 92/111/EEC]

Article 38

This Directive is addressed to the Member States.

TITLE XIX

FINAL PROVISIONS

Article 34

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.

Article 35

At the appropriate time the Council acting unanimously on a proposal from the Commission, after receiving the Opinion of the European Parliament and of the Economic and Social Committee, and in accordance with the interests of the common market, shall adopt further Directives on the common system of value added tax, in particular to restrict progressively or to repeal measures taken by the Member States by way of derogation from the system, in order to achieve complete parallelism of the national value added tax systems and thus permit the attainment of the objective stated in Article 4 of the first Council Directive of 11 April 1967.

Article 36

The fourth paragraph of Article 2 and Article 5 of the first Council Directive of 11 April 1967 are repealed.

Article 37

Second Council Directive 67/228/EEC of 11 April 1967 shall cease to have effect in each Member State as from the respective dates on which the provisions of this Directive are brought into application.

ANNEX A
LIST OF AGRICULTURAL PRODUCTION ACTIVITIES

- I. CROP PRODUCTION
1. General agriculture, including viticulture
 2. Growing of fruit (including olives) and of vegetables, flowers and ornamental plants, both in the open and under glass
 3. Production of mushrooms, spices, seeds and propagating materials; nurseries
- II. STOCK FARMING TOGETHER WITH CULTIVATION
1. General stock farming
 2. Poultry farming
 3. Rabbit farming
 4. Beekeeping
 5. Silkworm farming
 6. Snail farming
- III. FORESTRY
- IV. FISHERIES
1. Fresh water fishing
 2. Fish farming
 3. Breeding of mussels, oysters and other molluscs and crustaceans
 4. Frog farming
- V. Where a farmer processes, using means normally employed in an agricultural, forestry or fisheries undertaking, products deriving from his agricultural production, such processing shall also be regarded as agricultural production

ANNEX B
LIST OF AGRICULTURAL SERVICES

- Supplies of agricultural services which normally play part in agricultural production shall be considered the supply of agricultural services and include the following in particular:
- field work, reaping and mowing, threshing, baling, collecting, harvesting, sowing and planting
 - packing and preparation for market, for example drying, cleaning, grinding, disinfecting and ensilage of agricultural products
 - storage of agricultural products
 - stock minding, rearing and fattening
 - hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings
 - technical assistance
 - destruction of weeds and pests, dusting and spraying of crops and land
 - operation of irrigation and drainage equipment
 - lopping, tree felling and other forestry services

ANNEX C ¹⁾
COMMON METHOD OF CALCULATION

- I. For the purposes of calculating the value added for all agricultural, forestry and fisheries undertakings, the following shall be taken into account exclusive of value added tax:
 - 1. the value of the total final production including farmers' own consumption of the class "agricultural products and game" and "wood in the rough" as set out in points IV and V below, plus the output of the processing activities referred to in point V of Annex A;
 - 2. the value of the total inputs required to achieve the production referred to in (1);
 - 3. the value of the gross fixed-asset formation in connection with the activities listed in Annexes A and B.
- II. To determine the deductible taxable inputs and outputs of flat-rate farmers, the inputs and outputs taxed under the normal value added tax scheme shall be deducted from the national accounts, taking into account the same factors as those in paragraph I.
- III. The value added tax for flat-rate farmers is equal to the difference between the value of total final production, exclusive of value added tax, as referred to in point I(1) and the total value of inputs as referred to in point I(2) together with gross fixed asset formation as referred to in point I(3). All these factors relate to flat-rate farmers only.
- IV. AGRICULTURAL PRODUCTS AND GAME
(.....)
- V. WOOD IN THE ROUGH
(.....)

ANNEX D
LIST OF ACTIVITIES REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 4(5)

- 1. Telecommunications
- 2. The supply of water, gas, electricity and steam
- 3. The transport of goods
- 4. Port and airport services
- 5. Passenger transport
- 6. Supply of new goods manufactured for sale
- 7. The transactions of agricultural intervention agencies in respect of agricultural products carried out pursuant to regulations on the common organization of the market in these products
- 8. The running of trade fairs and exhibitions
- 9. Warehousing
- 10. The activities of commercial publicity bodies
- 11. The activities of travel agencies
- 12. The running of staff shops, cooperatives and industrial canteens and similar institutions
- 13. Transactions other than those specified in Article 13(A)(1)(q), of radio and television bodies

¹⁾ The classification used in this Annex is that used in the Economic Accounts for Agriculture of the Statistical Office of the European Communities (SOEC).

ANNEX E
TRANSACTIONS REFERRED TO IN ARTICLE 28(3)(a)

1. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(A)(1)(a) in so far as they relate to parcel post services"
2. Transactions referred to in Article 13(A)(1)(e)
3. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(A)(1)(f) other of those of groups of a medical or paramedical nature"
4. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(A)(1)(m)"
Article 1(1) of Directive 89/465/EEC reads:
"Those Member States which, on 1 January 1989, subjected to value added tax the transactions listed in Annex E, points 4 and 5, are authorized to apply the conditions of Article 13(A)(2)(a), final indent, also to services rendered and goods delivered, as referred to in Article 13(A)(1)(m) and (n) where such activities are carried out by bodies governed by public law."
5. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(A)(1)(n)"
Article 1(1) of Directive 89/465/EEC reads:
"Those Member States which, on 1 January 1989, subjected to value added tax the transactions listed in Annex E, points 4 and 5, are authorized to apply the conditions of Article 13(A)(2)(a), final indent, also to services rendered and goods delivered, as referred to in Article 13(A)(1)(m) and (n) where such activities are carried out by bodies governed by public law."
6. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(A)(1)(p)"
7. Transactions referred to in Article 13(A)(1)(q)
8. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(B)(d)(2)"
9. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(B)(d)(5) in so far as they relate to services of intermediaries"
10. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 13(B)(d)(6)"
11. Supplies covered by Article 13(B)(g) in so far as they are made by taxable persons who were entitled to deduction of input tax on the building concerned
12. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Supplies of goods referred to in Article 15(2)"
13. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Transactions referred to in Article 15(6) and (9)"
14. [Abolished; Article 1(1) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Supplies referred to in Article 15(12)"
15. The services of travel agents referred to in Article 26, and those of travel agents acting in the name and on account of the traveller, for journeys outside the Community

ANNEX F
TRANSACTIONS REFERRED TO IN ARTICLE 28(3)(b)

1. Admission to sporting events
2. Services supplied by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the second Council Directive of 11 April 1967 ¹⁾

Annex B – List of services referred to in Article 6(2):
 1. assignments of patents, trade marks and other similar rights, and the granting of licences in respect of such rights;
 2. work, other than that referred to in Article 5(2)(d), on tangible movable property, carried out for a taxable person;
 3. provision of services to prepare or co-ordinate the carrying out of works of construction, as, for example, services provided by architects and by firms providing on-site supervision of works;
 4. commercial advertising services;
 5. transport and storage of goods, and ancillary services;
 6. hiring of tangible movable property to a taxable person;
 7. provision of staff to a taxable person;
 8. services provided by consultants, engineers, planning offices and similar services, in scientific, economic or technical fields;
 9. the carrying out of an obligation to refrain from exercising, in whole or in part, a business activity or a right included in this list;
 10. the services forwarding agents, brokers, business agents and other independent intermediaries, in so far as they relate to supply or importation of goods or the provision of services included in this list.
3. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Supply of services by means of agricultural machinery for individual or associated agricultural undertakings"
4. [Abolished; Article 1(2)(b) of Directive 89/465/EEC]
Prior to 1 January 1991 this item read:
"Supply of greyhounds and thoroughbred horses"
5. Telecommunications services supplied by public postal services and supplies of goods incidental thereto
6. Services supplied by undertakers and cremation services, together with goods related thereto
7. Transactions carried out by blind persons or workshops for the blind provided these exemptions do not give rise to significant distortion of competition
8. The supply of goods and services to official bodies responsible for the construction, setting out and maintenance of cemeteries, graves and monuments commemorating war dead
9. [Abolished; Article 1(2)(c) of Directive 89/465/EEC]
Prior to 1 January 1992 this item read:
"Treatment of animals by veterinary surgeons"
10. Transactions of hospitals not covered by Article 13(A)(1)(b)
11. [Abolished; Article 1(2)(d) of Directive 89/465/EEC]
Prior to 1 January 1993 this item read:
"Services of experts in connection with insurance claim assessments"
12. The supply of water by public authorities
13. [Abolished; Article 1(2)(b) of Directive 89/465/EEC]
Prior to 1 January 1991 this item read:
"Management of credit and credit guarantees by a person or a body other than the one which granted the credits"

ANNEX G
RIGHT OF OPTION

14. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Debt collection"
15. [Abolished; Article 1(2)(b) of Directive 89/465/EEC]
Prior to 1 January 1991 this item read:
"The safekeeping and management of shares, interests in companies and associations, debentures and other securities or negotiable instruments, excluding documents establishing title to goods or securities referred to in Article 5(3)"
16. Supplies of those buildings and land described in Article 4(3)
17. Passenger transport
The transport of goods such as luggage or motor vehicles accompanying passengers and the supply of services related to the transport of passengers, shall only be exempted in so far as the transport of the passengers themselves is exempt
18. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"The supply, modification, repair, maintenance, chartering and hiring of commercial inland waterway vessels and the supply, hiring, repair and maintenance of equipment incorporated or used therein"
19. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Supplies of some capital goods after the expiry of the adjustment period for deductions"
20. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Supplies of recuperable material and fresh industrial waste"
21. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Goods for the fuelling and provisioning of private boats, proceeding outside the national territory"
22. [Abolished; Article 1(2)(a) of Directive 89/465/EEC]
Prior to 1 January 1990 this item read:
"Goods for the fuelling and provisioning of aircraft for private use proceeding outside the national territory"
23. The supply, modification, repair, maintenance, chartering and hiring of aircraft, including equipment incorporated or used therein, used by State institutions
24. [Abolished; Article 1(2)(b) of Directive 89/465/EEC]
Prior to 1 January 1991 this item read:
"The transport of goods on the Rhine and the canalized Moselle, and transactions linked thereto"
25. The supply, modification, repair, maintenance, chartering and hiring of warships
26. [Deleted; Article 2 of Directive 98/80/EC]
Prior to 17 October 1998 (1 January 2000) this item read:
"Transactions concerning gold other than gold for industrial use"
27. The services of travel agents referred to in Article 26, and those of travel agents acting in the name and on account of the traveller, for journeys within the Community

1. The right of option referred to in Article 28(3)(c) may be granted in the following circumstances:
- a. in the case of transactions specified in Annex E:
- Member States which already exempt these supplies but also give right of option for taxation may maintain this right of option
- b. in the case of transactions specified in Annex F:
- Member States which provisionally maintain the right to exempt such supplies may grant taxable persons the right to opt for taxation
2. Member States already granting a right of option for taxation not covered by the provisions of Paragraph 1 above may allow taxpayers exercising it to maintain it until at the latest the end of three years from the date the Directive comes into force.

ANNEX H
LIST OF SUPPLIES OF GOODS AND SERVICES WHICH
MAY BE SUBJECT TO REDUCED RATES OF VAT

In transposing the categories below which refer to goods into national legislation, Member States may use the combined nomenclature to establish the precise coverage of the category concerned.

Category	Description
1.	Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in preparation of foodstuffs; products normally intended to be used to supplement or substitute foodstuffs
2.	Water supplies
3.	Pharmaceutical products of a kind normally used for health care, prevention of diseases and treatment for medical and veterinary purposes, including products used for contraception and sanitary protection
4.	Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and children's car seats
5.	Transport of passengers and their accompanying luggage
6.	Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or substantially devoted to advertising matter
7.	Admissions to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities Reception of broadcasting services
8.	Services supplied by or royalties due to writers, composers and performing artists
9.	Supply, construction, renovation and alteration of housing provided as part of a social policy
10.	Supplies of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings
11.	Accommodation provided by hotels and similar establishments including the provision of holiday accommodation and the letting of camping sites and caravan parks
12.	Admission to sporting events
13.	Use of sporting facilities
14.	Supply of goods and services by organizations recognized as charities by Member States and engaged in welfare or social security work, in so far as these supplies are not exempt under Article 13
15.	Services supplied by undertakers and cremation services, together with the supply of goods related thereto

16. Provision of medical and dental care as well as thermal treatment in so far as these services are not exempt under Article 13
17. Services supplied in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Article 4(5)

ANNEX I

ANNEX J

WORKS OF ART, COLLECTORS' ITEMS AND ANTIQUES

DESCRIPTION OF GOODS

CN CODE

For the purposes of this Directive:

a. "works of art" shall mean:

- pictures, collages and similar decorative plaques, paintings and drawings, executed entirely by hand by the artist, other than plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas (CN code 9701),
- original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed entirely by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process (CN code 9702 00 00),
- original sculptures and statuary, in any material, provided that they are executed entirely by the artist; sculpture casts the production of which is limited to eight copies and supervised by the artist or his successors in title (CN code 9703 00 00); on an exceptional basis, in cases determined by the Member States, the limit of eight copies may be exceeded for statuary casts produced before 1 January 1989,
- tapestries (CN code 5805 00 00) and wall textiles (CN code 6304 00 00) made by hand from original designs provided by artists, provided that there are not more than eight copies of each,
- individual pieces of ceramics executed entirely by the artist and signed by him,
- enamels on copper, executed entirely by hand, limited to eight numbered copies bearing the signature of the artist or the studio, excluding articles of jewellery and goldsmiths' and silversmiths' wares,
- photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included;

b. "collectors' items" shall mean:

- postage or revenue stamps, postmarks, first-day covers, pre-stamped stationary and the like, franked, or if unfranked not being of legal tender and not being intended for use as legal tender (CN code 9704 00 00),
- collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological [sic], ethnographic or numismatic interest (CN code 9705 00 00);

c. "antiques" shall mean objects other than works of art or collectors' items, which are more than 100 years old (CN code 9706 00 00).

Tin	8001
Copper	7402 7403 7405 7408
Zinc	7901
Nickel	7502
Aluminium	7601
Lead	7801
Indium	ex 8112 91 ex 8112 99
Cereals	1001 to 1005 1006: unprocessed rice only 1007 to 1008
Oil seeds and oleaginous fruit	1201 to 1207
Coconuts, Brazil nuts and cashew nuts	0801
Other nuts	0802
Olives	0711 20
Grains and seeds (including soya beans)	1201 to 1207
Coffee, not roasted	0901 11 00 0901 12 00
Tea	0902
Cocoa beans, whole or broken, raw or roasted	1801
Raw sugar	1701 11 1701 12
Rubber, in primary forms or in plates, sheets or strip	4001 4002
Wool	5101
Chemicals in bulk	Chapters 28 and 29
Mineral oils (including propane and butane; also including crude petroleum oils)	2709 2710 2711 12 2711 13
Silver	7106
Platinum (Palladium, Rhodium)	7110 11 00 7110 21 00 7110 31 00
Potatoes	0701
Vegetable oils and fats and their fractions, whether or not refined, but not chemically modified	1507 to 1515

ANNEX K

List of supplies of services referred to in Article 28(6)

1. Small services of repairing:
 - bicycles,
 - shoes and leather goods,
 - clothing and household linen (including mending and alteration).
2. Renovation and repairing of private dwellings, excluding materials which form a significant part of the value of the supply.
3. Window cleaning and cleaning in private households.
4. Domestic care services (e.g. home help and care of the young, elderly, sick or disabled).
5. Hairdressing.

ANNEX L

Illustrative list of electronically supplied services referred to in Article 9(2)(e)

1. Website supply, web-hosting, distance maintenance of programmes and equipment¹⁾.

¹⁾ Under item 1 of Annex I to Regulation (EC) 1777/2005, 'electronically supplied services' shall include:

 - a. Website hosting and webpage hosting.
 - b. Automated, on-line and distance maintenance of programmes.
 - c. Remote systems administration.
 - d. On-line data warehousing where specific data is stored and retrieved electronically.
 - e. On-line supply of on-demand disc space.
2. Supply of software and updating thereof¹⁾.

¹⁾ Under item 2 of Annex I to Regulation (EC) 1777/2005, 'electronically supplied services' shall include:

 - a. Accessing or downloading software (including procurement/-accountancy programmes and anti-virus software) plus updates.
 - b. Software to block banner adverts showing, otherwise known as Bannerblockers.
 - c. Download drivers, such as software that interfaces computers with peripheral equipment (such as printers).
 - d. On-line automated installation of filters on web-sites.
 - e. On-line automated installation of firewalls.
3. Supply of images, text and information, and making databases available¹⁾.

¹⁾ Under item 3 of Annex I to Regulation (EC) 1777/2005, 'electronically supplied services' shall include:

 - a. Accessing or downloading desktop themes.
 - b. Accessing or downloading photographic or pictorial images or screensavers.
 - c. The digitised content of books and other electronic publications.
 - d. Subscription to on-line newspapers and journals.
 - e. Weblogs and website statistics.
 - f. On-line news, traffic information and weather reports.
 - g. On-line information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time).
 - h. The provision of advertising space including banner ads on a web site/web page.
 - i. Use of search engines and Internet directories.
4. Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events¹⁾.

¹⁾ Under item 4 of Annex I to Regulation (EC) 1777/2005, 'electronically supplied services' shall include:

 - a. Accessing or downloading of music on to computers and mobile phones.
 - b. Accessing or downloading of jingles, excerpts, ringtones, or other sounds.
 - c. Accessing or downloading of films.
 - d. Downloading of music on to computers and mobile phones.
 - e. Accessing automated on-line games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another.
5. Supply of distance teaching¹⁾.

¹⁾ Under item 5 of Annex I to Regulation (EC) 1777/2005, 'electronically supplied services' shall include:

 - a. Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student.
 - b. Workbooks completed by pupils on-line and marked automatically, without human intervention.

Where the supplier of a service and his customer communicates via electronic mail, this shall not of itself mean that the service performed is an electronic service within the meaning of the last indent of Article 9(2)(e).

RATES OF CONVERSION (EUA, ECU, euro)

	national currency	EUA 17 May 1977 ¹⁾	ECU 16 Dec. 1991 ²⁾	euro 1 Jan. 1999	euro 3 May 2004 ³⁾
Austria	ATS	18.9518	–	13.7603	–
Belgium	BEF	40.8128 ⁴⁾ 40.8269 ⁵⁾	42.0055	40.3399	–
Cyprus	CYP	–	–	–	0.5865
Czech Republic	CZK	–	–	–	32.55
Denmark	DKK	6.78547	7.93222	–	–
Estonia	EEK	–	–	–	15.6466
Finland	FIM	4.600122	–	5.94573	–
France	FRF	5.59197	6.96609	6.55957	–
Germany	DEM	2.66446	2.3984	1.95583	–
Greece	GRD	–	233.820	340.750 ⁶⁾	–
Hungary	HUF	–	–	–	251.75
Ireland	IEP	0.656603	0.765155	0.787564	–
Italy	ITL	1,000.42	1,539.82	1,936.27	–
Latvia	LVL	–	–	–	0.6523
Lithuania	LTL	–	–	–	3.4528
Luxembourg	LUF	40.8128 ⁴⁾ 40.8269 ⁵⁾	42.0055	40.3399	–
Malta	MTL	–	–	–	0.4262
Netherlands	NLG	2.77458	2.29834	2.20371	–
Poland	PLN	–	–	–	4.7919
Portugal	PTE	43.6267	180.962	200.482	–
Slovenia	SIT	–	–	–	238.55
Slovak Republic	SKK	–	–	–	40.325
Spain	ESP	77.7572	129.980	166.386	–
Sweden	SEK	4.92254	–	–	–
United Kingdom	GBP	0.656603	0.708540	–	–

1) European Unit of Account, rate of conversion listed in OJ C 120 of 18 May 1977.

2) European Currency Unit, rate of conversion listed in OJ C 348 of 17 December 1991.

3) The date of official accession was Saturday 1 May 2004, for which the ECB has not published a rate of conversion. The rate of conversion show in this column is that of 3 May 2004 listed in OJ C 128 of 4 May 2004.

4) Commercial market rate of conversion.

5) Financial market rate of conversion.

6) Rate of conversion from 1 January 2001.

THRESHOLDS and TAX RATES

1 January 2006	Currency ¹⁾	Distance selling threshold ²⁾ :	Intra-Comm. Acquisition threshold ³⁾ :	Retail export scheme ⁴⁾ :	Standard rate ⁵⁾ :	Reduced rates ⁶⁾ :
Sixth Directive	EUR	100,000	≥ 10,000	175	≥ 15 %	≥ 5 %
Austria	EUR	≥ 35,000				
	EUR	100,000	11,000	75	20% ¹¹⁾	10% and 12%
Belgium	EUR	35,000	11,200	125	21%	0%, 6% and 12%
Cyprus	CYP	20,000	6,000	100	15%	0%, 5% and 8%
Czech Republic	CZK	1,140,000	326,000	2,000	19%	5%
Denmark	DKK	280,000	80,000	300 ⁷⁾	25%	0% ⁸⁾
Estonia	EEK	550,000	160,000	2,500	18%	0% and 5%
Finland	EUR	35,000	10,000	40	22%	0%, 8% and 17%
France	EUR	100,000	10,000	175	19.6% ⁹⁾	2.1% and 5.5% ⁹⁾
Germany	EUR	100,000	12,500	–	16%	7%
Greece	EUR	35,000	10,000	120	19% ¹⁰⁾	4.5% and 9% ¹⁰⁾
Hungary	HUF	8,500,000	€ 10,000	50,000	20%	5% and 15%
Ireland	EUR	35,000	41,000	–	21%	0%, 4.8% and 13.5%
Italy	EUR	27,888.67	8,263.31	154.94	20%	4% and 10%
Latvia	LVL	24,000	7,000	25	18%	0% and 5%
Lithuania	LTL	125,000	35,000	–	18%	5% and 9%
Luxembourg	EUR	100,000	10,000	74	15%	3%, 6% and 12%
Malta	MTL	€ 35,000	€ 10,000	55	18%	5%
Netherlands	EUR	100,000	10,000	136	19%	6%
Poland	PLN	€ 35,000	€ 10,000	200	22%	0%, 3% and 7%
Portugal	EUR	35,000	10,000	49.88	21% ¹²⁾	5% and 12% ¹²⁾
Slovak Republic	SKK	1,500,000	420,000	5,000	19%	–
Slovenia	SIT	€ 35,000	€ 10,000	15,000	20%	8.5%
Spain¹³⁾	EUR	35,000	10,000	90.15	16%	4% and 7%
Sweden	SEK	320,000	90,000	200	25%	6% and 12%
United Kingdom	GBP	70,000	60,000	–	17.5%	0% and 5%

¹⁾ Unless indicated otherwise, the currencies indicated in this column apply. The rates of conversion are presented on the preceding page.

²⁾ Under Article 28b(B)(2), first and second paragraphs of the Sixth Directive, in principle, the threshold is EUR 100,000; in practice, the lower threshold of EUR 35,000 predominates.

³⁾ See Article 28a(1a)(b), second indent of the Sixth Directive. The United Kingdom periodically increases that threshold.

⁴⁾ Under Article 15(2), second paragraph of the Sixth Directive, the minimum amount is EUR 175, unless the Member States set a lower amount.

⁵⁾ Under Article 12(3), first paragraph of the Sixth Directive, the minimum rate is 15% until 31 December 2010.

⁶⁾ Under Article 12(3), third paragraph of the Sixth Directive, in principle, the minimum rate is 5%.

⁷⁾ Where the goods are exported to Norway and the Åland islands, the threshold is DKK 1,200.

⁸⁾ The importation and first sale of artists' products is subject to VAT at the standard rate of 25% but only 20% of the taxable amount is taken into account. Therefore, the effective rate is 5%.

⁹⁾ On Corsica, the standard rate is 13% and the reduced rates are 0.9%, 2.1%, and 8%. In the overseas departments, the standard rate is 8.5% and the reduced rates are 1.05%, 1.75% and 2.1%.

¹⁰⁾ In the Greek departments, the standard rate is 13% and the reduced rates are 3% and 6%.

¹¹⁾ In Jungholz and Mittelberg, the standard rate is 16%.

¹²⁾ On the Azores and Madeira, the standard rate is 15% and the reduced rates are 4% and 8%.

¹³⁾ On the Canary islands, the standard rate is 5%, the reduced rates are 0% and 2% and the increased rates 9% and 13%.

