



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.10.2004  
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Proposal for a

**COUNCIL REGULATION**

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

Corrigendum: Annule et remplace  
la version envoyée le 8.10.2004.  
Concerne les versions FR/EN/DE.

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **Context**

Under Article 29a of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment<sup>1</sup>, the Council, acting unanimously on a proposal from the Commission, shall adopt measures necessary to implement the Sixth Directive. The Council has reserved its right to decide on these measures, as they might have a significant impact on the budget of one or more Member States. The scope of such implementing measures remains limited since, although they are designed to clarify the provisions laid down in the Sixth Directive, they can not derogate from them.

Implementing provisions should ensure the correct and more uniform application of the current VAT system to improve the functioning of the internal market. They are particularly necessary where there is a danger of double taxation of cross-border transactions as the result of divergences between Member States in the application of the provisions of the Sixth Directive governing the place of supply.

Between 1977 and 2003, and in accordance with its rules of procedure under Article 29 of the Sixth Directive, the VAT Committee, operating in an advisory role, unanimously adopted a number of non-binding guidelines with the intention of improving the correct and more uniform application of the current VAT system and - since 1993 - the functioning of the internal market. These guidelines concern important aspects of the application of the Sixth Directive, in particular the definition of the taxable person; the place of supply of goods and services; the taxable amount; and the application of the transitional provisions. They therefore warrant being given a binding legal form in a Regulation for improving future legal certainty on how the provisions of the Sixth Directive should be applied.

The Commission has considered the ongoing validity and utility of the unanimously agreed guidelines and is now proposing legislation, where appropriate, to give some of them legal force. In this context, it should not be forgotten that the original guidelines were drawn up in response to specific questions of application raised by Member States. They therefore are designed to bring consistency of treatment to individual questions and as a result only have a narrow application with no automatic read across to other, similar cases.

### **Comments regarding the individual provisions**

#### **Article 1 – Subject matter**

Article 1 lists all the Articles and the Annex of Directive 77/388/EEC affected by the Regulation and thus defines its scope.

#### **Article 2 – taxable person**

This Article clarifies that European Economic Interest Groupings are capable of making taxable supplies in their own right as a taxable person if all the conditions for doing so are met.

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<sup>1</sup> OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

### Article 3 – Definition of services

Article 3(1) establishes that the sale of an option to exercise a right is a supply of a service in its own right and thus not part of any supply made under, or resulting from, the option. The paragraph is limited to options within the fifth point of Article 13(B)(d) of Directive 77/388/EEC.

Article 3(2) clarifies that the mere assembly of a machine (where the parts have been provided by the customer) is a service.

### Article 4 – Services falling under 9(1) of Directive 77/388/EEC

Article 4(1) lists particular instances where the place of the supply will always be decided by reference to Art 9(1) of the Directive. The rule does not apply to services supplied within the framework of organising a funeral unless the funeral constitutes a single supply of services.

Article 4(2) deals with situations where the supplier has premises in both the customer's Member State and in another Member State. In such cases, the place of supply is to be the place where the supplier has established his business, except where the supply is effectively made from the fixed establishment in the other Member State. The extent of the involvement of each location in the supply is a matter for Member States to decide on an individual basis.

### Article 5 – Services falling under 9(2)(c) of Directive 77/388/EEC

Article 5 determines the place of supply for services of the mere assembly of a machine. The Article stipulates that the rule only applies to a supply of services of work on tangible property which does not become part of immoveable property. This excludes, for example, the supply of the service of assembling and installing machinery such as a lift or air conditioning plant where part of the service is the machinery's incorporation within the fabric of a building.

### Articles 6 to 13 – Services falling under 9(2)(e) of Directive 77/388/EEC

Article 6 clarifies that the services of translating written text are included in Article 9(2)(e).

Article 7 determines that the place of supply for television broadcasting rights in respect of football matches in certain circumstances will fall under Article 9(2)(e), first indent.

Article 8 places the service of dealing with 8th Directive refunds within the third indent of Article 9(2)(e).

Article 9 confirms that the agents referred to in Article 9(2)(e) seventh indent may be acting on behalf of a buyer or on behalf of a vendor.

Article 10 has the effect of ensuring that trailers and semi-trailers are excluded from the definition of moveable tangible property in Article 9(2)(e) 8th indent.

Article 11 defines "radio and television broadcasting services" referred to in Article 9(2)(e), 11th indent.

Article 12 together with Annex I help to define which services are included in Article 9(2)(e), last indent and Annex L to Directive 77/388/EEC. These definitions are not exhaustive.

Article 13 helps to define which services are excluded from Article 9(2)(e), last indent. This is not an exhaustive list.

#### Article 14 - Taxable amount

Article 14 clarifies the VAT treatment of a practice used to reduce the taxable value of a supply. Although the overall price to the customer remains the same regardless of the method of payment, where payment is made by credit or debit card, a card handling fee is levied. The effect is to reduce the taxable value by the magnitude of the exempt card handling fee.

The Regulation ensures that where the total price charged for a supply of goods or services remains unchanged by the method of payment, then the taxable amount is not affected. It does not apply, therefore, when an additional charge for paying by credit or debit card is made.

#### Articles 15 to 19 - Exemptions

Article 15 and 16 help to define what is included in the scope of exemptions. Article 15 helps to define the phrase "vocational training or retraining" found in Art 13A(1)(i) of the Sixth Directive and establishes that the duration of the course does not have any impact on its classification. Although legal currency in the Isle of Man, platinum nobles are normally regarded as collectors items, and Article 16 excludes them from the exemption for currency, bank notes and coins.

Article 17 establishes that the use of means of transport for private purposes by non-natural persons, in addition to use by natural persons, is covered by the provisions of 15(2) of the Sixth Directive.

Article 18 confirms that the value threshold in Article 15(2) of the Sixth Directive is to be calculated by using invoice values. If a number of goods have been supplied on the same invoice to the same customer, by the same supplier, the total amount invoiced may be used to calculate whether the threshold value has been exceeded.

Article 19 determines that air traffic control services within airport zones falls within the scope of the exemption found in Article 15(9) of the Directive. The exemption only applies where the services are supplied to meet the direct needs of aircraft specified in Article 15(6).

#### Article 20 – Evidence for deduction

Article 20 allows import documents to be in either paper or electronic form for the purpose of Art 18(1) of the Sixth Directive, but only if the importing state has an electronic system and if the electronic document can be checked.

#### Article 21 – Agricultural flat rate

Article 21 implements Art 25(3) of the Sixth Directive. It provides a uniform method of calculating the flat-rate, based on average percentages, and in the absence of data from the 3 years immediately prior to the year for which the flat-rate is being calculated, it allows the 3 most recent known years to be used.

## Article 22 – Definition of investment gold

Article 22 identifies, through an Annex, a minimum definition of the weights commonly accepted by the bullion market. These weights will have to be accepted by Member States as qualifying as "investment gold".

For the purpose of drawing up the list referred to in Article 26b of Directive 77/388/EEC Article 22 establishes a common date (1 April) for Member States to apply one of the tests to define gold coins as investment gold - that the selling price of gold coins should not exceed the open market value by more than 80%. Where 1 April falls on a day on which the markets do not set a price, an alternative date – the next date on which the price is fixed - is provided for.

## Article 23 – Special scheme for electronically supplied services

Article 23 deals with the arrangements for running the special scheme for electronically supplied services.

Article 23(1) confirms that a non-established taxable person using the special scheme for electronically supplied services in Article 26c(B) of Directive 77/388/EEC can be excluded from the special scheme at any time in that quarter after they met the criteria for exclusion. There is no requirement to wait, for example, until the end of a calendar quarter or calendar year.

The second sub-paragraph of Article 23(1) ensures that supplies made under the scheme up to the date of exclusion are only accounted for on a scheme return. Under Article 26c(B)(5) this should be rendered within 20 days of the end of the calendar quarter in which exclusion took place. It is implicit that paragraphs (6) and (7) of Article 26c(B) will apply to this return. and explicit that the return has no impact on the person's obligations under the normal rules.

Article 23(2) caters for overpayments compared to a return rendered under the special scheme. If the error is discovered prior to the amounts being disbursed by the Member State of identification then the trader shall be directly reimbursed. If the error is discovered after the tax has been distributed (because it is the result of the correction of an incorrect return for example) then Member States will directly reimburse the trader, advising the Member State of identification.

Article 23(3) precludes the accounting for errors through adjustments on subsequent returns. It requires VAT due in a particular quarter to appear only on that quarter's return and for the payment only to be accounted for against that return. By ensuring that tax which accrues in a particular period is declared and accounted for in relation to that period only, each Member State is assured of obtaining its fair proportion of revenue.

Article 23(4) stipulates that figures on returns under the scheme are not subject to any rounding.

## Article 24 – Incorrect treatment of intra-Community supplies

Article 24 caters for circumstances in which a mistake has been made in the application of certain rules on intra-Community transactions. It ensures that incorrect treatment of the supply in the vendor's Member State shall not affect the correct application of the rules in the

Member State of acquisition. Any refund of the VAT in the vendor's Member State which it turns out was wrongly charged and accounted for shall only be made by the tax authority to the registered person originally accounting for the tax, subject to national rules covering refunds.

#### Article 25 – Taxation of new means of transport

Article 25 ensures that the transfer between Member States of a means of transport by a private person as part of a transfer of their usual residence does not create a tax charge even though the means of transport is still new. This does not apply when there is evidence to show that the person involved envisaged a move when the new means of transport was originally purchased.

#### Article 26 – Implications of breaching the distance selling thresholds

Article 26 deals with the operation of the distance selling thresholds. Under Article 26 first sub-paragraph, the treatment of supplies made whilst still below the threshold level are not affected by a breach of the threshold. The second sub-paragraph of Article 26 identifies the supplies whose place of supply are affected the breaching of the threshold: the supply which took the total supplies over the threshold in that Member State (letter a); any subsequent supplies to that Member State (letter b); and any supplies in the following calendar year to that Member State (letter c).

#### Article 27 – Details of commencement

Self-explanatory.

#### Annexes

Annex I is referred to in Article 12 and amplifies the illustrative list of services in Annex L of Directive 77/388/EEC. It comprises a non-exhaustive list of services, which, when delivered over the internet or an electronic network, are defined as electronically supplied services.

Annex II refers to Article 22 and lists the commonly traded weights accepted by the bullion markets.

Proposal for a

## **COUNCIL REGULATION**

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment<sup>2</sup>, and in particular Article 29a thereof,

Having regard to the proposal from the Commission<sup>3</sup>,

Whereas:

- (1) In order to improve the functioning of the internal market, it is essential to ensure a more uniform application of the current value added tax system. The adoption of provisions implementing Directive 77/388/EEC is a major step forward in that respect. A Regulation, binding and directly applicable in all Member States, will ensure that certain divergences in the application of the provisions of Directive 77/388/EEC no longer occur in the future. This Regulation will apply only when value added tax becomes chargeable after the date of its entry into force.
- (2) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring a more uniform application of the current value added tax system to lay down rules implementing Directive 77/388/EEC, in particular in respect of taxable persons; the supply of goods and services; and the place of their supply. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (3) The implementing provisions contain specific rules in response to selective questions of application and are designed to bring consistency of treatment throughout the Community to those specific circumstances only. They are therefore not conclusive for other cases.
- (4) The further integration of the internal market led to an increased need for co-operation by economic operators established in different Member States across internal borders and the development of European economic interest groupings, constituted in accordance with Council Regulation (EEC) No 2137/85<sup>4</sup>; it should therefore be

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<sup>2</sup> OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ L 199, 31.7.1985, p. 1.

provided that such groupings are also taxable persons where they supply goods or services for consideration or intend to make such supplies.

- (5) In particular cases, supplies of machines go hand-in-hand with specific assembly activities, creating a need to define in which cases the transactions involved should be supplies of services and to establish the place of supply.
- (6) The sale of an option as a financial instrument has to be treated as a supply of services separate from the underlying transactions to which the option relates.
- (7) The application of rules governing the place of supply for the hiring of railway wagons varies considerably in the Member States; as such hiring often involves cross-border scenarios, it is necessary to specify the rule on the place of supply.
- (8) Where various services supplied in the framework of a funeral form a part of a single service, the rule on the place of supply should also be determined.
- (9) Where the supplier of services has established his place of business in one Member State and a fixed establishment in another, priority should be given to the former for establishing the place of supply of the services, unless the supply is effectively made from the latter.
- (10) Certain specific services such as the assignment of television broadcasting rights in respect of football matches, the translation of texts, services for claiming value added tax refunds, certain services as an agent, the hiring of means of transport, radio and television broadcasting services, and certain electronic services, involve cross-border scenarios or even economic operators established in third countries. The place of supply of these services needs to be clearly determined in order to create greater legal certainty. It should be noted that the services identified as electronic services or otherwise do not constitute a definitive, exhaustive list.
- (11) In certain specific circumstances a credit or debit card handling fee which is paid in connection with a supply should not decrease the taxable amount for the latter.
- (12) Exempt vocational training or retraining should include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes, regardless of the duration of a course, because they fulfil the purpose pursued by the exemption.
- (13) “Platinum nobles”, that is to say, coins containing at least 1oz (31.1 grams) of pure platinum, are normally treated as collectors' items or as an investment medium, but are also recognised as legal tender on the Isle of Man. They should in all cases be treated as being excluded from the exemptions for currency, bank notes and coins.
- (14) Associations and bodies governed by public law should, in the same way as natural persons, be denied exemption for goods transported outside the Community by the purchaser and used for equipping, fuelling or provisioning of means of transport.
- (15) National administrative practices for the calculation of the minimum value for exemption on exportation of goods carried in the personal luggage of travellers vary considerably and therefore need to be harmonised.



- (16) Certain air traffic control activities in the airport zone should be exempt from value added tax, subject to appropriate conditions.
- (17) Electronic import documents should also be admitted to exercise the right to deduct, where they fulfil the same requirements as paper-based documents.
- (18) The flat-rate compensation percentages should be calculated on a uniform basis to avoid competitive distortions between farmers in different Member States.
- (19) Weights for investment gold which are definitely accepted by the bullion market should be named and a common date for establishing the value of gold coins be determined to ensure equal treatment of economic operators.
- (20) The special scheme for taxable persons not established in the Community, supplying electronic services to non-taxable persons established or resident within the Community is subject to certain conditions, and the consequences of failure to meet those conditions should be made clear.
- (21) Where certain rules for intra-Community acquisitions of goods have been applied incorrectly, the right of the Member State of acquisition to tax the acquisition should remain unaffected by the value added tax treatment of the transaction in other Member States.
- (22) It should be ensured that in certain circumstances, the transfer between Member States of a means of transport by a private person as part of a transfer of residence does not create a second tax charge even though the means of transport is still new.
- (23) Rules need to be established to ensure the uniform treatment of supplies of goods once a supplier has exceeded the distance selling threshold for supplies to another Member State,

HAS ADOPTED THIS REGULATION:

## **Chapter I**

### **Subject-matter**

#### *Article 1*

This Regulation lays down measures for the implementation of Articles 4, 6, 9, 11, 13, 15, 18, 25, 26b, 26c, 28a and 28b of Directive 77/388/EEC, and of Annex L thereto.

## **Chapter II**

### **Taxable persons and taxable transactions**

#### **SECTION 1**

*(ARTICLE 4 OF DIRECTIVE 77/388/EEC)*

##### *Article 2*

Where a European Economic Interest Grouping (EEIG), constituted in accordance with Regulation (EEC) No 2137/85, supplies goods or services for consideration to its members or to third parties, that EEIG is carrying out an economic activity for the purposes of Article 4(1) of Directive 77/388/EEC.

#### **SECTION 2**

*(ARTICLE 6 OF DIRECTIVE 77/388/EEC)*

##### *Article 3*

1. The sale of an option, where such a sale is a transaction within the scope of point (5) of Article 13(B)(d) of Directive 77/388/EEC, shall be regarded as a supply of services within the meaning of Article 6(1) of that Directive. That supply of services shall be regarded as separate from the underlying operations to which the services relate.
2. Where a supplier only assembles the different parts of a machine provided to him by his customer, that supply shall be regarded as a supply of services within the meaning of Article 6(1) of Directive 77/388/EEC.

## **Chapter III**

### **Place of taxable transactions**

#### **SECTION 1**

*(ARTICLE 9(1) OF DIRECTIVE 77/388/EEC)*

##### *Article 4*

1. The place of supply in respect of the following transactions shall be established in accordance with Article 9(1) of Directive 77/388/EEC:
  - (a) the hiring of railway wagons;
  - (b) services supplied in the framework of organising a funeral, if constituting a single service.

2. Where the supplier of a service has established his place of business in one Member State and has a fixed establishment in another, the place of supply under Article 9(1) of Directive 77/388/EEC shall be the place where the supplier has established his business, except where the supply is effectively made from his fixed establishment.

## SECTION 2

(ARTICLE 9(2) OF DIRECTIVE 77/388/EEC)

### *Article 5*

Except where the goods being assembled become part of immovable property, the place of the supply of services specified in Article 3(2) of this Regulation shall be established in accordance with Article 9(2)(c) or Article 28bF of Directive 77/388/EEC.

### *Article 6*

The service of translating text shall be covered by Article 9(2)(e) of Directive 77/388/EEC.

### *Article 7*

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) of Directive 77/388/EEC.

### *Article 8*

The service of applying for or of receiving refunds of value added tax under Council Directive 79/1072/EEC<sup>5</sup> shall be covered by the third indent of Article 9(2)(e) of Directive 77/388/EEC.

### *Article 9*

The seventh indent of Article 9(2)(e) of Directive 77/388/EEC shall cover the services of agents acting either in the name and for the account of the buyer, or in the name and for the account of the supplier.

### *Article 10*

Trailers and semi-trailers shall be regarded as forms of transport for the purposes of the eighth indent of Article 9(2)(e) of Directive 77/388/EEC.

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<sup>5</sup> OJ L 331, 27.12.1979, p. 11.

### *Article 11*

Radio and television broadcasting services, as referred to in the eleventh indent of Article 9(2)(e) of Directive 77/388/EEC, shall mean transmissions by wire or air, including via satellite, intended for reception by the public, even when they are simultaneously broadcast over the Internet or similar electronic networks.

Those services shall exclude the assignment of broadcasting or transmission rights, and the leasing of technical equipment or facilities utilised in providing a broadcast.

### *Article 12*

1. Electronically supplied services, as referred to in the twelfth indent of Article 9(2)(e) of Directive 77/388/EEC, 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 having no viability.
2. The following services, in particular, shall, where delivered over the Internet or an electronic network, be covered by paragraph 1:
  - (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 web site or a web page;
  - (c) services automatically generated from a computer via the internet or an electronic network, in response to specific data input by the customer;
  - (d) on-line auction services, including on-line market places or on-line shopping portals, that are dependent on automated databases and data input by the customer and requiring little or no human intervention;
  - (e) Internet Service Packages of information or interactive activities, going beyond mere Internet access and in which the telecommunications component forms an ancillary and subordinate part.
3. The services listed in Annex I shall be regarded as covered by Annex L to Directive 77/388/EEC.

### *Article 13*

The following, in particular, shall not be covered by the twelfth indent of Article 9(2)(e) of Directive 77/388/EEC:

- (1) radio and television broadcasting services as referred to in the eleventh indent of Article 9(2)(e) of Directive 77/388/EEC;
- (2) telecommunications services, within the meaning of the tenth indent of Article 9(2)(e) of Directive 77/388/EEC;

- (3) supplies of the following:
- (a) goods, where the order and processing is done electronically;
  - (b) CD-ROMs, floppy discs 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) interactive teaching services, where the course content is delivered by a teacher over the Internet or an electronic network, such as via remote link;
  - (i) physical repair services of computer equipment;
  - (j) off-line data warehousing services;
  - (k) advertising services, such 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.

## **Chapter IV**

### **Taxable amount**

*(Article 11 of Directive 77/388/EEC)*

#### *Article 14*

Where a handling fee is charged by a supplier of goods or services, or by an associate of the supplier, as a requirement in connection with accepting payment for the supply of goods or services by credit or debit card, and the total price payable is unaffected irrespective of how payment is made, the taxable amount for the supply of the goods or services determined in accordance with Article 11 of Directive 77/388/EEC shall not be reduced.

## **Chapter V**

### **Exemptions**

#### **SECTION 1**

*(ARTICLE 13 OF DIRECTIVE 77/388/EEC)*

#### *Article 15*

The term "vocational training or retraining" referred to in Article 13(A)(1)(i) of Directive 77/388/EEC 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 course shall be irrelevant for the purposes of its categorisation as vocational training or retraining.

#### *Article 16*

Article 13(B)(d)(4) of Directive 77/388/EEC shall not cover platinum nobles.

#### **SECTION 2**

*(ARTICLE 15 OF DIRECTIVE 77/388/EEC)*

#### *Article 17*

The term "means of transport for private use" in the first subparagraph of point (2) of Article 15 of Directive 77/388/EEC shall include means of transport used for non-business purposes by persons other than natural persons, such as associations and bodies governed by public law within the meaning of Article 4(5) of that Directive.

### *Article 18*

In order to determine whether the threshold provided for in the third indent of the second subparagraph of point (2) of Article 15 of Directive 77/388/EEC has been exceeded, the calculation shall be based on the invoice value including value added tax. The aggregate value of several goods may be used only if all those goods are included on the same invoice.

### *Article 19*

Air traffic control services provided in the airport zones defined by Member States shall be regarded as supplies of services covered by point (9) of Article 15 of Directive 77/388/EEC provided that the supply is to meet the direct needs of the aircraft specified in point (6) of that Article.

## **Chapter VI Deductions**

*(Article 18 of Directive 77/388/EEC)*

### *Article 20*

Where the importing Member State has introduced an electronic system for completing customs formalities, the term "import document" in point (b) of Article 18(1) of Directive 77/388/EEC shall cover electronic versions of such documents, provided that it allows for the exercise of the right of deduction to be checked.

## **Chapter VII Special schemes**

*(Articles 25 to 26c of Directive 77/388/EEC)*

### *Article 21*

For the purposes of fixing the flat-rate compensation percentages pursuant to the first subparagraph of Article 25(3) of Directive 77/388/EEC, Member States shall use average percentages.

These average percentages shall be based on macro-economic statistics for the three years preceding the year for which the flat-rate compensation percentage is being fixed. Where such data is not yet available, statistics for the last three available years shall be used.

### *Article 22*

1. The reference to "weights accepted by the bullion markets" in point (i) of the first paragraph of Part A of Article 26b of Directive 77/388/EEC shall at least cover the units and the weights traded as set out in Annex II to this Regulation.

2. For the purposes of establishing the list referred to in the third subparagraph of point (ii) of Part A of Article 26b of Directive 77/388/EEC, the reference to “price” and “open market value” in the fourth indent of that point shall be to 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.

### *Article 23*

1. Where, in the course of a calendar quarter, a non-established taxable person using the special scheme provided for in Article 26c(B) of Directive 77/388/EEC meets at least one of the criteria for exclusion laid down in Art 26c(B)(4), that person may subsequently be excluded from the identification register at any time during that quarter.

In respect of supplies made prior to exclusion but during the calendar quarter in which exclusion occurs, the person shall submit a return 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.

2. Where the Member State of identification has received an overpayment in relation to the return under Article 26c(B)(5) of Directive 77/388/EEC, it shall reimburse the overpaid amount directly to the taxable person concerned.

Where an overpayment due to an incorrect return has been distributed among the Member States of consumption, those Member States shall reimburse the taxable person and inform the Member State of identification of the overpayment.

3. Once a return under Article 26c(B)(5) of Directive 77/388/EEC is rendered, any subsequent changes to the figures contained therein shall be accomplished 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) of Directive 77/388/EEC 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.

4. Amounts on value added tax returns made under the special scheme provided for in Article 26c(B) of Directive 77/388/EEC 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.



## **Chapter VIII**

### **Transitional measures**

*(Articles 28a and 28b of Directive 77/388/EEC)*

#### *Article 24*

Where an intra-Community acquisition has incorrectly been considered as not subject to value added tax under Article 28a(1a), it shall be subject to value added tax in the Member State of acquisition irrespective of the value added tax treatment of the transaction in other Member States. Any refund of value added tax accounted for by the supplier shall be made to the supplier by the Member State of supply in accordance with its own domestic rules.

#### *Article 25*

The transfer to another Member State of a new means of transport by a private individual on transferring his habitual residence to another Member State shall not be an intra-Community acquisition of a new means of transport effected for consideration under Article 28a(1)(b) of Directive 77/388/EEC, provided that there is no evidence that such a transfer was envisaged at the time of purchase.

#### *Article 26*

Where in the course of a calendar year the thresholds provided for in Article 28b(B)(2) of Directive 77/388/EEC are exceeded, Article 28b(B) shall not affect the place of supply of those supplies carried out in the course of the same calendar year which are made before the threshold applied by Member States under the first indent of Article 28b(B)(2) of Directive 77/388/EEC is exceeded and for which the supplier has not exercised the option under Article 28b(B)(3) of that Directive.

However, Article 28b(B) of Directive 77/388/EEC shall affect the place of the following supplies to the same Member State:

- (a) the supply by which the threshold applied by Member States under the first indent of Article 28b(B)(2) of that Directive was exceeded;
- (b) any subsequent supplies in that calendar year;
- (c) supplies in the calendar year following the calendar year in which the event referred to in point (a) occurred.

## **Chapter IX**

### **Final provisions**

#### *Article 27*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*

## **ANNEX I**

(Article 12 of this Regulation)

### **1. Item 1 of Annex L to Directive 77/388/EEC**

- (a) Web-site hosting and web-page hosting
- (b) Automated, on-line 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. Item 2 of Annex L to Directive 77/388/EEC**

- (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. Item 3 of Annex L to Directive 77/388/EEC**

- (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, including such data as continually updated stock market data
- (h) The provision of advertising space including banner ads on a web site/web page
- (i) Use of search engines and Internet directories

**4. Item 4 of Annex L to Directive 77/388/EEC**

- (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) Web-based broadcasting that is only provided over the Internet or similar electronic network and is not simultaneously broadcast over a traditional radio or television network
- (e) Downloads of games on to computers, mobile phones and palm tops
- (f) Accessing automated on-line games which are dependent on the Internet, or other similar electronic networks, where players are remote from one another

**5. Item 5 of Annex L to Directive 77/388/EEC**

- (a) Teaching that is automated and dependent on the Internet or similar electronic network to function, 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 pupil on-line and marked automatically, without human intervention

## **ANNEX II**

(Article 22 of this Regulation)

<b>Unit</b>	<b>Weights traded</b>
Kg	12,5/1
Gram	500/250/100/50/20/10/5/2,5/2
Ounce (1oz = 31,1035 g)	100/10/5/1/1/2/1/4
Tael (1 tael = 1,193oz.) <sup>6</sup>	10/5/1
Tola (10 tolas = 3,75oz.) <sup>7</sup>	10

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<sup>6</sup> Tael = a traditional Chinese unit of weight. The nominal fineness of a Hong Kong tael bar is 990 but in Taiwan 5 and 10 tael bars can be 999,9 fine.

<sup>7</sup> Tola = a traditional Indian unit of weight for gold. The most popular sized bar is 10 tola, 999 fineness.