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Proposal for a sixth Council Directive on the harmonization of Member States concerning turnover taxes

Common system of value added tax: Uniform basis of assessment

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Explanatory Memorandum

Scope and objectives of this proposal for a directive

This proposal for a sixth directive on a common system of value added tax—uniform basis of assessment—aims to achieve a number of objectives which have already been defined in various Council instruments.

The two directives of 11 April 1967 on the harmonization of turnover taxes provided the basic principles for the common system of value added tax, but numerous and significant derogations were still possible as regards the scope of application of the tax. Article 19 of the second Directive only provided that such derogations should be progressively restricted or abolished.

The first step in this direction was taken on 9 December 1969, when the Council passed a resolution underlining the necessity for the retail trade to be included within the scope of application of value added tax from the time of its introduction in each Member State, and for keeping to a minimum the number of different rates of tax.

Then, on 21 April 1970,[1] the Council decided to replace the financial contributions of Member States to the Communities' budget by the Communities' own resources. Article 4 of that decision provides that from 1 January 1975, 'own resources' shall include, in addition to customs duties, agricultural levies, and any other revenue from taxes entered in the Communities' budget, resources accruing from value added tax and obtained by applying a rate not exceeding 1% on an assessment basis determined in a uniform manner for Member States according to Community rules.

To achieve a fair and consistent apportionment among Member States, it has been agreed that a uniform basis of assessment should be achieved by laying down common rules such that the resources accruing from value added tax should equal the amount obtained by applying the 'community' rate to the actual taxable amount at the last stage at which the tax applies, that is to say the selling price, less value added tax, for supplies of goods and services to a customer who is not entitled to make deductions of input tax in respect thereof.

In other words, the common rules must be arrived at by determining an area of application for value added tax which will be identical under each national law, particularly as regards which persons and which transactions are taxable or exempt, the methods of calculating the taxable amount and special schemes.

In the context of the harmonization of value added tax, mention must also be made of the important Resolution of the Council and the Representatives of the Governments of the Member States, passed on 22 March 1971[2] concerning the achievement by stages of economic and monetary union, and the expedition of effective free movement of persons, goods, services and capital.

The two objectives : a uniform system of tax and the interpretation of economies, are inseparable, as witness the wording of Title III point 2 of the abovementioned Resolution of 22 March 1971, where it is stated that in the field of taxation such interpenetration must be achieved, in an appropriate manner, by the adoption of Community rules on the uniform basis of assessment within the meaning of the Decision of 21 April 1970.

It is on the basis of these various Council instruments that this proposal for a directive has been drawn up. It should be seen against the background not only of the collection of the Community's own resources accruing from value added tax but also of economic and monetary union of which this harmonization is but one part in the wider context of economic integration.

For the avoidance of doubt, the Commission has decided to present its proposal in the form of a complete text, incorporating all those pro-

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[1] OJ L 94, 28 April 1970.
[2] OJ C 28, 27 March 1971.

visions of the Second Directive which it is not proposed to amend.

At Article 1: Introductory

Upon the adoption of this Directive, the Member States are called upon to take the necessary measures to adapt their value added tax systems to the provisions of this directive, so that the Community's own resources accruing from value added tax may be collected in accordance with Community rules.

At Article 2: Field of application

This Article incorporates the provisions of Article 2 of the Second Directive of 11 April 1967 on the application of the tax to supplies of goods and services and imports of goods. It also subjects to value added tax the receipt of certain services by persons established in the Community. This new case for the application of the tax must be considered in the light of the situation resulting from the provisions of Article 10 on the place of supply of services, and the exemption provided for in Article 16(10). Although difficult to enforce in certain cases, the aim of taxing, through the recipient, services supplied by a person established abroad, is to make it impossible, legally, to be a recipient of services intended to be utilized within a Member State without having borne value added tax.

At Article 3: Territory

Given the importance of this question with regard to the Community's own resources, it proved necessary that each Member State should determine in the same way the territory on which it applies value added tax. However, exceptions may be made in the case of Member States who, for historical reasons particularly, wish to continue to apply value added tax to a territory smaller than that comprised by their national territory plus its territorial waters.

At Article 4: Taxable persons

The new definition of taxable persons demonstrates the concern which exists that the field of application of value added tax, in keeping with its character as a general tax on consumption, should be extended to cover all economic activities, wherever they take place, and all transactions which are in the nature of such economic activities but which may be carried out separately or occasionally. Such transactions should be taxed in order to ensure impartial application of the tax, particularly as regards supplies of immovable property.

The definition of a taxable person, although applicable only in the Member State, is not confined to the boundaries of the Community; this is in order to make the tax more impartial with regard to the place where undertakings may be carrying on business.

In particular, the new definition of taxable person should be read together with Article 21(1) (person liable for payment of tax inside the country) and Article 17(2) and (3) (scope of the right to deduction).

Moreover, paragraph 4 goes into finer details, so that, in the interests of simplifying administration or of combating abuses (e.g. the splitting up of one undertaking among several taxable persons so that each may benefit from a special scheme) Member States will not be obliged to treat as taxable persons those whose 'independence' is purely a legal technicality.

Lastly, it is provided that legal persons governed by public law must be treated as taxable persons to the extent that they pursue economic activities not inherently those of a public authority, that is to say activities which could be pursued by persons governed by private law without usurping the basic functions and powers of the States, provinces, communes and other public law bodies in general administration, the administration of justice, or national security or defence.

A particular result of this definition is that the management of motorways, canals or harbours constitutes a taxable economic activity.

At Article 5: Taxable supplies of goods

Paragraph 1

The general definition of a supply of goods is that contained in the Second Directive. It applies therefore to both movable and immovable property.

Immovable property is involved in this directive in two ways:

1. as products which at the end of an economic cycle are supplied to individuals as consumers;

2. as a means of production the cost of which is reflected in the price of goods or services.

Seen from this angle, the principle requires that the construction and marketing of new buildings must be subject to the tax, in whatever capacity the vendor may be acting. To resolve difficulties in distinguishing between new buildings and old, the notion of first occupation has been used to determine the moment at which the building leaves the production process and becomes a subject of consumption, that is to say when the building begins to be used by its owner or a tenant.

With regard to old buildings, a distinction should be made between residential and other buildings. In principle residential buildings are excluded from the scope of value added tax as being property which has already been 'consumed' by virtue of the first occupation thereof. However once such a building is sold to a taxable person, such as a dealer in immovable property, it re-enters the Commercial circuit. To take account of this 're-commercialization' of the building, which would involve an unduly heavy tax burden on the business of the property dealer, it was necessary to tax it otherwise than under the general rules and to provide, in Article 12 A(1)(d) that Member States may treat as the chargeable amount for value added tax the difference between the sale price and the purchase price.

With regard to supplies of old buildings which are not residential buildings, these transactions are taxable because the vendor is usually a taxable person pursuing an economic activity within the meaning of Article 4(2) and because all supplies for consideration by a taxable person are taxable transactions. However, the exemptions provided for in Article 14 B(1) and (m) make the necessary modifications to the general principles of the tax.

Against the background of value added tax seen as a tax on consumption which applies at all stages of production and distribution, land would seem to be a most unsuitable subject for value added tax, since it is neither produced nor consumed. But, if earth as such cannot be 'produced', it can however be the subject of certain productive economic activities which may add value to it: a building site cleared and prepared will be more valuable than such a site in its natural state, and the source of the difference in value is the economic activity. The selling price will not be broken down into the price for the land as such and the price of the work which has been carried out on it. If supplies of land are exempted from value added tax, then one thereby exempts also the work which may have contributed to its value, if the land is supplied to an individual; by the same token however, the work will be taxed twice over if the land is supplied to an undertaking. Moreover, a distinction between a site prepared for construction (foundation, roads, levelling, installation of drainage and water supply systems, installation of electricity supply, etc.) and a site with a completed building on it is a completely artificial distinction, since in both cases a certain quantity of work is incorporated indivisibly into the earth. Indeed, plots of land would appear to be a 'raw material' of economic activities. Even if one considers that they cannot be the subject of consumption in the strict sense of the word, they are nevertheless put to use, to satisfy either the needs of individuals (residential premises), in which case they have the nature of consumer goods, or the needs of business undertakings, in which case they constitute investments.

For these reasons it appears necessary that plots of building land should be subject to value added tax.

One of the features of real property in private law is the existence of rights *in rem* which give the owner the right of economic utilization of the property to which they attach ('usufruct', 'emphyteusis', 'superficie' etc.): the transfer of such a right involves the transfer of the right to dispose of the property as owner, within the limits allowed by the law. On the other hand the holding of shares in a property company can be equivalent to having an interest in immovable property. The purpose of the provisions of paragraph 1 is to charge to value added tax, for obvious reasons of impartiality, transactions which, economically speaking, are equivalent to a supply of immovable property or part thereof. The taxation of supplies of new buildings and building plots must not however involve any undue increase in the fiscal burden on such operations. Therefore, for social reasons, Member States should refrain, at least in respect of certain of these transactions, from levying duties in respect of the registration thereof, and should apply value added tax thereto at a reduced rate.

Paragraph 2

By comparison with the corresponding provisions of the Second Directive of 11 April 1967, the notion of a supply of goods has been extended, by a provision relating to certain constructive transfers of movable or immovable properties (see (b)). These contracts usually effect a transfer of property upon their expiry, by virtue of the exercise by the user of the property of an option to purchase. They should therefore, for reasons of impartiality, be treated as taxable supplies within the meaning of this directive since when the property is made available to the user, what has taken place in fact can be described as a sale with payment by instalments.

Paragraph 3

The classes of transaction treated as taxable supplies are also added to by a new provision (paragraph 3(c)); to avoid the enjoyment of unjustified advantages by taxable persons who are entitled to deduct input tax, applications of goods to own use, and transfers of goods from a taxable business to an exempt business are treated as taxable supplies.

The same aim could have been attained by means of adjustments to deductions already made, but the technique of treating these transactions as taxable supplies was chosen for reasons of impartiality and simplicity.

Paragraph 4

Since contributions to companies can be considered as supplies for consideration, chargeable to tax, and since certain transfers for no consideration have been treated as taxable supplies, Member States have the option, in the interests of simplicity and so as not to overburden the resources of the undertaking making the contribution, to waive the tax involved. This option would be exercized particularly where the undertaking receiving the contribution intends to apply the goods in question for the purposes of a taxable business.

At Article 6: Works of construction

The second directive treats as a supply of goods 'the delivery of works of construction, including those in which movable property is incorporated in immovable property' (Article 5(2)(e)). Annex A(5) of that Directive, without giving a definition of 'works of construction', gives a list of various operations which are examples thereof and, as a measure of tolerance, permits certain operations to be classified as supplies of services where, for specifically national reasons, they cannot be considered as supplies of goods. It would appear that differences in classification could give rise to discrepancies as regards the taxable amount, the time at which the charge to tax arises, the rate of tax and the rules for collection. On the other hand, a definition of what constitutes a contract for the supply of works of construction, which could solve certain prob-

lems, would run into difficulties because of the different concepts employed in the national laws. With a view to eliminating all sources of discrepancy, it seemed desirable to draw up a list of operations to be treated as works of construction, in respect of which the detailed rules for the application of the tax are those laid down in respect of supplies of goods.

At Article 7: Taxable supplies of services

Under the provisions of this Article, combined with the repeal of Article 6(2) and Annex B of the Second Directive of 11 April 1967, all supplies of services are henceforth taxable, with the exception of those covered by exemptions contained in this Directive.

Paragraph 2, in the interests of making the tax impartial, deals with two cases to be treated as taxable supplies of services. In the first case (application of goods from a business for purposes not connected with the business) as in the case of taxable applications within the meaning of Article 5(3)(a), tax is only charged if the input tax on the goods so applied is deductible; this provision is to avoid such applications escaping tax altogether. In the second case (supplies of services between persons considered to be a single taxable person), tax is not chargeable where the input tax thereon would be deductible by the recipient had they been supplied by another taxable person.

At Article 9: Place of supply of goods

By comparison with the corresponding provisions of the Second Directive of 11 April 1967, this Article contains a new provision to cover the case where the goods supplied are to be installed or assembled by the supplier. This was necessary in view of the difficulties which might have arisen by reason of the differences which have been noted between certain national laws.

The main result of the new provision is that where a supplier exports an item in its component parts and assembles it in another country, the place of supply is deemed to be the place where assembly is effected. The supplier will be taxed upon importation on the value of the parts and will be taxed again, in the country where he becomes a taxable person, in respect of the value of the item concerned, including assembly, with deduction of the tax paid on importation.

Take the special case where a supplier delivers component parts in which ownership has passed to the purchaser, for example, on their leaving the factory, and then assembles the parts: this special procedure does not defeat the rule as to the place of supply of goods, which is still the place where the assembly takes place.

At Article 10: Place of supply of services

For all supplies of services, with the exception of services connected with immovable property and transport services, the place where the services are supplied is deemed to be the place where the supplier has established the seat of his business activities. This choice was made mainly for reasons of simplicity and for the avoidance of difficulties of interpretation which might arise from notions such as the place of utilization or exploitation of the services. As a corollary to this choice, and to avoid overlapping of taxes, which would be to the distinct disadvantage of national suppliers, a number of exemptions have had to be provided in respect of services supplied to customers established outside the country of the supplier (Article 16). When tax boundaries are abolished within the Community, these exemptions will only apply in respect of customers established outside the Community; with the result that the choice made now as to the place of supply will remain fully effective.

With regard to transport services, and in view of the peculiar nature of such services, it seemed advisable to provide that the place where they are supplied should be the place where transport takes place, ascertained having regard to the distance covered. Under this

principle all transport on the territory of a Member State will be subject to value added tax.

With regard to supplies of services connected with immovable property, such as the storage of goods, the letting of buildings, or the letting of safes, it seemed preferable to connect the tax with the locality of the immovable property.

At Article 11: Chargeable event and liability for tax

The determination of the event by virtue of which the tax becomes due (chargeable event) and the determination of the moment at which the tax authority becomes entitled to claim the tax (when the tax becomes chargeable) and the moment when the tax must be paid (liability for payment of the tax) have given rise to numerous controversies. Under the laws of most of the Member States, the moment when the 'chargeable event' takes place is indistinguishable from that when the tax becomes chargeable. On the contrary however, for practical reasons, the tax usually does not become payable until a later date.

Although these differences between the various national laws as regards these concepts and the times at which they become relevant should not be an obstacle to the harmonious collection of that portion of own resources which from 1 January 1975 is to accrue from value added tax, the determination of the moment at which the charge to tax arises is nonetheless important for:

1. determining time limits for invoicing

2. determining the time when the right to deduction arises

3. determining the tax period in which a taxable transaction takes place

4. fixing the time at which the tax must be paid to the collecting authority, as such payment depends on the declaration

5. determining, where changes are made in the tax rules or in the rate of tax, whether a transaction is taxable or not under the new rules or at the new rate.

It seemed necessary therefore to incorporate in the text concerning the uniform basis of assessment for value added tax definitions of the concepts of 'chargeable event', the tax becoming 'chargeable', 'the assessment of the amount of tax to be paid'[1] and 'liability for payment of the tax'[1], mainly because of the effects of these notions on the obligations of taxable persons who, under the value added tax system, act in effect as tax collectors.

The moments at which these concepts become relevant have been determined having regard to the following considerations:

Under internal systems

It is generally agreed that the moment of the chargeable event is that of each supply of goods or each supply of services, but there is no such general agreement as to when the tax becomes chargeable. There are numerous arguments in favour of the view that the tax could become due to the collecting at a moment other than that of the chargeable event. Thus one could consider that the tax becomes chargeable:

(a) in respect of transactions between taxable persons, at the time when the invoice is delivered confirming (or accompanying) the supply of goods or services or, failing the delivery of an invoice, when the time limit for such delivery expires,

(b) in all other cases, at the time of receipt of the consideration for the transaction.

This solution is not only attractively simple but also makes for fairness in the application of the tax by stating the principle that the tax should

[1] The definitions of the assessment of the amount of tax payable and the rules governing payment of tax, in respect of both domestic and import transactions, are contained in Title XIII, Article 22.

not become due before the time when the right to deduction can be exercized. On the other hand, for small businesses the majority of whose transactions are with individuals, the rule relating to the receipt of the consideration avoids practical difficulties and the financing of the tax in advance by their customers.

This solution does not however seem to have been accepted in its entirety in the laws of certain States, for fear not only of difficulties of inspection but also of a time lag in collection compared with the present situation, given the possibility of invoices and payments being delivered and made after the taxable transaction takes place. Nor is it possible by commercial custom to require that in every case the supply of goods or services should be invoiced or paid for immediately.

For the latter reasons, it seemed preferable to retain the principle set out in the Second Directive whereby the chargeable event occurs and the tax becomes chargeable at the same time, whilst still allowing the Member States to provide for the tax to become chargeable when the supply is invoiced or paid for.

However, when payments on account are received prior to the chargeable event, receipt of these amounts gives rise to a charge to tax, since the parties to the transaction in this way demonstrate their intention that all the financial consequences of the chargeable event should arise in advance.

Imports

The principle set out in the Second Directive has also been observed with regard to imports.

As a general rule, the chargeable event is the importation of the goods into the country and the tax becomes chargeable at this time. However, if the import is subject to customs duty, agricultural levies or taxes having equivalent effect under a common policy, then, for practical reasons, the chargeability of the tax is linked to that of those duties, levies or taxes. Such linking is no longer optional as in the Second Directive, but is obligatory. The particular aim of this is to avoid technical difficulties which might arise in administration if, for example, customs duties to be included in the chargeable amount only became due after value added tax became due.

There is no longer any reason, however, as regards intra-Community transactions, to link the value added tax to a non-existent chargeable event or charge to duty for customs purposes. Moreover, certain Member States have already abolished as between themselves not only tariff barriers but also customs barriers. Therefore the principles and rules to be applied in this area henceforth are those proper to value added tax. However, where upon their importation into a country goods are placed under customs and/or fiscal rule (including the Community transit procedure), Member States may provide that the tax shall not become chargeable before the moment when the goods are released from such control to be put into free circulation (see also Article 13 on the rates of tax).

At Article 12: Taxable amount

As in the case of 'chargeable event', the definition of 'taxable amount' is a definition applicable to each individual transaction by way of supply or importation of goods or supply of services.

Taxable amount for internal transactions

The definition of 'taxable amount' must be such as to be usable at all stages of the marketing process (i.e. in respect of each partial payment of value added tax). The definition must nonetheless be drawn primarily with a view to its application to the final transaction with the consumer rather than to transactions between taxable persons.

Thus the definition of 'taxable amount' should be first and foremost a definition which can be easily applied to the last stage of the marketing process, when the full amount of the tax be-

comes payable by the consumer. There must be available for application at this stage a simple definition capable of being generally understood and applied by those accountable for the tax.

In the vast majority of cases, the consideration for a supply of goods or services is the price, that is a sum of money payable to the supplier. It would therefore seem logical to base the definition of 'taxable amount' in the first place on the price—a notion familiar to all traders—always provided of course that it is a true price and constitutes the sole consideration for the transaction concerned. Where the price is not the sole consideration (for example transactions in which the supplier receives, over and above the price, other 'advantages', or where the tax authorities can prove that the price is not a true one), the taxable amount will have to be estimated by applying the mere theoretical notion of the 'open-market value'.

The purpose of this Article is not to change the substance of the provisions in this connection of the Second Directive, but simply to confirm on paper an existing situation of fact. Given that in virtually all cases the 'consideration' referred to in the Second Directive is in fact the price, it seemed more logical to provide that the taxable amount should be determined primarily by reference to the 'price' and failing this by reference to 'open market value'.

For, what has to be taxed is the actual cost to the consumer of goods and services and not a theoretical value put upon them.

Paragraph 3 provides that certain items are to be excluded in calculating the taxable amount. These include interest due on account of deferred or late payment and the cost of returnable packings.

The exclusion of interest on sales on deferred terms is analagous to the exemption in respect of credit transactions provided for in Article 14(B)(j).

The exclusion of interest on account of late payment is justified by the fact that such interest, being intended to penalize the buyer, cannot be said to form part of a normal commercial transaction.

The purpose of excluding the cost of returnable packings is to avoid having to adjust the taxable amount each time, as is normally the case, the packing is returned by the customer.

Taxable amount for importations

The provisions of the Second Directive concerning the taxable amount in the case of imports are somewhat imprecise and in places contradictory.

On the one hand Article 8(c) of that Directive provides that, in the case of importations of goods, the basis on which tax is to be charged is the customs value of the goods, even where the goods are in fact exempt from duty (e.g. any goods imported from other Member States) or not subject to *ad valorem* duties. On the other hand, under the provisions of Annex A relating to Article 8(c) Member States are to endeavour to apply to importations of goods from the other Member States a basis of assessment which corresponds to that applied to domestic transactions (which is certainly not the customs value). Furthermore, in the case of importations from third countries, Member States may likewise use in place of the customs value a basis of assessment corresponding to that employed for domestic transactions. Lastly, when the Second Directive was being adopted it was stated in relation to Article 8(c) that the Commission planned to present to the Council as soon as possible proposals laying down common criteria in this matter which would apply both to intra-Community trade and, where Member States availed themselves of the option provided for in the second paragraph of point 14 in Annex A of the Directive, to importations from third countries.

With a view to clarifying the position, it has been sought to put domestic transactions and importations on the same footing as regards the taxable amount, while endeavouring at the same time to retain the notion of 'customs

value' for cases where goods are subject to customs duties. Thus the expression 'open market value', which can apply both to domestic transactions and to importations, has been defined in such a way as to be virtually equivalent to 'customs value'. Moreover, as is the case with 'customs value', the notion of 'open market value' will apply to importations only in those exceptional cases in which there is no 'price paid or to be paid'. To make the rules absolutely watertight, it has been provided that where the customs value has to be determined (i.e. in the case of goods imported from third countries subject to *ad valorem* duties) the taxable amount for value added tax in no case be lower than the value established for customs purposes.

Miscellaneous provisions

It is provided that where the price remains unpaid (whether in whole or in part), the taxable amount may be reduced. To avoid abuses, the Member States are to lay down the conditions for applying this provision.

Finally there is a general provision, applicable both to domestic transactions and to importations, whereby the Member States may, provided they first consult the Value Added Tax Committee, maintain or introduce standard or minimum rates for certain transactions.

At Article 13: Rates

Paragraphs 2, 3 and 4 incorporate the provisions of Article 9 of the second Directive. Only paragraph 1 contains new provisions, which are required in connection with the collection of the Community's own resources.

At Title X: Exemptions
(Articles 14 to 16)

Article 10(3) of the second Directive left the Member States completely free, subject to the obligatory consultations provided for in Article 16, to provide for whatever exemptions they thought fit; whereas the purpose of the present Directive, dictated by the need to ensure equality of treatment as between the various Member States as regards collection of the Community's own resources, is that there should be uniformity as to the transactions which are taxable. This necessarily implies uniform rules as to exemptions.

The list of exemptions has been drawn up having regard (i) to the exemptions already existing in the various Member States, and (ii) the need to keep the number of exemptions as small as possible. This need reflects a concern to keep exceptions to the minimum in a general system of taxation of consumption, but also reflects a desire to avoid the inconveniences which such exemptions cause, mainly by reason of the fact that, unless the transaction exempted forms part of an international trading operation, taxes paid on inputs will not be deductible.

Exemptions within the territory of the country (Article 14)

The exemptions provided for within the territory of a country are based on a variety of grounds. The exemptions set out in section A are those already existing in the majority of the Member States. They relate to the postal services—(a), to medical services—(b), (c), (d), (e) and (f), to welfare services—(g), to educational services—(h) and (i), to physical recreation—(j), and to bodies providing services of a social, cultural or educational nature—(k).

The other exemptions, which are set out in section B, relate to specific fields, such as insurance, provision of credit and dealings in currency and on the stock exchange, where they are justified for reasons of general policy common to all the Member States.

As regards paragraph (d), it should be noted that in the Member States the letting of immovable property is generally exempted on technical, economic and social grounds. But the arguments which justify the exemption of lettings of premises as dwellings and of agricultural tenancies no longer apply in the case of hotel premises or of lettings for industrial or commercial purposes.

The exemption under paragraph (k) of gaming and lotteries is based on purely practical considerations. Such activities are in effect ill-suited to taxation on a value-added basis and are better dealt with by means of special taxes.

The exemptions provided for in paragraphs (l) and (m) are the necessary corollary to the provisions of Articles 4 and 5 concerning supplies of buildings or of building land. The object is to avoid taxing certain supplies, even where these are carried out by taxable persons carrying on an activity coming within Article 4(2).

The exemptions apply in the following cases:

(i) where tax did not become deductible by virtue of the transaction whereby the owner acquired the property (property already outside the field of application of VAT, or property acquired under payment of tax but with no right of deduction);

(ii) where the property concerned is not building land as defined in Article 4(3)(c).

Exemptions on imported goods (Article 15)

The exemptions provided for in respect of imported goods are also based on various grounds. They mainly concern goods exempted under the domestic scheme, but account has also been taken of the general principles of customs legislation, with a view to coordinating VAT and customs arrangements and thus simplifying the administrative work involved. Admittedly, the considerations underlying the exemptions in respect of customs duty are not necessarily the same as those governing VAT exemptions, but in a good number of cases (importations under diplomatic arrangements, temporary importations, transit and warehousing, travellers' allowances, small consignments, etc.) the aim pursued and the economic justification are identical.

Paragraphs 1, 2, 3, 6, 7, 8, 10 and 11 require no special explanation, whereas the other paragraphs merit further comment. The exemption provided for in paragraph 4 applies to goods which qualify for non-tariff exemption from customs duties, i.e. under one of the exemptions provided for by the Member States, subject to their own conditions, in the introductory notes to their national customs tariffs (e.g. removals, wedding gifts, fruit and crops grown in frontier zones).

In paragraph 5, it was considered desirable, in order to avoid frequent cases of double taxation, to extend the provision in respect of goods reimported into the State from which they were exported to cover the reimportation of motor vehicles which break down in another Member State and have to be repaired there.

Likewise with a view to avoiding double taxation, paragraph 9 covers importations of used goods not qualifying for exemption under any other provision of this Article. It would apply for example to motor vehicles, boats etc. owned by a private individual moving residence from one Member State to another. Having paid tax on the goods in the first Member State at the time of purchase he would normally be liable on coming to the new Member State to pay tax a second time. It was felt desirable that in such circumstances tax should be chargeable only where a difference in the rate of tax as between the two Member States concerned might result in tax evasion.

Exemption of exports and like transactions and international transport (Article 16)

In accordance with the basic principle of the system, whereby supplies by way of export must be relieved of input value added tax, Article 16 sets out the transactions which are exempted from tax but nevertheless give rise to a right of deduction in respect of the tax on the value previously added. The majority of the transactions listed require no commentary since these are exemptions which already exist in the Member States. This is the case as regards the supplies by way of export set out in paragraphs 1, 2 and 3 and the transactions of a like nature covered by paragraphs 4, 5, 6, 7, 8, 9, 11 and 12.

The exclusion of vessels used for non-commercial purposes from the exemption in respect of supplies of sea-going vessels and of goods and services in connection with the use of such vessels is justified by the nature of such transactions, which constitute supplies of consumer goods and services and as such must be subject to VAT. The exemption provided for in paragraph 10 in respect of supplies of services is a necessary corrective to the provisions of Article 10.

Under Article 10 the place where the service is supplied is deemed to be the place where the person providing the service resides. It follows that a supply of services to a person in another Member State or outside the Community would in principle be taxable in the country of the person providing the service. It is considered undesirable that such a rule should apply to the supplies of services set out in paragraph 10.

For, in the case of services supplied to a person established in a country other than that of the person supplying the service, application of the general rule as laid down in Article 10 would make Community supplies subject to distortions of competition vis-a-vis those in third countries, while it would also lead to distortion of competition within the Community, in that, because of differences in rates as between the Member States, the competitive position of suppliers would vary according to the State in which they were established.

It is accordingly provided that the supplies set out in paragraph 10 are to be exempted in the country of the person supplying the service, upon condition that the latter proves that the customer is established outside the Community; he is not required to prove that the customer is a taxable person within the meaning of Article 4. On the other hand, where the customer is a person established in another Member State, it is provided, in order to prevent the transaction escaping tax altogether, that the person supplying the service must prove that the customer is a taxable person, the latter being required under Article 2(3) and 23(8) to declare the supply to his national tax authority.

Exemptions in respect of international transport operations are dealt with in paragraph 13.

Subparagraph (a) provides for exemption in respect of the carriage of imported goods to the first place of destination, which is normally the place indicated in the consignment note accompanying the goods when they arrive from the country of exportation. This is a purely 'technical' exemption, designed to simplify collection of the tax. For, under Article 12 B(2) (b) the 'exempted' cost of carriage is in fact included in the taxable amount in respect of the goods imported.

Subparagraph (b) concerns the transport of goods which are being carried to a destination outside national territory or to an export bonded warehouse or in transit. This exemption, which is based on economic grounds, is in fact linked to the exemption in respect of the goods being so carried.

The exemption provided for in subparagraph (c) applies to the domestic section of international passenger transport operations by air or sea. This exemption was considered desirable in order to avoid the practical difficulties which, under present circumstances, a sudden change in the system of taxation of such transport operations would cause. Such an exemption is however contrary to the basic principle of the common system of value added taxation, whereby all modes of transport should receive equal treatment as regards taxation. The exemption is therefore to apply only until 1 January 1975 (cf. Article 28), the Commission being required in the meantime to examine methods for putting into effect a system of taxation applicable to all types of passenger transport within the Community, irrespective of the nationality of the transport undertaking concerned.

There is a provision for tax on inputs in respect of the transactions exempted under this Article to be refunded.

At Article 17: Existence and scope of the right to deduct

Paragraph 1

This paragraph specifies the time from which the right to deduct may be exercised and, consequently, the tax period during which the right may be exercised.

A taxable person may only exercise his right to deduct if the tax in respect of the previous transaction has become chargeable.

Paragraph 2

The first subparagraph is largely based on Article 11(1) of the Second Directive, which defines the cases in which tax may be deducted. The principle has been maintained that value added tax on goods and services used for the purposes of non-taxable or exempt transactions (except for transactions effected abroad and exports) should not be deductible. A fourth case where deduction is possible has been added, namely where tax is paid by or due from the recipient of services supplied by a foreign supplier as described in Article 2(3), where the recipient is a taxable person.

Paragraph 3

The aim of this text is to render obligatory what was merely an option given to Member States by paragraph 21 of Annex A to the second Directive.

Paragraph 4

This provision is to avoid cases where a taxable person established abroad might have to bear value added tax invoiced to him abroad without possibility of refund. Such cases could be those for example of a businessman exhibiting at a trade fair abroad, or indeed a carrier whose lorry has to be repaired abroad. In this way a double economic burden is avoided.

Paragraph 5

This paragraph repeats more or less the corresponding provisions of the Second Directive (Article 11(2), third subparagraph, and Annex A paragraph 22) on the general pro-rata rule. There is nevertheless a new provision in the last subparagraph, aimed at avoiding inequalities in the application of the tax. Such inequalities may work to the detriment or to the advantage of the taxable person, given that the proportion is a fixed amount which may give rise to deductions either greater or smaller than would have resulted on the basis of actual use. In this connection the States may authorize or oblige the taxable person to determine special proportions and to make deductions on the basis of actual use to which all or part of the goods and services are put in the business concerned, where he is able to show such use by means of separate accounts.

Paragraph 6

It would appear that certain expenditure, even though incurred in the ordinary course of business, is also incurred for private purposes, and apportionment of such expenditure between 'business' and 'private' purposes could not be adequately supervised. For this reason, it is provided that the categories of expenditure listed in paragraph 6 should be excluded from the scope of the right to deduct, so as to ensure uniform collection of own resources and to avoid abuses, and indeed large-scale fraud.

At Article 18: Exercise of the right to deduct

Paragraph 1

This paragraph defines the purely formal prerequisites for the exercise of the right to deduct (holding of an invoice or customs document or completion of other formalities). It should be pointed out however that an invoice is no more than evidence of a right to deduct: there is thus no right to deduction in the absence of an actual transaction (supply of goods or services).

Paragraph 2

This paragraph maintains the principle of immediate deduction, as already laid down by Article 11(3), first subparagraph, of the Second Directive. Deduction of the tax deductible in accordance with paragraph 1 must be made for the tax period during which it becomes deductible under Article 17(1).

There is one exception only to this rule, in the case of persons who become taxable by virtue only of occasional transactions as referred to in Article 4(3) (b) and (c). Deduction should not be allowed unless it can be shown that the transaction in question is taxable.

It also seemed necessary to lay down a rule whereby a taxable person who has been unable to make a deduction at the right time may exercise his right within a certain time-limit.

Paragraph 3

The aim of the rules laid down in paragraph 3 is to avoid the quasi-taxation of taxable persons arising from an excess of deductible tax over tax payable in respect of taxable transactions in the same tax period.

At Article 19: Calculation of the deductible proportion

Paragraphs 1 and 3

More precise rules were necessary in order to avoid discrepancies between the national laws as regards the determination and calculation of the factors to be taken into account in defining the normal proportion.

Paragraph 2

The factors mentioned in this paragraph must be excluded from the calculation of the proportion lest, being unrepresentative of the taxable person's business activity, they should deprive the amount of any real significance. Such is the case with sales of capital items and real estate and financial transactions which are only ancillary operations, that is to say are only of secondary importance in relation to the total turnover of the business. These factors are only excluded if they are not part of the usual business activity of the taxable person.

At Article 20: Adjustments of deductions

Paragraph 1

Deductions already made must be adjusted if they were not correctly made at the date of the return or if the original circumstances are modified by later events. Because of the financial consequences which may arise from adjustments of deductions, they should be governed by common rules.

Adjustments must therefore take place:

(i) (a) where the deductions prove to be greater or smaller than those which the taxable person was entitled to make at the date of the return; either in the case of a mistake or because the deductible percentage attributable to taxable business was over or underestimated (where goods and services are used at the same time for taxable and non-taxable business);

(ii) (b) where the difference between the final pro-rata amount and the provisional pro-rata amount defined in Article 19 exceeds ten points;

(iii) (c) where the factors, used in the calculation of the amounts of tax deductible come to be altered after the return is made. Such cases may be as follows: where a taxable person, having already deducted the tax in respect of a purchase, cancels the purchase or obtains a reduction of the price originally agreed; where goods, in respect of which a taxable person has already deducted the value added tax, disappear without an acceptable explanation being forthcoming. However, to avoid persons having to pay more tax in addition to suffering economic loss, it was necessary to provide that adjustment shall not be required where the loss, destruction or theft of the goods is duly proved in accordance with rules to be laid down by the Member States.

(iv) (d) where a taxable person changes over from the normal system to one of the special schemes for small businesses (Article 25(1) (a)) or for farmers (Article 27). In fact the normal system permits input value added tax to be deducted completely and immediately, especially as regards investments, which is not possible under the special schemes. Provision should therefore be made for deductions made by the taxable person under the normal scheme to be deducted, lest, by opting for one of the special schemes, the taxable person should receive some advantage by way of deduction over other taxable persons subject to that scheme.

Paragraph 2

This paragraph reproduces, in more precise wording, the rule in the third subparagraph of Article 11(3) of the second Directive, which provides that deductions of tax on capital goods shall be subject to adjustment during a period of five years. It appeared advisable to add, as done also in Article 20(1)(b) that no adjustment need be made where the variation in the proportion is less than ten points.

At Article 21: persons liable for payment of tax

Since not only taxable persons as defined by Article 4 but also other persons may be required to pay value added tax, it appeared necessary to specify which persons are liable for payment of tax vis-a-vis the collecting authority.

Under the very wide definition of a taxable person, given in Article 4, it is possible to tax on the territory of a State one single transaction carried out by a person whose business is carried on abroad.

Certain supplies of services are exempted by Article 16 in the supplier's country when the recipient is established abroad. If the transaction is not to escape tax in the country of the recipient, then the recipient must be made liable for the payment of the tax.

Any person who mentions value added tax on an invoice must be considered liable for payment of the tax, by reason of the right to deduction which the issue of the invoice may vest in the recipient if he is a taxable person.

In respects of imports the person liable for payment is the consignee of the goods. Where goods are imported to be put into free circulation, this will usually be the person who, at the moment of importation, is entitled to dispose of the goods as owner.

At Article 22: assessment of the amount of tax to be paid and liability for payment of the tax

The following are the necessary components of the assessment of a tax :

(i) the identification and where necessary the seeking out of the person liable for payment;

(ii) the assessment of the amount due, which necessarily implies identification of the chargeable event, and the taxable amount, that is to say the identification and valuation of what is to be taxed;

(iii) calculation of the amount of tax payable.

Once these operations have taken place, payment or collection (or the enforcement thereof, if necessary) can take place.

Although a chargeable event takes place and tax becomes chargeable each time a supply of goods or services is affected, it is not a practical proposition for the value added tax administration to seek out a multitude of taxable transactions and calculate the tax on them as and when they take place. This is why provision is made for the taxable person to draw up a return showing all transactions which have taken place during a certain period, to enable the tax administration to determine the amount

of tax payable, to collect payment and to check on the amount later.

At Title XIV: Obligations of persons liable for payment
(Articles 23 and 24)

As is stated in Title XIII, the purpose of the obligations imposed on persons liable for payment of tax is to enable the amount of tax payable to be determined and collected.

In comparison with the second Directive and the Annex thereto, a certain number of changes will be noticed which were prompted both by the desire to ensure the collection in a balanced manner of that portion of the value added tax which is to accrue to the Community's own resources, and by the desire to avoid burdening taxable persons with additional formalities.

Obligations under the internal system
(Article 23)

Paragraph 1

This paragraph is limited to a confirmation of the situation which exists in fact in each Member State, whereby every taxable person has to state when his activity as a taxable person commences, changes or ceases.

Paragraph 2

No change has been made to the second Directive as regards the obligation to keep accounts.

Paragraph 3

Although the invoice is the key document which enables the taxable person to exercise his right to deduction (see Article 18), it was not however considered necessary to harmonize the numerous and detailed national provisions concerning the delivery of invoices. These are not only part of tax law but also, and principally, of commercial law. Certain parts of the text of the second Directive have been rendered more precise.

Paragraphs 4 and 5

Certain additions have made to the text relating to periodical returns, which provides that every taxable person shall provide in his return: 'all information required to calculate the tax and the deductions to be made', so that tax administrations will have the necessary information at their disposal when the time comes to calculate the portion of the value added tax revenue which is to accrue to the Community's own resources.

Paragraph 6

Payment of value added tax is still to be made at the same time as the return is submitted.

Paragraph 7

No change has been made as regards the submission, if necessary, of an adjustment return during the first six months of each year.

Paragraph 8

The obligation to make a return imposed upon recipients of certain services which are exempt in the country of the supplier derives from the principle set out in Article 21, whereby the recipient is made liable for payment of the tax on such services.

Paragraph 9

Since by far the greater part of the revenue from value added tax, even after the arrangements for the Community's own resources are introduced, will continue to go towards financing national budgets, Member States remain free to introduce additional obligations on their taxable persons, if they consider this to be necessary for the collection of the tax or to combat evasion.

Obligations in respect of imports (Article 24)

Disparities in tax systems are not the only reason for maintaining customs controls at intra-Community frontiers. Importers are obliged to make customs declarations by reason also of the existence of a large number of national provisions other than those relating to tax.

In addition, it appears that it is not always disparities in tax systems alone that necessitate physical control of goods at frontiers. Nevertheless, for the purpose of calculating the value added tax payable on imports, most Member States still require declarations in each individual case, as they do for calculating customs duties. However, when these declarations relate to imports by taxable persons they are really only 'pre-declarations' enabling assessment and collection of the tax payable which, in this case, is deductible. Experience has shown that it is possible to simplify considerably the declarations and controls at the frontiers, at least as regards value added tax, and, where appropriate, to carry them out within the States. The abolition of border controls should not be confused with the abolition of tax barriers (abolition of the imposition of tax on importation and the remission of tax on exportation). Nevertheless, it led to the inclusion in this Directive of provisions enabling Member States to introduce or continue to use a system involving either 'deferred payment' or 'suspension of payment' of value added tax on imports. In theory these provisions have no effect on the basis rate of value added tax. They affect only the methods of payment of the tax on imports by taxable persons — the tax being deductible — and should not have any effect on the Community's own resources.

Article 24 was drawn up with this in mind and also to satisfy the desire, expressed in particular by the European Parliament, to see intra-Community frontier controls abolished.

At Article 25: Small undertakings

Article 14 of the second Directive provides that each Member State may, subejct to consultations, apply to small undertakings whose subjection to the normal system of value added tax would meet with difficulties the special system best suited to national requirements and possibilities.

Despite the more far-reaching requirements of the establishment of a uniform basis of assessment for value added tax, this provision is nonetheless compatible to a certain extent with this aim, on condition that it can be reconciled with the need for a common policy for small undertakings.

Such a common policy should prevent national measures which differ too much from one another from giving rise to doubt as to the transparency and impartiality of the tax and as to its balanced contribution to the Community's own resources.

In this respect it would seem adequate to provide, within a common framework, for a number of possibilities which Member States may use to enable them to cope with problems posed by the application of value added tax to small undertakings.

Article 25(1a) of the draft provides firstly for the exemption from tax of taxable persons whose annual turnover net of tax does not exceed 4 000 units of account.

Secondly provision is made for the granting of graduated tax relief ('décote') for taxable persons whose annual turnover net of tax does not exceed 12 500 units of account. This provision supplements the previous one. It should enable Member States wishing to grant exemption to ensure a smooth and fair transition to the normal system of taxation. However, it must be stressed that graduated tax relief can only exist as a measure marginal to exemption. In fact, if it were able to exist on its own, it would only constitute a subsidy for the taxable persons concerned, and as such there would be no grounds for its existence.

As regards the selection of criteria for determining the area of application of exemption and possible graduated tax relief, turnover was the

criterion finally chosen. This would in fact present the least number of complications for calculation by the taxable person and verification by administrative bodies.

Each Member State applying exemption and graduated tax relief will determine the limits and conditions depending on its own requirements within a Community framework. It will therefore determine, in particular :

(i) whether the national limits within which exemption and graduated tax relief might be applied will be at the highest level or beyond it;

(ii) whether the national limits will be expressed in terms of turnover or of value added, the latter clearly needing to be compatible with Community criteria expressed in terms of turnover net of tax;

(iii) whether exemption and graduated tax relief should be identical or different in the case of persons supplying services and producers/retailers, depending on the nature of the activity in which they are engaged;

(iv) the reference period during which the taxable person must fulfil the conditions for exemption.

Exemption and graduated tax relief are liable to play a part in overcoming difficulties which may be encountered by the smallest undertakings when applying value added tax. In addition, they may simplify the task of tax authorities. Nevertheless, a system of exemption and graduated tax relief cannot be considered as normal within the framework of a general tax on consumption such as value added tax. In addition, the coexistence of different special national systems could hinder the suppression of fiscal borders. This is the main reason why the proposed provisions are of a transitional nature.

Article 25(1b) stipulates that each Member State is entitled to introduce simplified procedures for charging and collecting the tax, provided that the amount of tax to be paid shall not thereby be reduced. Subject to this, each Member State shall draw up detailed rules for its own simplified schemes depending on its own ideas and possibilities.

Article 25(2) lays down the method of determining turnover for the purposes of applying exemptions and graduated tax relief. It excludes unusual transactions which may make drastic changes in the turnover within one year. It also disregards operations which, as in the case of the transfer of debts, do not indicate the actual size of the undertaking. Furthermore, Article 25(3) excludes all these operations from exemption and graduated tax relief. They are therefore subject to different rules governing taxation and exemption.

The reference turnover is calculated net of tax. It is the responsibility of Member States to provide formulae for the conversion of turnover before tax to turnover net of tax, in order to enable taxable persons eligible for exemption—the only ones for whom the problem arises—to work out as simply as possible whether their turnover is above the ceiling fixed for application of exemption.

Article 25(4) enables taxable persons exempt from taxation to opt for the normal system of value added tax and possibly to be eligible for graduated tax relief. This implies that in the Member States concerned those who exercise such option shall be treated as taxable persons at the lowest level for graduated tax relief.

At Article 26: Second-hand goods

When applying the normal taxation rules, supplies of goods—new or second-hand—made for consideration within the country by a taxable person shall be subject to value added tax calculated in proportion to their price. If no special provisions were made, the result would be that a finished item re-introduced into the economic circuit would once again be fully subject to value added tax, which could be avoided if the final consumer wishing to sell goods were to get into direct contact with another final consumer.

In order to reduce the cumulative effect of further taxation which encourages avoidance of the normal trade channels, it seemed expedient to grant taxable persons who have purchased goods for re-sale without paying tax the right to a deduction of a certain amount to be deemed to correspond to input tax. Nevertheless, this special system must be restricted to second-hand goods in respect of which application of the normal system would involve too great a risk of avoidance.

This deduction is to be calculated on the basis of the purchase price of the item at the rates in force at the time of acquisition.

This system of deduction of input charges has been chosen because it has the advantage of not revealing the seller's profit margin and of enabling the second-hand item to be exported tax-free.

Nevertheless, for the prevention of frauds which might be occasioned thereby, the application of this exceptional system is accompanied by safeguard measures and may be made dependent on authorization from Member States.

At Article 27: Common flat-rate scheme for farmers

Paragraph 1

The common flat-rate scheme for farmers is only one technical and practical method of applying value added tax, aimed at allowing farmers to offset at a flat rate the deductible tax on their purchases and on services rendered to them.

In order to ensure that the Community's own resources are collected fairly and to avoid the application of value added tax in the various Member States leading to distortions of competition, the common flat-rate scheme must not include financial advantages or disadvantages for the totality of farmers subject to this scheme in Member States applying it.

Paragraph 2

- *First and second indents: 'farmer', 'agricultural, forestry or fisheries undertaking'*

As a common flat-rate scheme has been provided specially for farmers, it seems necessary for Member States to adopt, for taxation purposes, a Community definition of the word 'farmer'. The activities enabling a taxable person to be classed as a 'farmer' are listed in Annex A, which has been drawn up on the basis of the International Standard Industrial Classification of all Economic Activities issued by the Statistical Office of the United Nations.[1] It would clearly have been preferable if a common definition of the term 'agricultural, forestry or fisheries undertaking' had been provided, but, given that no common definition has been provided for the general term 'undertaking' in the normal value added tax scheme, it would have been very difficult, if not impossible, to find Community definitions for the specific notion of 'agricultural, forestry or fisheries undertaking'. It is therefore the responsibility of the Member States to define this notion under their own laws.

- *Fourth and fifth indents: 'agricultural products'—'supply of agricultural services'*

The aim of the common flat-rate scheme is to enable a farmer under the scheme to have the value added tax on his inputs offset at a standard rate each time he makes a supply of agricultural products or services.

It is clear that application of this scheme would not have the same consequences—as regards the collection of the Community's own resources and the conditions of competition between farmers of different Member States—if flat-rate farmers in one State were entitled to offset tax at a flat-rate upon sales of products or the supply of services in respect of which flat-rate farmers in other countries were not

[1] Statistical Papers, Series M, No 4, Rev. 1, New York 1958.

entitled to offset tax in this way. Consequently, the best way to avoid such unequal treatment of flat-rate farmers would be to draw up common lists of goods and services on which tax may be offset at a flat rate.

Nevertheless, because of the technical difficulties in drawing up an exhaustive list of agricultural products from European farms, it seemed preferable to abandon the idea of such a list and to lay down criteria whereby a common definition of agricultural products may be formulated which will be of value having regard to the fiscal aims pursued.

The definition of 'agricultural products' formulated in the fourth indent of paragraph 2 does not eliminate completely the danger of differences in interpretation arising, particularly as regards processed agricultural products as mentioned in point V of Annex A. Nevertheless, it does ensure that all non-agricultural products which could be supplied by a farmer are excluded from the scope of the common flat-rate scheme.

As regards supplies of agricultural services, the list set out in Annex B remains indispensable in any case, given the fact that it is impossible to lay down common, simple, clear criteria for fixing the boundary between use of the farmer's labour and the normal equipment of his agricultural undertaking for agricultural purposes on the one hand, and for non-agricultural purposes on the other.

• *Sixth indent: 'value added tax charge on inputs'*

The common flat-rate scheme is intended to compensate solely for value added tax levied on purchases of goods and services by flat-rate farmers to meet the needs of production in the agricultural, forestry or fisheries sectors. Calculation of this charge on inputs must therefore relate solely to amounts of tax which would be deductible by a farmer subject to the normal deduction system provided for in this Directive.

In view of the fact that input tax charge on the totality of forestry undertakings is lighter than that on the totality of agricultural undertakings, a fact which has been established in Member States already applying a common flat-rate scheme for farmers, it is expedient, within the framework of the common flat-rate scheme, to provide, in the case of each Member State, that one input tax charge be determined for all agricultural and fishery undertakings, and another for all forestry undertakings.

Paragraph 3

The procedure provided for in this paragraph for the calculation and adoption of levels of charge on inputs in each Member State is dictated by the essential need to ensure that the common method of calculation explained in Annex C should be applied in a uniform way in all countries applying the common flat-rate scheme. It is therefore provided that the Commission should make the necessary calculations, using the common method of calculation, to determine the levels of the input tax charge in the various Member States, on the basis of macro-economic data to be supplied by these countries for that purpose. The levels of charge thus calculated are to be submitted to the Value Added Tax Committee in accordance with the procedure set out in Article 31.

The provision for having these calculations brought up to date every three years will make it possible for contradictory requirements to be reconciled, developments in the situation to be followed and over-frequent changes in national legislation to be avoided.

Paragraphs 4 and 5

The levels of charge calculated and adopted in accordance with the rules provided for in paragraph 3 should, in theory, constitute upper limits, below which Member States may fix freely the fixed percentages which they intend to apply in their territory.

It must however be kept in mind that, according to the common method of calculation laid down, calculation of the input tax charge is based on the inputs and outputs of the whole agricultural sector.

Now, given that already in some Member States an ever-increasing number of agricultural producers, being of the opinion that the national flat-rate scheme does not offset sufficiently their input tax charge, are opting for the normal scheme in order to benefit from a complete and immediate deduction of input tax, it is to be expected that the number of farmers who opt for the normal scheme will increase when the common flat-rate scheme enters into force.

Consequently, if on the one hand the input value added tax charge is calculated by reference to all farmers, and on the other hand a considerable number of farmers with an above-average charge opt for the normal system, the result is that the charge thus calculated will be higher than if it were calculated by reference to individual flat-rate farmers.

In order to ensure that flat-rate farmers do not receive offsetting payments in excess of their input tax charge, it is provided that the fixed offsetting percentages may not, on the entry into force of the present Directive, exceed 90 % of the levels of input charge as adopted in accordance with provisions of paragraph 3.

Furthermore, given that the number of farmers subject to the normal value added tax scheme will steadily increase in the years following the entry into force of this Directive, not only for tax reasons, but also as a result of the modernization of Community agricultural structures, it is desirable that provision be made for further reductions of the maximum fixed percentage levels; this is done in paragraph 5.

Paragraph 6

The common flat-rate system was conceived to enable farmers to whom it applies to offset the value added tax charge on their inputs at a flat rate, thus freeing them from those obligations of accounting, invoicing, declarations and payment of taxes which are required of other taxable persons.

Nevertheless, bearing in mind that one of the Commission's aims is that the majority of European farmers should gradually change over to the normal system of value added tax, it would have been inconsistent with this aim to prevent those Member States who so wished from imposing certain of the obligations provided for in Article 23 of their flat-rate farmers. Indeed, such provisions, which do not affect the functioning of the common flat-rate system, can only encourage flat-rate farmers to opt for the normal scheme. Consequently, the Member States are given the power, but are not obliged, to exempt flat-rate farmers from the obligations required of other taxable persons.

Paragraphs 7, 8 and 9

The basic mechanics of the common flat-rate system, which are the subject of these paragraphs, are as follows:

(i) Flat-rate farmers are entitled to offset the value added tax charge on their inputs according to the amount of their supplies of agricultural products and services, such amount being determined by applying the fixed percentage fixed for this purpose to the price, net of tax, of those supplies.

(ii) If the recipient of goods or services supplied by a flat-rate farmer is a taxable person other than a flat-rate farmer, the fixed percentage may be paid, depending on the systems adopted by the various Member States, either by the taxable recipient or by the public authorities.

(iii) If the recipient of the goods or services is another flat-rate farmer or a non-taxable person, the fixed percentage must be paid by such recipient.

It must nevertheless be noted that in the latter case there is nothing to stop the flat-rate farmer increasing his sale price by an amount equal to the fixed percentage, provided market conditions so permit.

Paragraph 10

The purpose of the Community rules provided for in this paragraph is to transfer from the flat-rate farmer to the taxable recipient of

goods or services the responsibility for a certain number of formalities, necessary for purposes of verification, which would normally attach to the person making the taxable supply, and, at the same time, to make the necessary technical provision to cover the operation of the two procedures open to Member States under paragraph 8 as regards transactions between a flat-rate farmer and a taxable person other than a flat-rate farmer.

For in both cases—payment of the fixed percentage by the taxable recipient or by the public authorities—the national taxation authorities must be able to verify the amounts deducted by the taxable recipient, or as the case may be the amounts claimed from the public authorities by the flat-rate farmer.

Paragraph 11

The common flat-rate system was conceived to ensure that farmers to whom it applies may offset the value added tax charge on their inputs. This charge is determined, by a common method of calculation, by reference to total supplies of agricultural products and services.

Thus, in keeping with the logic and the aims of the common flat-rate system, it is necessary to provide that supplies by flat-rate farmers of non-agricultural products or services do not entitle them to payment of the fixed percentage. Otherwise, all flat-rate farmers could be over-compensated for the value added tax-charge on their inputs, which would amount to giving them an economic aid from which other farmers under the normal scheme would not be able to benefit.

With regard to exports by flat-rate farmers, their exclusion from the right to payment of the fixed percentage is based on the rule laid down by the first 'Value Added Tax' Directive, Article 1, final sub-paragraph, which provides that, from the entry into force of the common system of value added tax, no Member State shall maintain or introduce any measure providing for flat-rate equalization of turnover taxes on exportation or importation in trade between Member States.

Paragraphs 12 and 13

In order that the Common flat-rate system may maintain its special character as a system specially adjusted to the needs of small agricultural producers who are considered not yet—at least provisionally—capable of being integrated into the normal system of value added tax, some obligatory exceptions have been provided for.

The general aim of the criteria laid down to this effect in paragraph 12 is to exclude from the flat-rate system those transactions which, though carried out by an agricultural producer, could not be regarded as constituting a typically agricultural activity: commercial distribution of agricultural products, supplies of agricultural products processed by industrial rather than agricultural means, or of products bought by the farmer for resale; supplies of services on a regular basis and/or by means of equipment which could be regarded as exceeding the needs, dimensions and characteristics of the agricultural undertaking in question.

For it is considered that by transactions such as these the flat-rate farmer enters into competition with tradesmen, manufacturers and service undertakings; consequently the flat-rate farmer ought in respect of such transactions to be subject to the normal system or to the system for small undertakings, while remaining subject to the flat-rate system for his agricultural activities.

The aim of paragraph 13 is to exclude from the flat-rate system all farmers who, by reason of their activities and the size of their undertaking and the accounting facilities available to them, cannot be regarded as small farmers unable to cope with the administrative formalities of the normal scheme, or with the reduced ones under the simplified scheme provided for in Article 25(1)(b).

Paragraph 16

In the context of this Directive, the common flat-rate system must be regarded as a transitional system. For, if one considers that this system, taken as a whole, does not include any element of subsidy or aid for the farmers to whom it applies, and if one takes account of the progressive modernization of Community agricultural structures, it is foreseeable that, in the various member countries, the number and economic importance of farmers subject to the normal system of Value Added Tax will increase in the years following the entry into force of the present Directive. Consequently, the question of what system of Value Added Tax should be applied to the category of small farmers will have to be re-considered, for this category will probably, over the Community as a whole, be far smaller than at present, either in terms of numbers or of turnover.

It is accordingly provided that the Commission is to present new proposals to the Council on this topic, and this will also enable account to be taken of progress achieved in the meantime in the harmonization of Community taxes.

At Article 28: Transitional provisions

In order to ensure collection of the Community's own resources accruing from Value Added Tax according to the same Community criteria, any provisions introduced in the Member States pursuant to Article 17 of the second directive of 11 April 1967 should cease to apply.

Nevertheless, it seems impossible, for economic and social reasons, to abolish zero rating in a very short time. The maintenance of such a measure, under the same conditions as those which were fixed in the abovementioned article, for a transitional period, and at the latest until the abolition of tax barriers, should nevertheless be subject to the express condition that it must not affect the determination of the Community's own resources, neither as regards their amount nor as regards the method of calculation. This is why it has been provided that the Member States concerned must take the necessary measures to ensure that taxable persons declare their actual turnover in respect of zero-rated transactions; the provisions of Article 22 and Article 23(4), relating respectively to the assessment of the amount of tax to be paid and the obligations of persons liable for payment must be applied, *mutatis mutandis.*

At Title XVII: Value Added Tax Committee (Articles 29 to 31)

This proposal for a directive provides for a great number of general principles and rules which are to be applied in a uniform manner. However, the various Member States are responsible for adopting the detailed rules for the application of these common principles and rules. As the directive comes into operation, it may prove necessary for some of these rules of application to be harmonized, or indeed made uniform, so as not merely to ensure fair conditions of competition between the Member States and to facilitate free traffic between them, but above all to ensure that own resources accruing from value added tax are collected in a fair and balanced manner.

It could arise that such rules of application have to be adopted as a matter of urgency. This could not be done if they had to be adopted by the normal procedure under a directive. Furthermore such measures, being purely technical in nature would nor normally be dealt with by legislative procedure, but by the procedure for delegated legislation. A simplified and accelerated Community procedure should therefore be provided for the adoption of these measures, and for this purpose a Value Added Tax Committee should be set up.

The role of the Value Added Tax Committee will be that of a 'rule-making committee', given that the rules of application to be adopted by the Commission or the Council must not in any way depart from the basic principles laid down by the instruments on value added tax adopted by the Council.

The measures are adopted by the Commission if they are in accordance with the opinion of the Committee, and if they are not, by the Council, or, failing a decision by the Council, by the Commission.

The same Committee also functions as an advisory committee. As such, it can deal with any question concerning the application of Community instruments on value added tax.

At Annex C

1. The purpose of this method is to determine, in respect of the Classes 'agricultural products and game' and 'wood in the rough', amended as indicated in paragraph I(1) of Annex C to the proposal by the addition of processed products, the input tax charge per monetary unit of production.

2. Value of production, the basic notion currently used in agricultural and forestry accounts by the SOEC, is adjusted by the inclusion of processed agricultural products; to the figures obtained for inputs and gross fixed asset production on the basis of the above Classes as currently defined, are added the figures for those items relating to the production of processed products. For statistical reasons we must base ourselves, in the framework of the common method of calculation, on the final completed production mentioned above and on intermediate consumption consequently increased accordingly and also on gross fixed asset formation.

3. In calculating the amount of tax per monetary unit as referred to in paragraph 1 above, the value of production must be determined net of the value added tax attaching thereto, and the amount of the value added tax on inputs and gross fixed asset production must be determined separately.

4. The value added tax charge on inputs will thus appear as a fraction. The numerator will be the value added tax on inputs and gross fixed asset production. The denominator will be the value of production net of value added tax.

Proposal for a Directive

Proposal for a Sixth Directive

The Council of the European Communities,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas all the Member States have adopted a system of value added tax in accordance with the First and Second Council Directives of 11 April 1969 [1] on the harmonization of the legislation of Member States concerning turnover taxes;

Whereas the Council Decision of 21 April 1970 [2] on the replacement of financial contributions from Member States by the Communities' own resources provides that the budget of the Communities shall, irrespective of other revenue, be financed entirely from the Communities' own resources; whereas these resources are to include those accruing from the value added tax and obtained by applying a common rate of tax on a basis of assessment determined in a uniform manner according to Community rules;

Whereas the actual liberalization of the movement of persons, goods, services and capital and the integration of national economies must be speeded up with a view to the establishment by stages of Economic and Monetary Union;

Whereas the value added tax constitutes a general tax on consumption and was therefore chosen as one of the best measures of the contributing capacity of the Member States; whereas all supplies and imports of goods and all supplies of services should in principle be subject to the tax;

Whereas account should be taken of the objective of abolishing the imposition of tax on importation and the remission of tax on exportation in trade between Member States, and the common system of turnover taxes should be made impartial as regards the origin of goods and services, so that a common market permitting fair competition and resembling a real market may be created at the planned time;

Whereas the Member States can remove the territorial criteria for tax collection only if the principle of the impartiality of taxes on consumption, and their contributions to the Communities own resources, are not endangered;

Whereas, to enhance the impartiality of the tax, the meaning of 'taxable person' must be clarified to include persons who occasionally carry out certain transaction;

Whereas the expression 'taxable transactions' has led to difficulties, in particular as regards transactions treated fictively as taxable transactions and works of constructions; whereas these concepts must be clarified;

Whereas the place of taxable transaction has been the subject of conflicts between Member States' laws, in particular as regards the supplies of goods for assembly and the place where a supply of services takes place; whereas the place where a supply of services takes place should be defined as the place where the person supplying the services has his principal place of business so that the laws of the Member States will no longer need to be amended when the objective set out in Article 4 of the First Directive has been attained;

Whereas the concepts of chargeable event and of the charge to tax must be harmonized if the introduction and any subsequent alterations of the Community rate of value added tax are to become operative at the same time in all Member States;

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[1] OJ 71, 14 April 1967.
[2] OJ L 94, 28 April 1970.

Whereas the basis of calculation of the taxable amount must be so harmonized so that the Community rate of value added tax may be applied to taxable transactions in a comparable manner in all Member States;

Whereas the rates applied by Member States must be such that the tax applied at the preceding stage will in the normal way be deductible;

Whereas a common list of exemptions should be drawn up so that the Community's own resources may be collected in a uniform manner in all Member States; whereas the number of exemptions must be as small as possible, so that value added tax may remain a general tax on consumption;

Whereas the rules governing deductions should be harmonized to the extent that they actually affect the real amounts collected; whereas, in particular, there should be a common list of goods and services in respect of which deductions may not be made and the deductible proportion should be calculated in similar manner in all Member States;

Whereas it should be specified which persons are liable to pay tax, in particular as regards services supplied by a person established in another country.

Whereas the times at which the amount of tax to be paid is to be assessed and paid should be defined in common terms so that the Community may exercise its rights to its own resources at the same time in all Member States;

Whereas the obligations of taxpayers must be harmonized as far as possible so as to ensure that taxes are collected in uniform manner in all Member States; whereas taxpayers should, in particular, make a periodic omnibus return of their transactions, relating to both inputs and outputs, so that the collection of own resources may be supervised;

Whereas the various special shemes now in force should be harmonized; whereas it has been found that the Member States may be left to choose the special schemes for small undertakings where tax relief cannot be granted to undertakings whose turnover does not exceed a certain amount, so that the own resources should not be affected by divergence between the schemes; whereas it has been found that the tax on second-hand goods should be reduced in order to avoid penalizing certain branches of trade; whereas Member States who select a flat-rate scheme for offsetting input tax for farmers who have not opted for the normal value added tax scheme should apply the scheme on a common basis to prevent the value added tax from acting as a hidden charge varying from country to country and to ensure the uniform collection of own resources is not jeopardized;

Whereas the uniform application of the provisions of this Directive should be ensured, and whereas to this end an effective Community procedure should be laid down by which any necessary implementing measures may be adopted when required; whereas the setting up of a Value Added Tax Committee would enable the Member States and the Commission to cooperate closely and effectively;

Has adopted this directive:

Title I

Introductory provisions

Article 1

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

They shall without delay adopt the necessary laws, regulations and administrative provisions so that the systems as modified may enter into force on 1 January 1975.

Title II

Field of Application

Article 2

The following shall be chargeable to value added tax:

1. Supplies of goods or services effected for consideration within the territory of the country by a taxable person;

2. The importation of goods;

3. Supplies of services as listed in Article 16 (10), effected within the territory of the country to a taxable person by a person established in another country, and supplies of such services effected within the territory of the country to a non-taxable person by a person established outside the Community.

Title III

Territory

Article 3

1. 'Territory of the country' means in respect of each Member State, the entire national territory, including territorial waters. It may also extend to the continental shelf.

2. A Member State which, at the date of this Directive, does not apply *in toto* the principle laid down by paragraph 1 and proposes to continue thus shall so inform the Commission not later than three months after the date of this Directive.

The Commission may, within six months following receipt of such information, consult the Member States on the effects of the request, in particular on the fairness of competition and on the Community's own resources; it shall submit proposals to the Council which, acting by a qualified majority, shall decide thereon within six months.

If no decision is adopted by the Council within that period, the proposed measures shall be adopted by the Commission.

Pending a Community decision the Member State may apply the derogation requested.

Title IV

Taxable persons

Article 4

1. 'Taxable person' means any person who independently and regularly carries out in any place transactions pertaining to the occupations specified in paragraph 2, or who occasionally carries out one of the transactions specified in paragraph 3, whatever the purposes or results of such occupations or transactions may be.

2. The occupations referred to in paragraph 1 are the activities of producers and traders and persons supplying services, including mining and agricultural activities and activities of the professions.

3. The transactions referred to in paragraph 1 are :

(a) the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a permanent basis;

(b) the supply of buildings or parts of buildings and the land on which they stand, before first occupation. A building means any structure fixed to the ground;

(c) the supply of building land. 'Building land' means:

(i) land which is prepared for construction, land on which an incomplete building or a building for demolition stands, and rights to build on top of an existing building;

(ii) land other than as defined above on which the person acquiring it, at the time of such acquisition, undertakes to erect a building within four years.

4. The use of the word 'independently' in paragraph 1 excludes from the tax employed persons and other persons bound to an employer by a contract for the hire of labour or similar contract creating a relationship of employer and employee.

Until such time as the objective set out in Article 4 of the First Council Directive of 11 April 1967 is attained, each Member State may treat as a single taxable person, persons established in its national territory who are legally independent but are bound to one another by financial, economic or organizational relationships.

5. States, regional and local government authorities, and other bodies governed by public law shall not be considered to be taxable persons as regards their activities pursued as public authorities.

However, where they carry out transactions covered by paragraph 1, they shall be considered to be taxable persons in respect of such transactions. This provision extends to the activities of broadcasting authorities, and of the agricultural intervention agencies in respect of dealings in agricultural products in pursuance of a Regulation on the common organization of the market in the relevant product.

Title V

Taxable transactions

Article 5

Supply of goods

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

The following shall be treated as the property to which they relate:

(a) all rights *in rem* giving the holder thereof a right of user over immovable property;

(a) all interests or shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof.

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

(a) 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 ownership shall pass at the latest upon payment of the final instalment;

(b) the actual handing over of:

(i) movable property, pursuant to a contract for the use of the property for a specified period, with no possibility of unilateral termination by the user, which provides that the user shall at the end of the contract have the option of purchasing the property, provided that the total of the periodic payments to be made, excluding financing costs, corresponds approximately to the value of the property at the time of handing over to the hirer;

(ii) immovable property, pursuant to a contract for the use of the property for a specified period, with no possibility of unilateral termination by the user, and in particular pursuant to a contract which provides that the user shall at the end of the contract have the option of purchasing the land and/or the building, where the price to be paid for exercising the option:

- is a nominal amount bearing no relation to the economic value of the property at the time of the exercise of the option; or
- represents the value of the land as ascertained at the time of formation of the contract and/or the residual value of the buildings at the time of the exercise of the option; or
- is fixed in the light of the real value of the property at the time of the exercise of the option;

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

(d) supply under a contract to make up work from customer's materials, that is to say, the 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 a part of the products used;

(e) the handing over of a work of construction as defined in Article 6;

(f) the transfer, by order made by or in the name of a public authority, of the ownership in property against payment of compensation, where the transfer of such property by private agreement would attract liability to the tax;

(g) the supply of electricity, gas, heat, refrigeration and the like.

3. The following shall be treated as supplies made for consideration;

(a) taxable applications, that is to say the application by a taxable person of goods forming part of his business assets to his own personal use or that of his staff or the disposal thereof free of charge, where the value added tax on the goods in question or the component parts thereof is wholly or partly deductible. However, applications for the purpose of giving samples or making gifts of small value, eligible for classification as general expenses giving tax relief, are not to be considered as taxable transactions;

(b) the application by a taxable person for the purposes of his business of goods produced, manufactured or extracted in the course of such business, save where the value added tax on such goods, had they been acquired from a taxable person, would be wholly deductible;

(c) the application of goods by a taxable person for the purposes of a nontaxable business, where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (b) above.

4. In the case of a transfer by way of contribution to a company, or otherwise, or a transmission of a totality of assets or part thereof for no consideration, the recipient may be treated by the Member States as the successor to the business and the personality of the transferor.

Article 6

Works of construction

For the purposes of Article 5(2), (c), 'works of construction' means :

(a) all works relating to buildings, bridges, roads, ports and other structures fixed to the ground, such as:

(i) demolition;

(ii) construction, including foundations, supply of principal materials, fitting out;

(iii) incorporation of movable property in immovable property, including all installation works;

(iv) extension, modification and renovation;

(v) repairs and maintenance, other than day-to-day maintenance;

(b) work on preparing and improving land, such as foundation for work on industrial and residential developments, division into plots, levelling, installation of water supply and sewers, electricity supply installations, supporting-walls, planting of gardens.

Article 7

Supply of Services

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

Such transactions include, *inter alia:*

(i) the assignment of intangible property;

(ii) the observance of an obligation to refrain from an act or to tolerate an act or situation;

(iii) the performance of a service in pursuance of an order made by or in the name of a public authority.

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 purposes not connected

with the business, where the value-added tax on such goods is wholly or partly deductible;

(b) the supply of services as between persons considered to be a single taxable person within the meaning of the second subparagraph of Article 4 (4), save where the value-added tax on such services, were they to be supplied by another taxable person, would be wholly deductible

Article 8

Imports

'Importation of goods' means the entry of goods into the territory of the country as defined in Article 3.

Title VI

Place of taxable transactions

Article 9

Supply of goods

The place of supply 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 contract provides that the goods are to be installed or assembled, 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

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

Article 10

Supply of services

1. The place where the service is supplied shall be deemed to be the place where the business of the person providing the service is established or, in the absence of such a place, the place where he has his permanent address.

2. However:

(a) the place of supply of services connected with immovable property and of services for preparing and coordinating works of construction, such as the services of architects and of firms providing on-site supervision of works, 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, ascertained having regard to the distance covered.

Title VII

Chargeable event and the charge to tax

Article 11

1. *(a)* 'Chargeable event' means the occurrence by virtue of which the legal conditions are fulfilled for the tax to become due.

(b) the tax becomes 'chargeable' when

(i) the tax authority becomes entitled to claim the tax, notwithstanding that the time of payment be deferred; and

(ii) conversely, the taxable person becomes liable to discharge the tax, such liability arising at the same time as the tax authority becomes entitled to claim as aforesaid.

2. In respect of supplies of goods and services, the chargeable event occurs at the time when the goods are delivered or the services are performed.

The tax shall become chargeable at the time of the chargeable event. However, where in respect of a supply of goods or services a payment is to be made on account before the goods are delivered or performance of the services has been completed, the tax shall

become chargeable on receipt of the payment and on the amount received.

Moreover, Member States may provide that the tax shall not become chargeable until:

(a) in respect of supplies by small undertaking covered by Article 25 and supplies to non-taxable persons, the time of receipt of payment for the goods or services;

(b) in respect of supplies between taxable persons, the time of issue of the invoice provided for in Article 23 (3);

3. As regards imported goods, the chargeable event occurs at the time when the goods enter the territory of the country as defined in Article 3.

The tax shall become chargeable at the time of the chargeable event.

However, where goods are subject, on importation, to the Common Customs Tariff duties, to agricultural levies or to charges having equivalent effect, the tax shall become chargeable at the same time as such common duties, charges and levies.

Where on importation goods are placed under a transit, bonded warehouse or temporary importation arrangement under customs and/or fiscal supervision, with suspension of customs duties and or charges, Member States may provide that the tax shall become chargeable only when the goods are declared for free circulation.

Title VIII

Taxable amount

Article 12

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, the price, expressed as a sum of money which has been or is to be obtained by the supplier, where such price constitutes the sole consideration for the supply;

(b) in respect of supplies under Articles 5(3) and 7(2), and supplies by way of exchange, and, generally, where the price expressed as a sum of money is not the sole consideration for the supply of goods or services, the 'open market value' of the subject of the relevant supply. 'Open market value' of goods or services means 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 goods or services in question;

(c) in respect of the supplies specified in Article 5(2)(b), the total of the periodic payments plus any sum to be paid on exercising the option;

(d) in respect of supplies of buildings and land, other than as referred to in Article 4(3)(b) and (c), purchased for the purpose of resale by a taxable person to a non-taxable person or to a taxable person for whom the value added tax on the building or land in question is not deductible, the taxable amount may be the difference between the selling price and the purchase price.

2. The taxable amount shall include:

(a) taxes, duties, levies and charges, excluding the value added tax;

(b) incidental expenses such as commission, packing, transport and insurance costs charged by the supplier to the purchaser even where such costs are the subject of a separate agreement.

3. The taxable amount shall not include:

(a) price reductions granted by way of discount for advance payment;

(b) price discounts and rebates allowed to the customer and accounted for at the time of the supply;

(c) interest to be paid on deferred or delayed payments;

(d) returnable packing costs;

(e) amounts paid in the name or for account of the customer and credited in the supplier's book's to a suspense account.

4. In respect of the supplies specified in Article 5(2)(f), the amount of compensation paid, excluding reemployment allowance, shall be deemed to be the taxable amount.

B. Importation of goods

1. The taxable amount shall be:

(a) the price, expressed as a sum of money paid or to be paid by the importer, where this sum is the sole consideration for importation;

(b) the 'open market value', where no price is paid or where the price paid is not the sole consideration for the importation.

'Open market value' of imported goods means the amount, excluding value added tax, which an importer at the marketing stage at which the importation takes place would have to pay to a supplier at arm's length in the country from which the goods are exported at the time when the tax becomes chargeable, under conditions of fair competition, to obtain the goods in question;

2. The taxable amount shall include:

(a) the taxes, duties, levies and charges due outside the country of importation and those due by reason of importation, excluding the value added tax;

(b) incidental expenses, such as commission, packing, transport and insurance costs, arising up to the place of destination within the territory of the country.

3. The taxable amount shall not include those factors which are not included under the internal system, as provided in point A 3 (a to d).

4. The taxable amount in respect of goods temporarily exported and then reimported by the exporter after repairs, modifications, adaptations or manual operations have been carried out for his account in another country shall be the cost of labour and of any materials or parts supplied, plus the taxes, duties, levies, charges and incidental expenses mentioned at point B 2(a) and (b).

5. The taxable amount in respect of goods imported subject to Common Customs Tariff *ad valorem* duties shall in no case be lower than the value for customs purposes defined in Council Regulation (EEC) No 803/68 of 27 June 1968, plus such of the factors listed in point B 2(a) and (b) as are not already included therein.

C. Miscellaneous provisions

1. The taxable amount shall be reduced to an appropriate extent in the case of supplies of goods or services which remain unpaid in whole or in part or which are cancelled, or where the price is reduced after the supply takes place. The Member States shall lay down the rules for applying this provision.

2. Where a Member State proposes to maintain or introduce standard or minimum rates for certain transactions in order to prevent fraud or to simplify the calculation and collection of the tax, it shall consult the Value Added Tax Committee in accordance with the procedure laid down in Article 31.

3. Where the factors for determining the taxable amount are expressed in a currency other than that of the Member States where valuation takes place, the exchange rate shall be determined in accordance with Article 12 of Council Regulation (EEC) No 803/68 of 27 June 1968.

Title IX

Rates

Article 13

1. The rate applicable to taxable transactions shall be that in force at the time of the chargeable event. However, in the cases provided for in the last subparagraph of Article 11(3), the rate applicable shall be that in force at the time of release for free circulation.

2. 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 supplies of goods and for supplies of services.

3. In certain cases, supplies of goods or services may be made subject to increased or reduced rates. 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 Article 17.

4. The rate applicable in respect of imported goods shall be the rate applicable to supplies of like goods within the territory of the country.

Title X

Exemptions

Article 14

Exemptions within the territory of the country

A. Exemptions for certain activities in the public interest

1. Member States shall exempt the following:

(a) the supply of services, other than passenger transport, and supplies of goods incidental thereto, by public postal and telecommunications services;

(b) the supply of hospital and medical services, and supplies of goods incidental thereto, by medical establishments run by:

(i) bodies governed by public law; or

(ii) non-profit-making organizations; or

(iii) private charitable organizations;

(c) the supply of medical services in the lawful exercise of the medical and like professions;

(d) supplies of human blood and milk;

(e) the supply of services by dental technicians in their professional capacity and supplies of prostheses by dentists and dental technicians;

(f) services supplied by independent professional groups of a medical or like nature to their members for the purposes of their exempted activities;

(g) the supply of services directly relating to welfare assistance and social security and supplies of goods incidental thereto, by:

(i) bodies governed by public law; or

(ii) non-profit-making organizations; or

(iii) private charitable organizations;

(h) the supply of services for the protection or education of children and young persons, and supplies of goods incidental thereto, by:

(i) bodies governed by public law; or

(ii) non-profit-making organizations; or

(iii) private charitable organizations;

(i) the supply of services, and supplies of goods incidental thereto, having an educational purpose or being directly connected with education or vocational training or retraining, by:

(i) bodies governed by public law; or

(ii) private educational establishments placed under the supervision of the competent public authorities and authorized to prepare students

for a qualification from a school or university or a professional qualification, recognized or approved by the State;

(j) the supply of services, and supplies of goods incidental thereto, by non-profit-making sport or physical training organizations to their members; this exemption shall apply only to operations directly connected with the pursuit of sport and physical training activities by amateurs;

(k) the supply of services by theatres, cinema-clubs, concert-halls, museums, libraries, public parks, botanical or zoological gardens, educational exhibitions, and operations within the framework of activities in the public interest of a social, cultural or educational nature, by:

(i) bodies governed by public law; or

(ii) non profit-making organizations; or

(iii) private charitable organizations.

2. *(a)* 'Non-profit-making organization' means an organization meeting the following requirements:

(aa) it shall not have as its object the making of profits;

(bb) it shall assign any profits made to the improvement and continuance of the services which it provides;

(cc) it shall obtain no material advantages for persons other than the customers or users of the organization; this provision shall be without prejudice to the employment by the organization of wage or salary-earning staff.

(b) 'private charitable organization' means an organization whose activities are directed to the public good or to benevolent ends, and which meets one of the following requirements:

(aa) its prices shall be approved by the competent public authorities; or

(bb) its profits shall be assigned to promoting the public interest or benevolent ends in accordance with rules to be laid down under national laws.

B. Other exemptions

Member States shall exempt:

(a) insurance and reassurance transactions and services relating thereto supplied by insurance brokers and insurance agents;

(b) the supply of services by undertakers and supplies of goods incidental thereto;

(c) supplies of goods and services to organizations responsible for constructing, installing and maintaining cemeteries, graves and monuments commemorating war dead;

(d) the letting of immovable property, excluding

(1) the provision of accommodation in hotels and similar establishments, holiday camps and camping sites;

(2) the letting of immovable property for industrial or commercial uses, such as factories, shops and sections of buildings, and contracts for the supply of cold storage facilities;

(3) the hiring of safes, and contracts for the supply of parking facilities;

(e) supplies of goods having formed part of the assets of a business exempted under this Article, and of second-hand goods within the meaning of Article 26, on the acquisition of which, by virtue of Article 17 (6), value added tax did not become deductible;

(f) dealings in debts, shares, debentures and other securities, excluding all documents establishing title to goods and all rights, interests and shares covered by Article 5(1) (a) and b);

(g) the supply of new postage stamps valid for use on letters posted in the territory of the country, excluding supplies by dealers in stamps for collectors;

(h) dealings in currency other than for collection and in gold to be used as coin, and credit transfers;

(i) supplies of tax marks, discs, bands or stamps issued by other countries to be fixed to

goods for export to such countries or on invoices or bills of lading accompanying such exports;

(j) the making of advances and the granting of credit;

(k) gaming and lotteries;

(l) supplies of buildings or parts thereof and of the land pertaining thereto, after first occupation, by a taxable person for whom the value added tax on the building is not deductible or to whom Article 12A (1)(d) does not apply. For the purposes of this exemption flat-rate farmers, as defined in Article 27, shall be deemed to be taxable persons subject to the normal scheme;

(m) supplies of land, other than building land as defined in Article 4(3) (c).

Article 15

Exemptions of imported goods

The Member States shall exempt the following:

1. Final importation of goods the supply of which by a taxable person within the territory of the country would be exempted under Articles 14A(1)(d), 14E(c), (f), (g), (h) and (i), or 16 (4 to 7);

2. Importation of goods under a declaration for the transit or bonded warehouse arrangements, supplies of goods still subject to such arrangements and supplies of services incidental to such importation or supplies;

3. Importation of goods under a declaration for the temporary importation arrangement which thereby qualify for exemption from customs duties or would qualify therefor if they were imported from a third country, supplies of such goods still subject to such arrangement and supplies of services incidental to such importation or supplies; however, to avoid serious distortions of competition, the exemption may be revised subject to consultation in accordance with Article 31;

4. Final importation of goods qualifying for non-tariff exemption from customs duties or which would qualify therefor if they were imported from a third country, but excluding the importation of goods in respect of which exemption from value added tax would distort competition to the detriment of the internal market;

5. Reimportation of goods in the state in which they were exported, under the conditions and within the limits laid down in respect of exemption from customs duties, or which would qualify therefor if they were imported from a third country; this provision shall also apply to the reimportation of motor vehicles which have had to be repaired in another Member State;

6. Importation of goods:

(a) under diplomatic and consular arrangements, which qualify for exemption from customs duties or would qualify therefor if they were imported from a third country;

(b) by international organizations recognized as such by the public authorities of the host country, in accordance with the terms of headquarters agreements;

7. Importation of goods in the personal luggage of travellers, under the conditions and within the limits laid down by Community rules;

8. Importation of goods in small consignments, under the conditions and within the limits laid down by Community rules;

9. Importation of used goods not qualifying for exemption as specified above where the owner can prove that value added tax was finally paid on the acquisition thereof in another Member State at least six months earlier. Member States may, however, collect value added tax by applying to the market value of the goods a rate equal to the difference between the national rate and that in the other Member State as ruling on the day of importation;

10. Importation by sea fishing undertakings of their catches, unprocessed or after undergoing preservation for marketing;

11. The supply of services, other than transport services as defined in Article 16(13), in connection with the importation goods, and the value of which is included in the taxable amount in accordance with Article 12B (2)(b).

Article 16

Exemption of exports and like transactions and international transport

The Member States shall, subject to the conditions and limits laid down by Community rules, exempt the following:

1. Goods consigned or transported out of the territory of the country as defined in Article 3 by or on behalf of the vendor;

2. Goods consigned or transported out of the territory of the country as defined in Article 3 by or on behalf of a purchaser established in another country, subject to conditions to be laid down by each Member State;

3. Goods consigned or transported to an export warehouse under customs control, or delivered to such warehouse;

4. Goods for the fuelling and provisioning of sea-going vessels, in accordance with rules to be laid down by each Member State, excluding supplies to vessels which, regardless of tonnage or flag, do not carry passengers for reward and are not used in the course of commercial, industrial or fishing activities;

5. The supply, modification, repair, chartering and hiring of sea-going vessels, and the supply, repair and hiring of objects—including fishing equipment—incorporated or used therein, excluding vessels not qualified for the exemption provided for at point 4;

6. The supply, modification, repair, chartering and hiring of aircraft used by airlines on international routes, and the supply, repair and hiring of objects incorporated or used thereon;

7. Goods for the fuelling and provisioning of aircraft as referred to in point 6;

8. Operations carried out within ports for the direct needs of sea-going vessels other than pleasure boats, and services of pilots, tugs and salvage vessels;

9. Operations carried out in international airports for the direct needs of aircraft as referred to in point 6;

10. Supplies of the following services, upon condition that the person supplying the service proves that the customer:

(i) is established outside the Community; or

(ii) is a taxable person established in the Community but in a country other than that of the person supplying the service;

(a) assignments of patents, trade marks and like rights, and the granting of licences;

(b) work on movable tangible property, other than work under a contract to make up work within the meaning of Article 5(2) (d);

(c) advertising services;

(d) the hiring out of movable tangible property other than motor vehicles, aircraft and ships;

(e) services of consultants, engineers and planning offices, and similar services;

(f) obligations to refrain from carrying on or exercising, in whole or in part, a business activity or a right included in this paragraph 10;

(g) banking and financial transactions not specified in Article 14;

11. 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, and other usual services directly relating to exportation as defined in points 1, 2 and 3;

12. Supplies of goods and services to diplomatic and consular missions accredited to each

Member State, or to international organizations recognized as such by the host Member State.

This exemption shall apply under the conditions and within the limits laid down by each Member State until common rules are adopted in accordance with the procedure laid down in Article 31.

The benefit of the exemption may be granted by means of a drawback procedure;

13. Supplies of services in:

(a) the transport of goods from another country to the first place of destination;

(b) the transport of goods which are being carried to a destination outside national territory, or to an export bonded warehouse or in transit;

(c) international passenger transport by sea or air, subject to the time limit set in Article 28.

By way of derogation from (a) and (b), above, the transport of goods accompanying passengers or connected with the transport of passengers, such as luggage, motor vehicles, shall be exempted only where the transport of such passengers is itself exempted.

Title XI

Deductions

Article 17

Existence and scope of the right to deduct

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. Where goods and services are to be used for the purposes of his taxable business, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax invoiced to him in accordance with Article 23(3) in respect of goods or of services supplied to him;

(b) value added tax due or paid in respect of goods imported and declared in accordance with Article 24;

(c) value added tax due under Articles 5(3) (b) and 7(2) (b);

(d) value added tax due from a person to whom services have been supplied in one or other of the circumstances described in Article 23.

3. Member States shall also grant to taxable persons the right to deduct or to be refunded value added tax invoiced to them in respect of goods and services supplied to them for the purposes:

(a) of occupations or transactions covered by Article 4(2), carried out in another country, where these occupations or transactions would be taxed if carried out in the territory of the country; or

(b) of occupations which are exempt under Article 16.

4. Each Member State shall refund to any taxable person established in another country who supplies no goods or services within its territory the value added tax invoiced to him in respect of goods and services supplied to him in the said territory, where the value added tax on such goods or services would be deductible, if the taxable person in question carried on his business within its territory.

The refund shall be made upon application from the taxable person. No application shall be made in respect of an amount of tax lower than 100 units of account, but several invoices may together form the subject of a single application.

5. As regards goods and services used 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 (general proportion rule).

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

However, to ensure that the tax is applied consistently, 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 actual use of all or part of the goods and services.

6. Value added tax on the following shall not be deductible:

(a) expenditure on accommodation, lodging, restaurants, food, drink, entertainment and passenger transport, unless incurred by an undertaking whose principal or subsidiary business is the pursuit of such activities;

(b) expenditure on luxuries;

(c) entertainment expenditure;

(d) goods relating to the expenditure and costs listed in (a), (b) and (c) above, and supplies of services in connection with such property, expenditure and costs.

Article 18

Rules for exercising the right to deduct

1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17(2) (a), hold a detailed invoice, drawn up in accordance with Article 23(3);

(b) in respect of deductions under Article 17(2) (b), hold an import document, specifying him as consignee and permitting calculation of the amount of tax due;

(c) in respect of deductions under Article 17(2) (c) and (d), comply with the formalities established by each Member State;

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 paragraph 1 (immediate deduction).

However, as regards taxable persons who carry out occasional transactions as provided in Article 4(3)(b) and (c), the right to deduct shall be exercised only at the time of the supply.

Where by error or omission the taxable person does not make the deduction at the right time, he may exercise his right to deduct at any time up to and including 31 December of the year following that in which the deduction should have been made in accordance with the first subparagraph. The deduction shall in such case be made in accordance with the provisions in force at the time when the deduction should have been made. It may be exercised when the return provided for in Article 23(7) is made.

3. 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.

However, upon application from the taxable person, the excess amount at 31 December shall be refunded to the taxable person within three months.

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:

(i) as numerator, the total amount, exclusive of value added tax, of turnover per calendar year attributable to transactions in respect of which value added tax is deductible under Article 17(2) and (3);

(ii) as denominator, the total amount, exclusive of value added tax, of turnover per calendar year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible.

The proportion shall be determined each calendar year, fixed as a percentage and rounded up to the next unit.

2. By way of derogation from paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to transactions specified in Article 14B(f), to the sale of capital goods used by the taxable person for the purposes of his business, and to incidental real estate or financial transactions, except where these operations form part of the regular business activity of the taxable person.

3. The provisional proportion for a calendar 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, deductible proportion shall be estimated provisionally, under supervision of the tax authorities, by the taxable person from his own forecasts. Deductions made on the basis of such provisional proportion shall be adjusted when the final proportion is fixed during the next calendar year.

Article 20

Adjustments of deductions

1. The taxable person shall adjust the initial deduction:

(a) where that deduction was higher or lower than that to which he was entitled under Articles 17, 18 and, if applicable, 26;

(b) where the difference between the final proportion and the provisional proportion defined in Article 19 exceeds 10 points;

(c) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in accordance with Article 18(2), in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be required in cases of destruction, loss or theft of property, duly proved or confirmed, nor in the cases specified in Article 5(3);

(d) where, instead of being taxed in the normal way, he becomes subject to one of the special schemes provided for in Articles 25(1)(a) and 27. Member States shall take all necessary measures to ensure that the taxable person does not unduly benefit under these special schemes from deductions made under the normal scheme.

2. As regards capital goods, adjustment shall be spread over five years beginning with that in which the property is acquired. The annual adjustment shall be made only in respect of one fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the final proportion for the four years following the year of acquisition in relation to the final proportion for the year of acquisition. However no adjustment need be made where the difference is less than 10 points.

Title XII

Persons liable for payment of tax

Article 21

Persons liable to pay tax to the tax authority

The following shall be liable to pay value added tax:

1. Under the internal system:

(a) taxable persons who carry out taxable transactions, and agents of taxable persons established in another country who carry out taxable transactions;

(b) persons to whom services covered by Article 2(3) are supplied;

(c) any person who mentions the value added tax on an invoice or other document in that behalf;

2. On importation: the person specified as consignee in the import documents or, in the absence of such documents or specification, the importer. The consignee, the declarant and his agent shall be jointly liable for tax.

Title XIII

Assessment of the amount of tax to be paid and liability for payment of the tax

Article 22

1. The amount of tax to be paid shall be assessed by the tax authority on the basis of the return made by the person liable for payment. Such return may be verified by the tax authority and this may lead to reassessment of the amount to be paid. In the absence of a return, the amount may be assessed by the authority.

2. Liability to pay tax means the obligation to pay the amount of the tax at the end of the period prescribed by law following either the submission of the return or assessment of the amount of tax due.

Title XIV

Obligations of persons liable for payment

Article 23

Obligations under the internal system

1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

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

3. *(a)* Every taxable person shall issue an invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof.

Every taxable person shall likewise issue an invoice in respect of payments on account made to him by another taxable person before the supply of goods or services is effected or completed.

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

(c) Where a Member State has made provision as authorized by Article 11(2)(b), the invoice shall be issued within 30 days following the chargeable event.

4. Every taxable person subject to the normal tax systems shall each month submit a return setting out the supplies in respect of which tax has become chargeable during the preceding month together with all information required to calculate the tax and the deductions to be made, including the total amount of the relevant supplies and the total amount of exempted supplies.

5. Taxable persons subject to the special schemes provided for in Articles 25 and 27 may be authorized by Member States to submit quarterly, half-yearly or annual returns setting out the same information as required under paragraph 4.

6. Every taxable person shall pay the net amount of the value added tax when submitting the return.

7. During the first six months of each year the taxable person shall submit a return covering all supplies made in the preceding year and setting out all the information required for any adjustment.

8. Every person who to whom a service covered by Article 2(3) is supplied shall declare to his national tax authority the object of the service, the price which has been or is to be paid and the amount of tax chargeable, and shall, where appropriate, pay the amount thereof.

9. Member States may where necessary impose other obligations should this prove necessary for the collection of the tax or the prevention of fraud.

10. Member States may release from certain obligations taxable persons who make only exempt supplies.

Article 24

Obligations in respect of imports

Detailed rules relating to accounts and payments to be made on the basis thereof in respect of imported goods shall be laid down by each Member State.

Member States may provide *inter alia* that the value added tax on goods imported by certain categories of taxable persons, payable by reason of importation, need not be paid at the time of importation, upon condition that the tax be mentioned, as a tax due by reason of importation, in the periodic returns to be submitted by the taxable person under Article 23(4).

Title XV

Special schemes

Article 25

Special scheme for small undertakings

1. Where the application of the normal tax scheme to small undertakings would give rise to difficulties, each Member State may, under such conditions and within such limits as it may prescribe, and subject to consultation with the Value Added Tax Committee as provided for in Article 30, apply:

(a) until such time as the objective specified in Article 4 of the First Directive (67/227/EEC of 11 April 1967) is attained;

(aa) exemption from tax for taxable persons whose annual turnover does not exceed 4 000 units of account; and

(bb) if appropriate, graduated tax relief for taxable persons whose annual turnover exceeds the maximum amount fixed by that State for total exemption but does not exceed 12 500 units of account;

(b) simplified procedures for charging and collecting the tax, provided that the amount of tax to be paid shall not thereby be reduced.

2. The relevant turnover for the purposes of the application of paragraph 1(a) shall be the total pre-tax amount of the supplies of goods and services defined in Articles 5 and 7, including exempt supplies and supplies made in another country.

However, disposals of tangible or intangible investment property which formed part of the fixed assets of the undertaking, supplies of buildings and of building land, the transactions specified in Article 14 B(d) and (f) and the letting of buildings shall be disregarded in calculating the turnover.

3. Paragraph 1 (a) shall not apply to taxable persons whose main or subsidiary business consists of real property transactions, nor to the transactions specified in the second subparagraph of paragraph 2.

4. Taxable persons totally exempted from tax shall not be entitled to deduct tax invoiced to them or to mention the tax on invoices issued by them or any other documents in that behalf. They may, however, opt for the normal value added tax scheme and, where applicable, qualify for the graduated relief provided for in paragraph 1(a).

5. Without prejudice to the application of paragraph 1(b), taxable persons who qualify for graduated relief shall be treated as taxable persons subject to the normal value added tax scheme.

Article 26

Special scheme for second-hand goods

1. 'Second-hand goods' means used movable property which can be re-used as it is or after repair, excluding original works of art created by the hand of the artist, antiques, collectors' items, and stamps and coins being collectors' items.

2. By way of derogation from Articles 17 and 18:

(a) where second-hand goods are supplied by a non-taxable person to a taxable person for resale the taxable person shall be entitled to deduct the value added tax calculated on the purchase price of such goods at the rate in force at the time of acquisition, save where the taxable person is subject to the special scheme provided for in Article 25(1)(a);

(b) where a taxable person supplies second-hand goods the value added tax on which is by virtue of Article 17(6) not deductible, the recipient shall likewise be entitled to deduct the value added tax calculated as in (a) above where he is a taxable person and intends to resell the goods in question.

3. The deductions provided for in paragraph 2 shall not exceed 4/5 of the amount of tax due on the resale. The initial deduction shall, where necessary, be adjusted at the time of resale.

4. Member States may make the application of the provisions reffered to in paragraphs 2 and 3 subject to special administrative obligations.

Article 27

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 25(1)(b), would give rise to difficulties, Member States may apply to farmers the common flat-rate scheme provided for in the following paragraphs.

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

(i) 'farmer': a taxable person carrying on any of the productive activities listed in Annex 4 on an agricultural, forestry or fisheries undertaking operated by him;

(ii) 'agricultural, forestry or fisheries undertaking': an undertaking considered to be such by the Member State concerned;

(iii) 'flat-rate farmer': a farmer subject to the flat-rate scheme provided for in paragraphs 7 *et seq.*;

(iv) 'agricultural products': goods produced by an agricultural, forestry or fisheries undertaking in a Member State as a result of the activities listed in Annex A;

(v) 'agricultural service': any service as set out in Annex B supplied by a farmer personally and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him;

(vi) 'value added tax charge on inputs': the respective amounts in each Member State of (a) the total value added tax, calculated in accordance with paragraph 3 below, attaching to the goods and services purchased by all agricultural and fisheries undertakings and (b) the like total in respect of all forestry undertakings, where such tax would be deductible under Article 17 by a farmer subject to the normal value added tax scheme;

(vii) 'fixed offsetting percentages': the percentages fixed by Member States in accordance with paragraph 4, and applied by them in the cases specified in paragraph 7, to enable flat-rate farmers to offset at a fixed rate the value added tax charge on inputs.

3. The Commission shall be responsible for calculating the level of the value added tax

charge on inputs in each Member State, using the common method of calculation set out in Annex C. Such calculation shall be based on macro-economic statistics for the preceding two years supplied by the Member States for the purposes of the common method of calculation set out in Annex C.

The calculations shall be updated by the Commission every three years and also whenever in any Member State the rates in force or the lists of goods and services subject to such rates are so changed as to be likely to affect the level of the input charge in the Member State concerned.

The levels of input charge so calculated, rounded down to the nearest tenth of one per cent, shall be so fixed in accordance with the procedure laid down in Article 31 that they may be adopted:

(i) for the first time, not later than 30 September 1974:

(ii) for each three-yearly updating: not later than 30 September of the third year;

(iii) in the case of changes likely to affect the level of the charge, as soon as possible.

Member States shall supply the Commission with the macro-economic statistics and other data required for the common method of calculation:

(i) for the first time, not later than 30 May 1974;

(ii) for each three-yearly updating, not later than 30 June of the third year;

(iii) in the case of changes likely to affect the level of the charge, as soon as possible.

4. Member States shall fix, at levels not exceeding 90 % of the levels of input charge adopted in accordance with paragraph 3, two fixed offsetting percentages as follows:

(a) the first to offset the input charge in respect of agricultural and fisheries undertakings, and applicable to supplies by a flat-rate farmer of agricultural products from such undertakings and of agricultural services;

(b) the second to offset the input charge on forestry undertakings, and applicable to supplies by a flat-rate farmer of agricultural products from such undertakings.

Member States may, subject to consultation with the Value Added Tax Committee as provided for in Article 30, vary the offsetting percentage provided for in (a) above by reference to subdivisions of agriculture or by treating separately agriculture proper and fisheries. In such case they shall fix different fixed offsetting percentages for agricultural products from each such subdivision or from agriculture proper and from fisheries. None of these different fixed offsetting percentages shall exceed the level of the fixed percentage provided for under (a).

5. In order that flat-rate farmers may gradually transfer to the normal value added tax scheme or, as the case may be, to the simplified scheme provided for in Article 25(1)(b), the fixed offsetting percentages applied in each Member State shall not exceed:

(i) from the fourth year following the entry into force of this Directive, 80% of the value added tax charge on inputs adopted in accordance with paragraph 3;

(ii) from the seventh year following the entry into force of this Directive, 70% of the value added tax charge on inputs adopted in accordance with paragraph 3.

6. Member States may release flat-rate farmers from the obligations imposed upon them by Article 23.

7. Flat-rate farmers shall be entitled, subject as provided in the following paragraphs, to offset the value added tax charge on inputs by applying to the price, exclusive of tax, of the agricultural products and agricultural services supplied by them the fixed percentage provided for in paragraph 4. This offsetting shall exclude all other forms of deduction.

8. As regards supplies of agricultural products and agricultural services by a flat-rate

farmer to a taxable person other than a flat-rate farmer, the fixed percentage shall be paid, according as the Member States shall provide:

(a) either by the taxable person to whom the goods or services are supplied; or

(b) by the public authorities.

9. As regards all supplies of agricultural products and agricultural services other than those covered by paragraph 8, the fixed percentage shall be paid by the recipient of such supplies.

10. In respect of the transactions specified in paragraph 8, the taxable person to whom the goods or services are supplied:

(i) shall draw up in duplicate a purchase document to be used in place of the invoice, which shall clearly state, *inter alia,* the price exclusive of tax and, where pursuant to paragraph 8(a) the fixed offsetting percentage is payable by him, the amount paid by him to the flat-rate farmer in respect of that percentage; such person may however draw up a combined purchase document setting out, for a stated period, all his transactions with a particular flat-rate farmer;

(ii) shall give the flat-rate farmer a copy of such purchase document;

(iii) shall keep, in accordance with rules to be laid down by the individual Member States, a copy of the document countersigned by the farmer;

(iv) shall be entitled, where he is required pursuant to paragraph 8(a) to pay the fixed offsetting percentage, to deduct from the value added tax due from him an amount equal to that paid, as indicated on the purchase document, to the flat-rate farmer in respect of that percentage.

11. No fixed offsetting percentage shall be payable to a flat-rate farmer in respect of the following transactions:

(a) supplies by such farmer by way of exportation;

(b) the supply by such farmer of non-agricultural products or non-agricultural services.

12. The following transactions shall not qualify for the flat-rate scheme:

(a) commercial distribution by a flat-rate farmer or:

(i) supplies of agricultural products which have been processed with means not normally employed on an agricultural, forestry or fisheries undertaking; or

(ii) supplies, in exess of limits to be determined by the Member States subject to consultation with the Value Added Tax Committee as provided in Article 30, of goods not produced in the agricultural, forestry or fisheries undertaking of the flat-rate farmer in question;

(b) services provided by the flat-rate farmer on a regular basis and/or by means of equipment not normally associated with an agricultural, forestry or fisheries undertaking of the type operated by him.

In respect of these transactions the flat-rate farmer shall be subject to the normal value added tax scheme or, as the case may be, to the simplified scheme provided for in Article 25(1)(b).

Detailed rules for the application of this paragraph shall be adopted by the Member States.

13. The following shall be excluded from the flat-rate scheme and shall be subject to the normal value added tax scheme or, as the case may be, to the simplified scheme provided for in Article 25(1)(b):

(a) farmers who also carry on a non-agricultural occupation in respect of which they are already subject to the normal value added tax scheme or to the simplified scheme provided for in Article 25(1)(b);

(b) farmers operating an agricultural, forestry or fisheries undertaking the annual turnover of which exceeds 50 000 units of account;

(c) any agricultural, forestry or fisheries undertaking legally constituted as a partnership or company.

14. Each Member State may exclude from the flat-rate scheme certain categories of farmers, and farmers to whom the normal value added tax scheme, or as the case may be the simplified scheme provided for in Article 25(1)(b), can be applied without giving rise to administrative difficulties.

15. 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 25(1)(b).

16. The Commission shall, before the end of the sixth 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.

17. The Annexes A, B and C referred to in this Article may be amended in accordance with the procedure laid down in Article 31.

Title XVI

Transitional provisions

Article 28

1. The exemption provided for in Article 16(13)(c) shall apply until 1 January 1977.

The Commission shall in due course make to the Council proposals concerning the tax scheme to be applied from 1 January 1977 to international passenger transport by sea and air.

2. Any provisions brought into force by the Member States in exercise of the rights conferred on them by Article 17 of the Second Council Directive No 67/228/EEC of 11 April 1967 shall with effect from 1 January 1975 cease to apply.

However, those Member States which have exercised the right conferred under the last indent of this Article regarding exemption with refund of any tax paid at the preceding stage, may maintain in force the exemptions existing on 1 April 1973 or, on the date on which Council Directive No 67/228/EEC of 11 April 1967 came into force, until such date as shall be fixed by the Council on a proposal from the Commission. Such date not to be later than that on which the charging of tax on imports and the remitting of tax on exports in trade between the Member States are abolished. The Member States shall adopt the necessary provisions to ensure that taxable persons declare the real turnover, calculated in conformity with this Directive, in respect of such exempt transactions.

3. Member States which avail themselves of the provisions of the second subparagraph of paragraph 2 shall supply to the Commission in every two years, and for the first time before 30 June 1975, with such information as will enable it to determine whether the grounds on which the exemptions referred to in that subparagraph have been maintained in force still obtain. The Commission shall take such information into account in the reports provided for in Article 32 and will make proposals in such reports for the adaptation by stages of the abovementioned exemptions to the obligations resulting from the achievement of Economic and Monetary Union.

Title XVII

Value Added Tax Committee

Article 29

1. A Value Added Tax Committee, hereinafter called 'the Committee', is hereby set up and shall consist of representatives of the Member States with a representative of the Commission as Chairman.

2. The Committee shall establish its own rules of procedure.

Article 30

In addition to the consultations made compulsory by Articles 25 and 27, the Committee may examine any question relating to the application of any Community act concerning the value added tax, raised by the Chairman either on his own initiative or at the request of the representative of a Member State.

Article 31

1. Without prejudice to Articles 12, 15, 16 and 27, the measures necessary for applying this Directive shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken, considering in particular the consequences thereof both on the fairness of competition at national and international level and on own resources. The Committee shall deliver its Opinion on such measures within a time-limit which may be set by the Chairman according to the urgency of the matter. Opinions shall be delivered by a majority of 41 votes, the votes of the Member States being weighted in accordance with Article 148(2) of the Treaty. The Chairman shall not vote.

3. *(a)* The Commission shall adopt the proposed measures where they are in accordance with the Opinion of the Committee.

(b) Where the measures are not in accordance with the Opinion of the Committee, or in the absence of such Opinion, the Commission shall without delay make to the Council proposals concerning the measures to be taken. The Council shall act by a qualified majority.

(c) If, three months after the proposal was made to the Council, the Council does not act, the proposed measures shall be adopted by the Commission.

Title XVIII

Miscellaneous provisions

Article 32

For the first time on 1 January 1976 and thereafter every two years, the Commission shall, after consulting the Member States, send the Council a report on the application of the common value added tax system in the Member States.

Article 33

At the appropriate time the Council, acting on a proposal from the Commission and in accordance with the interests of the common market, shall adopt further Directives on the common value added tax system, 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 paralellism of the national value added tax systems and thus permit the attainment of the objective stated in Article 4 of the First Directive.

Article 34

The following provisions of the First Council Directive, No 67/227/EEC of 11 April 1967, are repealed:

(a) the fourth subparagraph of Article 2;

(b) Article 5.

Article 35

The Second Council Directive, No 67/228/EEC, of 11 April 1967 is hereby repealed with effect from 31 December 1974.

Article 36

This Directive is addressed to the Member States.

Annex A

List of activities in agricultural production

I. Crop production

1. General agriculture, including wine-growing.

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 using the land

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 essentially from his agricultural production, such processing shall also be regarded as agricultural production.

*

Annex B

List of agricultural services

(i) Field work, reaping and mowing, threshing, baling, collecting, harvesting, sowing and planting;

(ii) Packing and preparation for market, for example drying, cleaning, grinding, disinfecting and ensilage of agricultural products;

(iii) Storage of agricultural products;

(iv) Stock minding, rearing and fattening;

(v) Hiring out of agricultural machinery;

(vi) Technical assistance;

(vii) Destruction of weeds and pests, dusting and spraying of crops and land;

(viii) Operation of irrigation equipment;

(ix) Lopping, tree felling and other forestry services.

*

Annex C[1]

Common method of calculation

I. For the purposes of calculating the value added tax charge on inputs in a Member State for, respectively, all agricultural and fisheries undertakings and all forestry undertakings, the following shall be taken into account:

1. The value of the total final production, exclusive of value added tax, of respectively the Classes 'agricultural products and game' and 'wood in the rough' as set out below at points III and IV, plus the output of the processing activities referred to in point V of Annex A;

2. Total inputs in respect of the production and output referred to in 1;

3. Gross fixed asset production in connection with the activities listed in Annex A.

[1] The classification in this Annex is that used in the Economic Accounts for Agriculture of SOEC (Statistical Office of the European Communities).

II. The respective value added tax charges on inputs shall be expressed as the relationship between the sum of the total value added tax deductible under Article 17 of the Directive attaching to inputs as referred to in point I(2) and to gross fixed asset production as referred to in point I(3), and the value of total final production, exclusive of value added tax, as referred to in point I(1).

III. Agricultural products and game

	SOEC code number	
Cereals (excluding rice)		
Wheat and spelt		
— Winter wheat and spelt	10.01.11	1
	10.01.19	1
• Winter wheat and spelt	—	
• Spring wheat	—	
— Durum wheat	10.01.51	
	10.01.59	
• Winter wheat	—	
• Spring wheat	—	
Rye and meslin		
— Rye	10.02.00	
• Winter rye	—	
• Spring rye	—	
— Meslin	10.01.11	2
	10.01.19	2
Barley	10.03.10	
	10.03.90	
• Spring barley	—	
• Winter barley	—	
Oats and summer meslin		
— Oats	10.04.10	
	10.04.90	
Summer meslin	—	
Maize	10.05.10	
	10.05.92	
Other cereals (excluding rice)		
— Buckwheat	10.07.10	
— Millet	10.07.91	
— Grain sorghum	10.07.95	
— Canary seed	10.07.96	
— Cereals, not elesewhere specified (excluding rice)	10.07.99	
Rice (in the husk or paddy)	10.06.11	
Pulses		
Dried peas and fodder peas	07.05.11	
— Dried peas (other than for fodder)	—	
• Dried peas (excluding chick peas)	—	
• Chick peas	—	
— Fodder Peas	—	
Haricot beans, broad and field beans		
— Haricot beans	07.05.15	
— Broad and field beans	07.05.95	
Other pulses		
— Lentils	07.05.91	
— Vetches	12.03.31	2
— Lupins	12.03.49	2
— Dried pulses, not elsewhere classified, pulse mixtures and cereal and pulse mixtures	07.05.97	
Roots, brassicas group for fodder		
Potatoes		
— Potatoes (excluding seed potatoes)		
• New potatoes	07.01.13	
	07.01.15	
• Main crop potatoes	07.01.17	
	07.01.19	
— Seed potatoes	07.01.11	
Sugar beet	12.04.11	
Mangolds and fodder beet; swedes, fodder carrots and fodder turnips; other roots and fodder brassicas		
— Mangolds and fodder beet	12.10.10	
— Swedes, fodder carrots, fodder turnips		
• Swedes		
• Fodder carrots, fodder turnips		
— Fodder cabbages and kales	12.10.99	2
— Other roots and fodder brassicas		
• Jerusalem artichokes	07.06.10	
• Sweet potatoes	07.06.50	

• Roots and fodder brassicas not elsewhere specified	07.06.30 12.10.99	3

Industrial crops

Oil seeds and oleaginous fruit (excluding olives)		
— Colza and rape seed	12.01.91	
• Winter colza	—	
• Summer colza	—	
• Rape	—	
— Sunflower Seed	12.01.95	
— Soya beans	12.01.40	
— Castor seed	12.01.50	
— Linseed	12.01.61 12.01.69	
— Sesame, hemp, mustard and poppy seed		
• Sesame seed	12.01.97	
• Hemp seed	12.01.94	
• Mustard seed	12.01.92	
• Oil poppy and poppy seed	12.01.93	
Fibre plants		
— Flax	54.01.10	
— Hemp	57.01.10	
Unmanufactured tobacco (including dried tobacco)	24.01.10 24.01.90	
Hops	12.06.00	
Other industrial crops		
— Chicory roots	12.05.00	
— Medicinal plants, aromatics, spices and plants for perfume extraction		
• Saffron	09.10.31	
• Caraway	07.01.82	
• Medicinal plants, aromatics, spices and plants for perfume extraction not elsewhere specified	09.09 (11-13-15-17-18) 09.10 (11-20-51-55-71) 12.07 (10-20-30-40-50-60-70-80-91-99)	

Fresh vegetables

Cabbages for human consumption		
— Cauliflowers	07.01.21 07.01.22	
— Other cabbages		
• Brussels sprouts	07.01.26	
• White cabbages • Red cabbages	07.01.23	
• Savoy cabbages • Green cabbages • Cabbages not elsewhere specified	07.01.27	1
Leaf and stalk vegetables other than cabbages		
— Celery and celeriac	07.01.51 07.01.53 07.01.97	2
— Leeks	07.01.68	
— Cabbage lettuces	07.01.31 07.01.33	
— Endives	07.01.36	1
— Spinach	07.01.29	
— Asparagus	07.01.71	
— Witloof chicory	07.01.34	
— Artichokes	07.01.73	
— Other leaf and stalk vegetables		
• Corn salad	07.01.36	2
• Cardoons and edible thistle	07.01.37	
• Fennel	07.01.91	
• Rhubarb • Cress • Parsley • Broccoli • Leaf and stalk vegetables not elsewhere specified	07.01.97	
Vegetables grown for fruit		
— Tomatoes	07.01.75 07.01.77	
— Cucumbers and gherkins	07.01.83 07.01.85	
— Melons	08.09.10	
— Aubergines, marrows and pumpkins, courgettes	07.01.95	
— Sweet capsicum	07.01.93	
— Other vegetables grown for fruit	07.01.97	3
Root and tuber crops		
— Kohlrabi	07.01.27	2
— Turnips — Carrots	07.01.54	
— Garlic	07.01.67	
— Onions and shallots	07.01 (62-63-66)	

— Beetroot (red beet) — Salsify and scorzonera — Other root and tuber crops (chives, radishes, French turnips, horse radishes)	07.01.56 07.01.59	
Pod vegetables		
— Green peas	07.01.41	
	07.01.43	
— Beans	07.01.45	
	07.01.47	
— Other pod vegetables	07.01.49	
Cultivated mushrooms	07.01.87	
Fresh fruit, including citrus fruit (excluding grapes and olives)		
Dessert apples and pears		
— Dessert apples	08.06 (13-15-17)	
— Dessert pears	08.06 (36-38)	
Cider apples and perry pears		
— Cider apples	08.06.11	
— Perry pears	08.06.32	
Stone fruit		
— Peaches	08.07.32	
— Apricots	08.07.10	
— Cherries	08.07 (51-55)	
— Plums (including greengages, mirabelles and quetsches)	08.07 (71-75)	
— Other stone fruit	08.07.90	
Nuts		
— Walnuts	08.05.31	
— Hazel nuts	08.05.91	
— Almonds	08.05.11	
	08.05.19	
— Chestnuts	08.05.50	
— Other nuts (excluding tropical nuts)		
• Pistaches	08.05.70	
• Nuts not elsewhere specified	08.05.97	1
Other tree fruits		
— Figs	08.03.10	
— Quinces	08.06.50	
— Other tree fruits, not elsewhere specified (excluding tropical fruit)	08.09.90	1
Strawberries	08.08 (11-15)	
Berries		
— Black currants and red currants		
• Black currants	08.08.41	
• Red currants	08.08.49	1
— Raspberries — Gooseberries — Other berries (e.g. cultivated blackberries)	08.08.90 08.09.90	1 2
Citrus fruit		
— Oranges	08.02 (21-22-24-27)	
— Mandarines and clementines	08.02 (32-36)	
— Lemons	08.02.50	
— Grapefruit	08.02.70	
— Other citrus fruit	08.02.90	
• Citrons	—	
• Limes	—	
• Bergamots	—	
• Citrus fruit not elsewhere specified	—	
Grapes and olives		
Grapes		
— Table grapes	08.04 (21-23)	
— Other grapes (for wine making, fruit juice production and processing into raisins)	08.04 (25-27)	
Olives		
— Table olives	07.01.78	
— Other olives (for olive oil production)	07.01.79	
	07.03.13	
Other crop products		
Fodder crops[1]	12.10.99	1
Nursery products		
— Fruit trees and bushes	06.02 (19-40-51-55)	
— Vine slips	06.02 (10-30)	
— Ornamental trees and shrubs	06.02 (71-75-79-98)	
— Forest seedlings and cuttings	06.02.60	
Vegetable materials used primarily for plaiting		
— Osiers, rushes, rattans	14.01 (11-19-51-59)	
— Reeds, bamboos	14.01 (31-39)	
— Other vegetable materials used primarily for plaiting	14.01.90	

[1] e.g. Hay, clover (excluding brassicas).

Flowers, ornamental plants and Christmas trees	
— Flower bulbs, corms and tubers	06.01.10
— Ornamental plants	06.01 (31-39)
— Cut flowers, branches and foliage	06.03 (11-15-90) 06.04 (20-40-50)
— Christmas trees	06.04.90
— Perennial plants	06.02.92
Seeds	
— Agricultural seeds[1]	06.02.95
	12.03 (11-19-35-39-44-46-84-86-89)
	12.03.31 1
	12.03.49 1
— Flower seeds	12.03.81
Products gathered in the wild[2]	07.01 (88-89)
	08.05.97 2
	08.08.31
	08.08.35
	08.08.90 2
	23.06.10 1
	08.08.49 2
By-products from cultivation[3] of:	
— Cereals (excluding rice)	12.08 (10-31)
— Rice	12.08.90
— Pulses	12.09.00
— Root crops	13.03.12
— Industrial crops	14.02 (10-21-23-25-29)
— Fresh vegetables	14.03.00
— Fruit and citrus fruit	14.04.00
— Grapes and olives	14.05 (11-19)
— Other crops	15.16.10
Crop products not elsewhere specified	23.06.10 2 23.06.30 13.01.00
Grape must and wine	
Grape must	22.04.00
Wine	22.05 (21-25-31-35-41-44-45-47-51-57-59-61-69)
By-products of wine production[4]	23.05.00
Olive oil	
Pure olive oil[5]	15.07.06
Olive oil, unrefined[5]	15.07 (07-08)
By-products of olive oil extraction[6]	23.04.05
Cattle	
Domestic cattle	01.02 (11-13-14-15-17)
— Calves	—
— Other cattle, less than 1 year old	—
— Heifers	—
— Cows	—
— Male breeding animals	—
• 1-2 years old	—
• More than 2 years old	—
— Cattle for slaughtering and fattening	—
• 1-2 years old	—
• More than 2 years old	—
Pigs	
Domestic pigs	01.03 (11-15-17)
— Piglets	—
— Young pigs	—
— Pigs for fattening	—
— Sows and gilts for breeding	—
— Breeding boars	—
Equines	
Horses	01.01 (11-15-19)
Donkeys	01.01.31
Mules and hinnies	01.01.50
Sheep and goats	
Domestic sheep	01.04 (11-13)
Domestic goats	01.04.15

[1] Excluding cereal seeds, rice seeds and seed potatoes (011.1, 011.2, 011.4)
[2] e.g. wild mushrooms, cranberries, bilberries, blackberries, wild raspberries, etc.
[3] e.g. straw, beet and cabbage tops, pea and bean husks
[4] e.g. wine lees, argol, etc.
[5] the distinction between these two products is based on the method of processing rather than on different production stages.
[6] e.g. olive oil cakes and other residual products of olive oil extraction.

Poultry, rabbits, pigeons and other animals		
Hens, cocks, cockerels, pullets, chicks	01.05 (10-91)	
Ducks	01.05.93	
Geese	01.05.95	
Turkeys	01.05.97	
Guinea-fowl	01.05.98	
Domestic rabbits	01.06.10	
Domestic pigeons	01.06.30	
Other animals		
— Bees	—	
— Silkworms	—	
— Animals reared for fur	—	
— Snails (excluding sea-snails)	03.03.66	
— Animals not elsewhere specified	01.06.99	
	02.04.99	1
Game and game meat		
Game[1]	01.01.39	
	01.02.90	
	01.03.90	
	01.04.90	
	01.06.91	
Game meat	02.04.30	
Milk, untreated		
Cow's milk	—	
Ewe's milk	—	
Goat's milk	—	
Buffalo milk	—	
Eggs		
Hen eggs		
— Hatching eggs	04.05.12	1
— Other	04.05.14	
Other eggs		
— Hatching eggs	04.05.12	2
— Other	04.05.16	
	04.05.18	
Other livestock products		
Raw wool (including animal hair[2])	53.01 (10-20)	
	53.02 (93-95)	
Honey	04.06.00	
Silkworm cocoons	50.01.00	
By-products of livestock production[3]	15.15.10	
Livestock products not elsewhere specified	43.01 (10-20-30-90)	
	53.02.97	
Agricultural services[4]		
Agricultural products almost exclusively imported		
Tropical oil seeds and oleaginous fruit		
— Ground-nuts	12.01.11	
	12.01.15	
— Copra	12.01.20	
— Palm nuts and kernels	12.01.30	
— Cotton seed	12.01.96	
— Oil seeds and oleaginous fruit not elsewhere specified	12.01.99	
Tropical fibre plants		
— Cotton	55.01.00	
— Other fibre plants		
• Manila hemp	57.02.00	
• Jute	57.03.10	
• Sisal	57.04.10	
• Coir	57.04.30	
• Ramie	54.02.00	
• Fibre plants, not elsewhere specified	57.04.50	
Other tropical plants for industrial use		
— Coffee	09.01.11	
— Cocoa	18.01.00	
— Sugar cane	12.04.30	
Tropical fruit		
— Tropical nuts		
— Coconuts	08.01.75	
— Cashew nuts	08.01.77	
— Brazil nuts	08.01.80	
— Pecans	08.05.80	
— Other tropical fruit		
• Dates	08.01.10	

[1] Live game includes only specially reared game and other game kept in captivity.
[2] If it is a principal product.
[3] e.g. skins and animal hair and pelts of slaughtered game, wax, manure, liquid manure.
[4] i.e. services which are *normally* provided by agricultural holdings *themselves*, e.g. ploughing, mowing and reaping, threshing, tobacco drying, sheep-shearing, care of animals.

• Bananas	08.01 (31-35)
• Pineapples	08.01.50
• Papaws	08.08.50
• Tropical fruit, not elsewhere specified	08.01 (60-99)
Ivory, unpolished	05.10.00

IV. Wood in the rough

Coniferous timber for industrial uses

— Coniferous long timber

- Logs
  - Fir, spruce, douglas
  - Pine, larch
- Mine timber
  - Fir, spruce, douglas
  - Pine, larch
- Other long timber
  - Fir, spruce, douglas
  - Pine, larch

— Coniferous ply-wood

- Fir, spruce, douglas
  - Pine, larch

Coniferous firewood

— Fir, spruce, douglas

— Pine, larch

Leaf-wood for industrial uses

— Long timber (leaf-wood)

- Logs
  - Oak
  - Beech
  - Poplar
  - Other
- Mine timber
  - Oak
  - Other
- Other long timber
  - Oak
  - Beech
  - Poplar
  - Other

— Ply-wood (leaf)

- Oak
- Beech
- Poplar
- Other

Firewood (leaf)

— Oak

— Beech

— Poplar

— Other

Forestry services[1]

Other products (e.g. bark, cork, resin)

[1] i.e. services which are usually performed by forestry undertakings themselves (e.g. felling of timber)