

Council Directive 2006/112/EC of 28 November
2006 on the common system of value added tax

TITLE I

SUBJECT MATTER AND SCOPE

Article 1

1 This Directive establishes the common system of value added tax (VAT).

2 The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.

Article 2

1 The following transactions shall be subject to VAT:

- a the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;
- b the intra-Community acquisition of goods for consideration within the territory of a Member State by:
 - (i) a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Articles 282 to 292 and who is not covered by Articles 33 or 36;
 - (ii) in the case of new means of transport, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1), or any other non-taxable person;
 - (iii) in the case of products subject to excise duty, where the excise duty on the intra-Community acquisition is chargeable, pursuant to Directive 92/12/EEC, within the territory of the Member State, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1);
- c the supply of services for consideration within the territory of a Member State by a taxable person acting as such;
- d the importation of goods.

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- a For the purposes of point (ii) of paragraph 1(b), the following shall be regarded as 'means of transport', where they are intended for the transport of persons or goods:
 - (i) motorised land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7,2 kilowatts;

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- (ii) vessels exceeding 7,5 metres in length, with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and of vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing;
 - (iii) aircraft the take-off weight of which exceeds 1 550 kilograms, with the exception of aircraft used by airlines operating for reward chiefly on international routes.
- b These means of transport shall be regarded as ‘new’ in the cases:
- (i) of motorised land vehicles, where the supply takes place within six months of the date of first entry into service or where the vehicle has travelled for no more than 6 000 kilometres;
 - (ii) of vessels, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;
 - (iii) of aircraft, where the supply takes place within three months of the date of first entry into service or where the aircraft has flown for no more than 40 hours.
- c Member States shall lay down the conditions under which the facts referred to in point (b) may be regarded as established.
- 3 ‘Products subject to excise duty’ shall mean energy products, alcohol and alcoholic beverages and manufactured tobacco, as defined by current Community legislation, but not gas supplied through the natural gas distribution system or electricity.

Article 3

- 1 By way of derogation from Article 2(1)(b)(i), the following transactions shall not be subject to VAT:
- a the intra-Community acquisition of goods by a taxable person or a non-taxable legal person, where the supply of such goods within the territory of the Member State of acquisition would be exempt pursuant to Articles 148 and 151;
 - b the intra-Community acquisition of goods, other than those referred to in point (a) and Article 4, and other than new means of transport or products subject to excise duty, by a taxable person for the purposes of his agricultural, forestry or fisheries business subject to the common flat-rate scheme for farmers, or by a taxable person who carries out only supplies of goods or services in respect of which VAT is not deductible, or by a non-taxable legal person.
- 2 Point (b) of paragraph 1 shall apply only if the following conditions are met:
- a during the current calendar year, the total value of intra-Community acquisitions of goods does not exceed a threshold which the Member States shall determine but which may not be less than EUR 10 000 or the equivalent in national currency;
 - b during the previous calendar year, the total value of intra-Community acquisitions of goods did not exceed the threshold provided for in point (a).

The threshold which serves as the reference shall consist of the total value, exclusive of VAT due or paid in the Member State in which dispatch or transport of the goods began, of the intra-Community acquisitions of goods as referred to under point (b) of paragraph 1.

- 3 Member States shall grant taxable persons and non-taxable legal persons eligible under point (b) of paragraph 1 the right to opt for the general scheme provided for in Article 2(1)(b)(i).

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Member States shall lay down the detailed rules for the exercise of the option referred to in the first subparagraph, which shall in any event cover a period of two calendar years.

Article 4

In addition to the transactions referred to in Article 3, the following transactions shall not be subject to VAT:

- (a) the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is a taxable dealer acting as such and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the margin scheme provided for in Articles 312 to 325;
- (b) the intra-Community acquisition of second-hand means of transport, as defined in Article 327(3), where the vendor is a taxable dealer acting as such and VAT has been applied to the means of transport in the Member State in which their dispatch or transport began, in accordance with the transitional arrangements for second-hand means of transport;
- (c) the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is an organiser of sales by public auction, acting as such, and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the special arrangements for sales by public auction.

TITLE II

TERRITORIAL SCOPE

Article 5

For the purposes of applying this Directive, the following definitions shall apply:

- (1) 'Community' and 'territory of the Community' mean the territories of the Member States as defined in point (2);
- (2) 'Member State' and 'territory of a Member State' mean the territory of each Member State of the Community to which the Treaty establishing the European Community is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of this Directive;
- (3) 'third territories' means those territories referred to in Article 6;
- (4) 'third country' means any State or territory to which the Treaty is not applicable.

Article 6

1 This Directive shall not apply to the following territories forming part of the customs territory of the Community:

- a Mount Athos;
- b the Canary Islands;
- c the French overseas departments;
- d the Åland Islands;
- e the Channel Islands.

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2 This Directive shall not apply to the following territories not forming part of the customs territory of the Community:

- a the Island of Heligoland;
- b the territory of Büsingen;
- c Ceuta;
- d Melilla;
- e Livigno;
- f Campione d'Italia;
- g the Italian waters of Lake Lugano.

Article 7

1 In view of the conventions and treaties concluded with France, the United Kingdom and Cyprus respectively, the Principality of Monaco, the Isle of Man and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be regarded, for the purposes of the application of this Directive, as third countries.

2 Member States shall take the measures necessary to ensure that transactions originating in or intended for the Principality of Monaco are treated as transactions originating in or intended for France, that transactions originating in or intended for the Isle of Man are treated as transactions originating in or intended for the United Kingdom, and that transactions originating in or intended for the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for Cyprus.

Article 8

If the Commission considers that the provisions laid down in Articles 6 and 7 are no longer justified, particularly in terms of fair competition or own resources, it shall present appropriate proposals to the Council.

TITLE III

TAXABLE PERSONS

Article 9

1 'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

2 In addition to the persons referred to in paragraph 1, any person who, on an occasional basis, supplies a new means of transport, which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Member State but within the territory of the Community, shall be regarded as a taxable person.

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Article 10

The condition in Article 9(1) that the economic activity be conducted ‘independently’ shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Article 11

After consulting the advisory committee on value added tax (hereafter, the ‘VAT Committee’), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.

Article 12

1 Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

- a the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;
- b the supply of building land.

2 For the purposes of paragraph 1(a), ‘building’ shall mean any structure fixed to or in the ground.

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by ‘the land on which a building stands’.

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

3 For the purposes of paragraph 1(b), ‘building land’ shall mean any unimproved or improved land defined as such by the Member States.

Article 13

1 States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.

In any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed in Annex I, provided that those activities are not carried out on such a small scale as to be negligible.

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2 Member States may regard activities, exempt under Articles 132, 135, 136, 371, 374 to 377, and Article 378(2), Article 379(2), or Articles 380 to 390, engaged in by bodies governed by public law as activities in which those bodies engage as public authorities.

TITLE IV

TAXABLE TRANSACTIONS

CHAPTER 1

supply of goods

Article 14

1 ‘Supply of goods’ shall mean the transfer of the right to dispose of tangible property as owner.

2 In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:

- a the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;
- b the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment;
- c the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.

3 Member States may regard the handing over of certain works of construction as a supply of goods.

Article 15

1 Electricity, gas, heat, refrigeration and the like shall be treated as tangible property.

2 Member States may regard the following as tangible property:

- a certain interests in immovable property;
- b rights in rem giving the holder thereof a right of use over immovable property;
- c shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof.

Article 16

The application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible.

However, the application of goods for business use as samples or as gifts of small value shall not be treated as a supply of goods for consideration.

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Article 17

1 The transfer by a taxable person of goods forming part of his business assets to another Member State shall be treated as a supply of goods for consideration.

‘Transfer to another Member State’ shall mean the dispatch or transport of movable tangible property by or on behalf of the taxable person, for the purposes of his business, to a destination outside the territory of the Member State in which the property is located, but within the Community.

2 The dispatch or transport of goods for the purposes of any of the following transactions shall not be regarded as a transfer to another Member State:

- a the supply of the goods by the taxable person within the territory of the Member State in which the dispatch or transport ends, in accordance with the conditions laid down in Article 33;
- b the supply of the goods, for installation or assembly by or on behalf of the supplier, by the taxable person within the territory of the Member State in which dispatch or transport of the goods ends, in accordance with the conditions laid down in Article 36;
- c the supply of the goods by the taxable person on board a ship, an aircraft or a train in the course of a passenger transport operation, in accordance with the conditions laid down in Article 37;
- d the supply of gas through the natural gas distribution system, or of electricity, in accordance with the conditions laid down in Articles 38 and 39;
- e the supply of the goods by the taxable person within the territory of the Member State, in accordance with the conditions laid down in Articles 138, 146, 147, 148, 151 or 152;
- f the supply of a service performed for the taxable person and consisting of work on the goods in question physically carried out within the territory of the Member State in which dispatch or transport of the goods ends, provided that the goods, after being worked upon, are returned to that taxable person in the Member State from which they were initially dispatched or transported;
- g the temporary use of the goods within the territory of the Member State in which dispatch or transport of the goods ends, for the purposes of the supply of services by the taxable person established within the Member State in which dispatch or transport of the goods began;
- h the temporary use of the goods, for a period not exceeding twenty-four months, within the territory of another Member State, in which the importation of the same goods from a third country with a view to their temporary use would be covered by the arrangements for temporary importation with full exemption from import duties.

3 If one of the conditions governing eligibility under paragraph 2 is no longer met, the goods shall be regarded as having been transferred to another Member State. In such cases, the transfer shall be deemed to take place at the time when that condition ceases to be met.

Article 18

Member States may treat each of the following transactions as a supply of goods for consideration:

- (a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible;

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- (b) the application of goods by a taxable person for the purposes of a non-taxable area of activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with point (a);
- (c) with the exception of the cases referred to in Article 19, the retention of goods by a taxable person, or by his successors, when he ceases to carry out a taxable economic activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with point (a).

Article 19

In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor.

Member States may, in cases where the recipient is not wholly liable to tax, take the measures necessary to prevent distortion of competition. They may also adopt any measures needed to prevent tax evasion or avoidance through the use of this Article.

CHAPTER 2

Intra-Community acquisition of goods

Article 20

'Intra-Community acquisition of goods' shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.

Where goods acquired by a non-taxable legal person are dispatched or transported from a third territory or a third country and imported by that non-taxable legal person into a Member State other than the Member State in which dispatch or transport of the goods ends, the goods shall be regarded as having been dispatched or transported from the Member State of importation. That Member State shall grant the importer designated or recognised under Article 201 as liable for payment of VAT a refund of the VAT paid in respect of the importation of the goods, provided that the importer establishes that VAT has been applied to his acquisition in the Member State in which dispatch or transport of the goods ends.

Article 21

The application by a taxable person, for the purposes of his business, of goods dispatched or transported by or on behalf of that taxable person from another Member State, within which the goods were produced, extracted, processed, purchased or acquired within the meaning of Article 2(1)(b), or into which they were imported by that taxable person for the purposes of his business, shall be treated as an intra-Community acquisition of goods for consideration.

Article 22

The application by the armed forces of a State party to the North Atlantic Treaty, for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic

market of a Member State shall be treated as an intra-Community acquisition of goods for consideration, where the importation of those goods would not be eligible for the exemption provided for in point (h) of Article 143.

Article 23

Member States shall take the measures necessary to ensure that a transaction which would have been classed as a supply of goods if it had been carried out within their territory by a taxable person acting as such is classed as an intra-Community acquisition of goods.

CHAPTER 3

Supply of services

Article 24

1 'Supply of services' shall mean any transaction which does not constitute a supply of goods.

2 'Telecommunications services' shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of access to global information networks.

Article 25

A supply of services may consist, inter alia, in one of the following transactions:

- (a) the assignment of intangible property, whether or not the subject of a document establishing title;
- (b) the obligation to refrain from an act, or to tolerate an act or situation;
- (c) the performance of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.

Article 26

1 Each of the following transactions shall be treated as a supply of services for consideration:

- a the use of goods forming part of the assets of a business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business, where the VAT on such goods was wholly or partly deductible;
- b the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business.

2 Member States may derogate from paragraph 1, provided that such derogation does not lead to distortion of competition.

Article 27

In order to prevent distortion of competition and after consulting the VAT Committee, Member States may treat as a supply of services for consideration the supply by a taxable

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person of a service for the purposes of his business, where the VAT on such a service, were it supplied by another taxable person, would not be wholly deductible.

Article 28

Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.

Article 29

Article 19 shall apply in like manner to the supply of services.

CHAPTER 4

Importation of goods

Article 30

‘Importation of goods’ shall mean the entry into the Community of goods which are not in free circulation within the meaning of Article 24 of the Treaty.

In addition to the transaction referred to in the first paragraph, the entry into the Community of goods which are in free circulation, coming from a third territory forming part of the customs territory of the Community, shall be regarded as importation of goods.

TITLE V

PLACE OF TAXABLE TRANSACTIONS

CHAPTER 1

Place of supply of goods

Section 1

Supply of goods without transport

Article 31

Where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when the supply takes place.

Section 2

Supply of goods with transport

Article 32

Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins.

However, if dispatch or transport of the goods begins in a third territory or third country, both the place of supply by the importer designated or recognised under Article 201 as liable for payment of VAT and the place of any subsequent supply shall be deemed to be within the Member State of importation of the goods.

Article 33

1 By way of derogation from Article 32, the place of supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that in which dispatch or transport of the goods ends shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends, where the following conditions are met:

- a the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;
- b the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

2 Where the goods supplied are dispatched or transported from a third territory or a third country and imported by the supplier into a Member State other than that in which dispatch or transport of the goods to the customer ends, they shall be regarded as having been dispatched or transported from the Member State of importation.

Article 34

1 Provided the following conditions are met, Article 33 shall not apply to supplies of goods all of which are dispatched or transported to the same Member State, where that Member State is the Member State in which dispatch or transport of the goods ends:

- a the goods supplied are not products subject to excise duty;
- b the total value, exclusive of VAT, of such supplies effected under the conditions laid down in Article 33 within that Member State does not in any one calendar year exceed EUR 100 000 or the equivalent in national currency;
- c the total value, exclusive of VAT, of the supplies of goods, other than products subject to excise duty, effected under the conditions laid down in Article 33 within that Member State did not in the previous calendar year exceed EUR 100 000 or the equivalent in national currency.

2 The Member State within the territory of which the goods are located at the time when their dispatch or transport to the customer ends may limit the threshold referred to in paragraph 1 to EUR 35 000 or the equivalent in national currency, where that Member State fears that the threshold of EUR 100 000 might cause serious distortion of competition.

Member States which exercise the option under the first subparagraph shall take the measures necessary to inform accordingly the competent public authorities in the Member State in which dispatch or transport of the goods begins.

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3 The Commission shall present to the Council at the earliest opportunity a report on the operation of the special EUR 35 000 threshold referred to in paragraph 2, accompanied, if necessary, by appropriate proposals.

4 The Member State within the territory of which the goods are located at the time when their dispatch or transport begins shall grant those taxable persons who carry out supplies of goods eligible under paragraph 1 the right to opt for the place of supply to be determined in accordance with Article 33.

The Member States concerned shall lay down the detailed rules governing the exercise of the option referred to in the first subparagraph, which shall in any event cover two calendar years.

Article 35

Articles 33 and 34 shall not apply to supplies of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), nor to supplies of second-hand means of transport, as defined in Article 327(3), subject to VAT in accordance with the relevant special arrangements.

Article 36

Where goods dispatched or transported by the supplier, by the customer or by a third person are 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.

Where the installation or assembly is carried out in a Member State other than that of the supplier, the Member State within the territory of which the installation or assembly is carried out shall take the measures necessary to ensure that there is no double taxation in that Member State.

Section 3

Supply of goods on board ships, aircraft or trains

Article 37

1 Where goods are supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, the place of supply shall be deemed to be at the point of departure of the passenger transport operation.

2 For the purposes of paragraph 1, 'section of a passenger transport operation effected within the Community' shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

'Point of departure of a passenger transport operation' shall mean the first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community.

'Point of arrival of a passenger transport operation' shall mean the last scheduled point of disembarkation within the Community of passengers who embarked in the Community, where applicable before a stopover outside the Community.

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In the case of a return trip, the return leg shall be regarded as a separate transport operation.

3 The Commission shall, at the earliest opportunity, present to the Council a report, accompanied if necessary by appropriate proposals, on the place of taxation of the supply of goods for consumption on board and the supply of services, including restaurant services, for passengers on board ships, aircraft or trains.

Pending adoption of the proposals referred to in the first subparagraph, Member States may exempt or continue to exempt, with deductibility of the VAT paid at the preceding stage, the supply of goods for consumption on board in respect of which the place of taxation is determined in accordance with paragraph 1.

Section 4

Supply of goods through distribution systems

Article 38

1 In the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2 For the purposes of paragraph 1, 'taxable dealer' shall mean a taxable person whose principal activity in respect of purchases of gas or electricity is reselling those products and whose own consumption of those products is negligible.

Article 39

In the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by Article 38, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.

Where all or part of the gas or electricity is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.

CHAPTER 2

Place of an intra-Community acquisition of goods

Article 40

The place of an intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends.

Article 41

Without prejudice to Article 40, the place of an intra-Community acquisition of goods as referred to in Article 2(1)(b)(i) shall be deemed to be within the territory of the Member

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State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition in accordance with Article 40.

If VAT is applied to the acquisition in accordance with the first paragraph and subsequently applied, pursuant to Article 40, to the acquisition in the Member State in which dispatch or transport of the goods ends, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.

Article 42

The first paragraph of Article 41 shall not apply and VAT shall be deemed to have been applied to the intra-Community acquisition of goods in accordance with Article 40 where the following conditions are met:

- (a) the person acquiring the goods establishes that he has made the intra-Community acquisition for the purposes of a subsequent supply, within the territory of the Member State identified in accordance with Article 40, for which the person to whom the supply is made has been designated in accordance with Article 197 as liable for payment of VAT;
- (b) the person acquiring the goods has satisfied the obligations laid down in Article 265 relating to submission of the recapitulative statement.

CHAPTER 3

Place of supply of services

Section 1

General rule

Article 43

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

Section 2

Particular provisions

Subsection 1

Supply of services by intermediaries

Article 44

The place of supply of services by an intermediary acting in the name and on behalf of another person, other than those referred to in Articles 50 and 54 and in Article 56(1),

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shall be the place where the underlying transaction is supplied in accordance with this Directive.

However, where the customer of the services supplied by the intermediary is identified for VAT purposes in a Member State other than that within the territory of which that transaction is carried out, the place of the supply of services by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Subsection 2

Supply of services connected with immovable property

Article 45

The place of supply of services connected with immovable property, including the services of estate agents and experts, and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is located.

Subsection 3

Supply of transport

Article 46

The place of supply of transport other than the intra-Community transport of goods shall be the place where the transport takes place, proportionately in terms of distances covered.

Article 47

The place of supply of intra-Community transport of goods shall be the place of departure of the transport.

However, where intra-Community transport of goods is supplied to customers identified for VAT purposes in a Member State other than that of the departure of the transport, the place of supply shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 48

‘Intra-Community transport of goods’ shall mean any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

‘Place of departure’ shall mean the place where transport of the goods actually begins, irrespective of distances covered in order to reach the place where the goods are located.

‘Place of arrival’ shall mean the place where transport of the goods actually ends.

Article 49

The transport of goods in respect of which the place of departure and the place of arrival are situated within the territory of the same Member State shall be treated as intra-Community transport of goods where such transport is directly linked to transport of goods in respect of which the place of departure and the place of arrival are situated within the territory of two different Member States.

Article 50

The place of the supply of services by an intermediary, acting in the name and on behalf of another person, where the intermediary takes part in the intra-Community transport of goods, shall be the place of departure of the transport.

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

Article 51

Member States need not apply VAT to that part of the intra-Community transport of goods taking place over waters which do not form part of the territory of the Community.

Subsection 4

Supply of cultural and similar services, ancillary transport services or services relating to movable tangible property

Article 52

The place of supply of the following services shall be the place where the services are physically carried out:

- (a) cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities and, where appropriate, ancillary services;
- (b) ancillary transport activities, such as loading, unloading, handling and similar activities;
- (c) valuations of movable tangible property or work on such property.

Article 53

By way of derogation from Article 52(b), the place of supply of services involving activities ancillary to the intra-Community transport of goods, supplied to customers identified for VAT purposes in a Member State other than that in the territory of which the activities are physically carried out, shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 54

The place of the supply of services by an intermediary, acting in the name and on behalf of another person, where the intermediary takes part in the supply of services consisting

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in activities ancillary to the intra-Community transport of goods, shall be the place where the ancillary activities are physically carried out.

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

Article 55

By way of derogation from Article 52(c), the place of supply of services involving the valuation of movable tangible property or work on such property, supplied to customers identified for VAT purposes in a Member State other than that in the territory of which the services are physically carried out, shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

The derogation referred to in the first paragraph shall apply only where the goods are dispatched or transported out of the Member State in which the services were physically carried out.

Subsection 5

Supply of miscellaneous services

Article 56

1 The place of supply of the following services to customers established outside the Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides:

- a transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- b advertising services;
- c the services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- d obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this paragraph;
- e banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;
- f the supply of staff;
- g the hiring out of movable tangible property, with the exception of all means of transport;
- h the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- i telecommunications services;
- j radio and television broadcasting services;
- k electronically supplied services, such as those referred to in Annex II;

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- 1 the supply of services by intermediaries, acting in the name and on behalf of other persons, where those intermediaries take part in the supply of the services referred to in this paragraph.
- 2 Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service for the purposes of point (k) of paragraph 1.
- [^{F13} Points (j) and (k) of paragraph 1 and paragraph 2 shall apply until 31 December 2008.]

Textual Amendments

- F1** Substituted by [Council Directive 2006/138/EC of 19 December 2006 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.](#)

Article 57

1 Where the services referred to in point (k) of Article 56(1) are supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, the place of supply shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

[^{F12} Paragraph 1 shall apply until 31 December 2008.]

Textual Amendments

- F1** Substituted by [Council Directive 2006/138/EC of 19 December 2006 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.](#)

Subsection 6

Criterion of effective use and enjoyment

Article 58

In order to avoid double taxation, non-taxation or distortion of competition, Member States may, with regard to the supply of the services referred to in Article 56(1) and with regard to the hiring out of means of transport:

- (a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community, if the effective use and enjoyment of the services takes place outside the Community;
- (b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory, if the effective use and enjoyment of the services takes place within their territory.

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However, this provision shall not apply to the services referred to in point (k) of Article 56(1), where those services are rendered to non-taxable persons.

Article 59

1 Member States shall apply Article 58(b) to telecommunications services supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.

[^{F12} Until 31 December 2008, Member States shall apply Article 58(b) to radio and television broadcasting services, as referred to in point (j) of Article 56(1), supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or who has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.]

Textual Amendments

- F1** Substituted by [Council Directive 2006/138/EC of 19 December 2006 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.](#)

CHAPTER 4

Place of importation of goods

Article 60

The place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Community.

Article 61

By way of derogation from Article 60, where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

Similarly, where, on entry into the Community, goods which are in free circulation are placed under one of the arrangements or situations referred to in Articles 276 and 277, the place of importation shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

TITLE VI

CHARGEABLE EVENT AND CHARGEABILITY OF VAT

CHAPTER 1

General provisions*Article 62*

For the purposes of this Directive:

- (1) ‘chargeable event’ shall mean the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled;
- (2) VAT shall become ‘chargeable’ when the tax authority becomes entitled under the law, at a given moment, to claim the tax from the person liable to pay, even though the time of payment may be deferred.

CHAPTER 2

Supply of goods or services*Article 63*

The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.

Article 64

1 Where it gives rise to successive statements of account or successive payments, the supply of goods, other than that consisting in the hire of goods for a certain period or the sale of goods on deferred terms, as referred to in point (b) of Article 14(2), or the supply of services shall be regarded as being completed on expiry of the periods to which such statements of account or payments relate.

2 Member States may provide that, in certain cases, the continuous supply of goods or services over a period of time is to be regarded as being completed at least at intervals of one year.

Article 65

Where a payment is to be made on account before the goods or services are supplied, VAT shall become chargeable on receipt of the payment and on the amount received.

Article 66

By way of derogation from Articles 63, 64 and 65, Member States may provide that VAT is to become chargeable, in respect of certain transactions or certain categories of taxable person at one of the following times:

- (a) no later than the time the invoice is issued;
- (b) no later than the time the payment is received;

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- (c) where an invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

Article 67

1 Where, in accordance with the conditions laid down in Article 138, goods dispatched or transported to a Member State other than that in which dispatch or transport of the goods begins are supplied VAT-exempt or where goods are transferred VAT-exempt to another Member State by a taxable person for the purposes of his business, VAT shall become chargeable on the 15th day of the month following that in which the chargeable event occurs.

2 By way of derogation from paragraph 1, VAT shall become chargeable on issue of the invoice provided for in Article 220, if that invoice is issued before the 15th day of the month following that in which the chargeable event occurs.

CHAPTER 3

Intra-Community acquisition of goods

Article 68

The chargeable event shall occur when the intra-Community acquisition of goods is made.

The intra-Community acquisition of goods shall be regarded as being made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State.

Article 69

1 In the case of the intra-Community acquisition of goods, VAT shall become chargeable on the 15th day of the month following that in which the chargeable event occurs.

2 By way of derogation from paragraph 1, VAT shall become chargeable on issue of the invoice provided for in Article 220, if that invoice is issued before the 15th day of the month following that in which the chargeable event occurs.

CHAPTER 4

Importation of goods

Article 70

The chargeable event shall occur and VAT shall become chargeable when the goods are imported.

Article 71

1 Where, on entry into the Community, goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.

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

2 Where imported goods are not subject to any of the duties referred to in the second subparagraph of paragraph 1, Member States shall, as regards the chargeable event and the moment when VAT becomes chargeable, apply the provisions in force governing customs duties.

TITLE VII

TAXABLE AMOUNT

CHAPTER 4

IMPORTATION OF GOODS

Article 72

For the purposes of this Directive, ‘open market value’ shall mean the full amount that, in order to obtain the goods or services in question at that time, a customer at the same marketing stage at which the supply of goods or services takes place, would have to pay, under conditions of fair competition, to a supplier at arm's length within the territory of the Member State in which the supply is subject to tax.

Where no comparable supply of goods or services can be ascertained, ‘open market value’ shall mean the following:

- (1) in respect of goods, an amount that is not less than the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply;
- (2) in respect of services, an amount that is not less than the full cost to the taxable person of providing the service.

CHAPTER 2

Supply of goods or services

Article 73

In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

Article 74

Where a taxable person applies or disposes of goods forming part of his business assets, or where goods are retained by a taxable person, or by his successors, when his taxable economic activity ceases, as referred to in Articles 16 and 18, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase

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price, the cost price, determined at the time when the application, disposal or retention takes place.

Article 75

In respect of the supply of services, as referred to in Article 26, where goods forming part of the assets of a business are used for private purposes or services are carried out free of charge, the taxable amount shall be the full cost to the taxable person of providing the services.

Article 76

In respect of the supply of goods consisting in transfer to another Member State, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time the transfer takes place.

Article 77

In respect of the supply by a taxable person of a service for the purposes of his business, as referred to in Article 27, the taxable amount shall be the open market value of the service supplied.

Article 78

The taxable amount shall include the following factors:

- (a) taxes, duties, levies and charges, excluding the VAT itself;
- (b) incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.

For the purposes of point (b) of the first paragraph, Member States may regard expenses covered by a separate agreement as incidental expenses.

Article 79

The taxable amount shall not include the following factors:

- (a) price reductions by way of discount for early payment;
- (b) price discounts and rebates granted to the customer and obtained by him at the time of the supply;
- (c) amounts received by a taxable person from the customer, as repayment of expenditure incurred in the name and on behalf of the customer, and entered in his books in a suspense account.

The taxable person must furnish proof of the actual amount of the expenditure referred to in point (c) of the first paragraph and may not deduct any VAT which may have been charged.

Article 80

1 In order to prevent tax evasion or avoidance, Member States may in any of the following cases take measures to ensure that, in respect of the supply of goods or services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State, the taxable amount is to be the open market value:

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- a where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177;
- b where the consideration is lower than the open market value and the supplier does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177 and the supply is subject to an exemption under Articles 132, 135, 136, 371, 375, 376, 377, 378(2), 379(2) or Articles 380 to 390;
- c where the consideration is higher than the open market value and the supplier does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177.

For the purposes of the first subparagraph, legal ties may include the relationship between an employer and employee or the employee's family, or any other closely connected persons.

2 Where Member States exercise the option provided for in paragraph 1, they may restrict the categories of suppliers or recipients to whom the measures shall apply.

3 Member States shall inform the VAT Committee of national legislative measures adopted pursuant to paragraph 1 in so far as these are not measures authorised by the Council prior to 13 August 2006 in accordance with Article 27 (1) to (4) of Directive 77/388/EEC, and which are continued under paragraph 1 of this Article.

Article 81

Member States which, at 1 January 1993, were not availing themselves of the option under Article 98 of applying a reduced rate may, if they avail themselves of the option under Article 89, provide that in respect of the supply of works of art, as referred to in Article 103(2), the taxable amount is to be equal to a fraction of the amount determined in accordance with Articles 73, 74, 76, 78 and 79.

The fraction referred to in the first paragraph shall be determined in such a way that the VAT thus due is equal to at least 5 % of the amount determined in accordance with Articles 73, 74, 76, 78 and 79.

Article 82

Member States may provide that, in respect of the supply of goods and services, the taxable amount is to include the value of exempt investment gold within the meaning of Article 346, which has been provided by the customer to be used as basis for working and which as a result, loses its VAT exempt investment gold status when such goods and services are supplied. The value to be used is the open market value of the investment gold at the time that those goods and services are supplied.

CHAPTER 3

Intra-Community acquisition of goods

Article 83

In respect of the intra-Community acquisition of goods, the taxable amount shall be established on the basis of the same factors as are used in accordance with Chapter 1 to determine the taxable amount for the supply of the same goods within the territory of the Member State concerned. In the case of the transactions, to be treated as intra-Community acquisitions of goods, referred to in Articles 21 and 22, the taxable amount

shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of the supply.

Article 84

1 Member States shall take the measures necessary to ensure that the excise duty due from or paid by the person making the intra-Community acquisition of a product subject to excise duty is included in the taxable amount in accordance with point (a) of the first paragraph of Article 78.

2 Where, after the intra-Community acquisition of goods has been made, the person acquiring the goods obtains a refund of the excise duty paid in the Member State in which dispatch or transport of the goods began, the taxable amount shall be reduced accordingly in the Member State in the territory of which the acquisition was made.

CHAPTER 4

Importation of goods

Article 85

In respect of the importation of goods, the taxable amount shall be the value for customs purposes, determined in accordance with the Community provisions in force.

Article 86

1 The taxable amount shall include the following factors, in so far as they are not already included:

- a taxes, duties, levies and other charges due outside the Member State of importation, and those due by reason of importation, excluding the VAT to be levied;
- b incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the Member State of importation as well as those resulting from transport to another place of destination within the Community, if that other place is known when the chargeable event occurs.

2 For the purposes of point (b) of paragraph 1, 'first place of destination' shall mean the place mentioned on the consignment note or on any other document under which the goods are imported into the Member State of importation. If no such mention is made, the first place of destination shall be deemed to be the place of the first transfer of cargo in the Member State of importation.

Article 87

The taxable amount shall not include the following factors:

- (a) price reductions by way of discount for early payment;
- (b) price discounts and rebates granted to the customer and obtained by him at the time of importation.

Article 88

Where goods temporarily exported from the Community are re-imported after having undergone, outside the Community, repair, processing, adaptation, making up or re-working, Member States shall take steps to ensure that the tax treatment of the goods

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for VAT purposes is the same as that which would have been applied had the repair, processing, adaptation, making up or re-working been carried out within their territory.

Article 89

Member States which, at 1 January 1993, were not availing themselves of the option under Article 98 of applying a reduced rate may provide that in respect of the importation of works of art, collectors' items and antiques, as defined in points (2), (3) and (4) of Article 311(1), the taxable amount is to be equal to a fraction of the amount determined in accordance with Articles 85, 86 and 87.

The fraction referred to in the first paragraph shall be determined in such a way that the VAT thus due on the importation is equal to at least 5 % of the amount determined in accordance with Articles 85, 86 and 87.

CHAPTER 5

Miscellaneous provisions

Article 90

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

2 In the case of total or partial non-payment, Member States may derogate from paragraph 1.

Article 91

1 Where the factors used to determine the taxable amount on importation are expressed in a currency other than that of the Member State in which assessment takes place, the exchange rate shall be determined in accordance with the Community provisions governing the calculation of the value for customs purposes.

2 Where the factors used to determine the taxable amount of a transaction other than the importation of goods are expressed in a currency other than that of the Member State in which assessment takes place, the exchange rate applicable shall be the latest selling rate recorded, at the time VAT becomes chargeable, on the most representative exchange market or markets of the Member State concerned, or a rate determined by reference to that or those markets, in accordance with the rules laid down by that Member State.

However, for some of the transactions referred to in the first subparagraph or for certain categories of taxable persons, Member States may use the exchange rate determined in accordance with the Community provisions in force governing the calculation of the value for customs purposes.

Article 92

As regards the costs of returnable packing material, Member States may take one of the following measures:

- (a) exclude them from the taxable amount and take the measures necessary to ensure that this amount is adjusted if the packing material is not returned;

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- (b) include them in the taxable amount and take the measures necessary to ensure that this amount is adjusted if the packing material is in fact returned.

TITLE VIII

RATES

CHAPTER 1

Application of rates

Article 93

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

However, in the following situations, the rate applicable shall be that in force when VAT becomes chargeable:

- (a) in the cases referred to in Articles 65 and 66;
- (b) in the case of an intra-Community acquisition of goods;
- (c) in the cases, concerning the importation of goods, referred to in the second subparagraph of Article 71(1) and in Article 71(2).

Article 94

1 The rate applicable to the intra-Community acquisition of goods shall be that applied to the supply of like goods within the territory of the Member State.

2 Subject to the option under Article 103(1) of applying a reduced rate to the importation of works of art, collectors' items or antiques, the rate applicable to the importation of goods shall be that applied to the supply of like goods within the territory of the Member State.

Article 95

Where rates are changed, Member States may, in the cases referred to in Articles 65 and 66, effect adjustments in order to take account of the rate applying at the time when the goods or services were supplied.

Member States may also adopt all appropriate transitional measures.

CHAPTER 2

Structure and level of rates

Section 1

Standard rate

Article 96

Member States shall apply a standard rate of VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.

Article 97

1 From 1 January 2006 until 31 December 2010, the standard rate may not be less than 15 %.

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

Section 2

Reduced rates

Article 98

1 Member States may apply either one or two reduced rates.

2 The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

The reduced rates shall not apply to the services referred to in point (k) of Article 56(1).

3 When applying the reduced rates provided for in paragraph 1 to categories of goods, Member States may use the Combined Nomenclature to establish the precise coverage of the category concerned.

Article 99

1 The reduced rates shall be fixed as a percentage of the taxable amount, which may not be less than 5 %.

2 Each reduced rate shall be so fixed that the amount of VAT resulting from its application is such that the VAT deductible under Articles 167 to 171 and Articles 173 to 177 can normally be deducted in full.

Article 100

On the basis of a report from the Commission, the Council shall, starting in 1994, review the scope of the reduced rates every two years.

The Council may, in accordance with Article 93 of the Treaty, decide to alter the list of goods and services set out in Annex III.

Article 101

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

Section 3

Particular provisions

Article 102

Member States may apply a reduced rate to the supply of natural gas, of electricity or of district heating, provided that no risk of distortion of competition thereby arises.

Any Member State intending to apply a reduced rate under the first paragraph must, before doing so, inform the Commission accordingly. The Commission shall decide whether or not there is a risk of distortion of competition. If the Commission has not taken that decision within three months of receipt of the information, no risk of distortion of competition shall be deemed to exist.

Article 103

1 Member States may provide that the reduced rate, or one of the reduced rates, which they apply in accordance with Articles 98 and 99 is also to apply to the importation of works of art, collectors' items and antiques, as defined in points (2), (3) and (4) of Article 311(1).

2 If Member States avail themselves of the option under paragraph 1, they may also apply the reduced rate to the following transactions:

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

Article 104

Austria may, in the communes of Jungholz and Mittelberg (Kleines Walsertal), apply a second standard rate which is lower than the corresponding rate applied in the rest of Austria but not less than 15 %.

Article 105

Portugal may, in the case of transactions carried out in the autonomous regions of the Azores and Madeira and of direct importation into those regions, apply rates lower than those applying on the mainland.

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CHAPTER 3

Temporary provisions for particular labour-intensive services

Article 106

The Council may, acting unanimously on a proposal from the Commission, allow Member States to apply until 31 December 2010 at the latest the reduced rates provided for in Article 98 to services listed in Annex IV.

The reduced rates may be applied to services from no more than two of the categories set out in Annex IV.

In exceptional cases a Member State may be allowed to apply the reduced rates to services from three of those categories.

Article 107

The services referred to in Article 106 must meet the following conditions:

- (a) they must be labour-intensive;
- (b) they must largely be provided direct to final consumers;
- (c) they must be mainly local and not likely to cause distortion of competition.

There must also be a close link between the decrease in prices resulting from the rate reduction and the foreseeable increase in demand and employment. Application of a reduced rate must not prejudice the smooth functioning of the internal market.

Article 108

Any Member State wishing to apply for the first time after 31 December 2005 a reduced rate to one or more of the services referred to in Article 106 pursuant to this Article shall inform the Commission accordingly no later than 31 March 2006. It shall communicate to it before that date all relevant information concerning the new measures it wishes to introduce, in particular the following:

- (a) scope of the measure and detailed description of the services concerned;
- (b) particulars showing that the conditions laid down in Article 107 have been met;
- (c) particulars showing the budgetary cost of the measure envisaged.

CHAPTER 4

Special provisions applying until the adoption of definitive arrangements

Article 109

Pending introduction of the definitive arrangements referred to in Article 402, the provisions laid down in this Chapter shall apply.

Article 110

Member States which, at 1 January 1991, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the minimum

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laid down in Article 99 may continue to grant those exemptions or apply those reduced rates.

The exemptions and reduced rates referred to in the first paragraph must be in accordance with Community law and must have been adopted for clearly defined social reasons and for the benefit of the final consumer.

Article 111

Subject to the conditions laid down in the second paragraph of Article 110, exemptions with deductibility of the VAT paid at the preceding stage may continue to be granted in the following cases:

- (a) by Finland in respect of the supply of newspapers and periodicals sold by subscription and the printing of publications distributed to the members of corporations for the public good;
- (b) by Sweden in respect of the supply of newspapers, including radio and cassette newspapers for the visually impaired, pharmaceutical products supplied to hospitals or on prescription, and the production of, or other related services concerning, periodicals of non-profit-making organisations.

Article 112

If the provisions of Article 110 cause for Ireland distortion of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorised by the Commission to apply a reduced rate to such supplies, in accordance with Articles 98 and 99.

In the case referred to in the first paragraph, Ireland shall submit a request to the Commission, together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorised to apply the reduced rates proposed.

Article 113

Member States which, at 1 January 1991, in accordance with Community law, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the minimum laid down in Article 99, in respect of goods and services other than those specified in Annex III, may apply the reduced rate, or one of the two reduced rates, provided for in Article 98 to the supply of such goods or services.

Article 114

1 Member States which, on 1 January 1993, were obliged to increase their standard rate in force at 1 January 1991 by more than 2 % may apply a reduced rate lower than the minimum laid down in Article 99 to the supply of goods and services in the categories set out in Annex III.

The Member States referred to in the first subparagraph may also apply such a rate to restaurant services, children's clothing, children's footwear and housing.

2 Member States may not rely on paragraph 1 to introduce exemptions with deductibility of the VAT paid at the preceding stage.

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Article 115

Member States which, at 1 January 1991, were applying a reduced rate to restaurant services, children's clothing, children's footwear or housing may continue to apply such a rate to the supply of those goods or services.

Article 116

Portugal may apply one of the two reduced rates provided for in Article 98 to restaurant services, provided that the rate is not lower than 12 %.

Article 117

1 For the purposes of applying Article 115, Austria may continue to apply a reduced rate to restaurant services.

2 Austria may apply one of the two reduced rates provided for in Article 98 to the letting of immovable property for residential use, provided that the rate is not lower than 10 %.

Article 118

Member States which, at 1 January 1991, were applying a reduced rate to the supply of goods or services other than those specified in Annex III may apply the reduced rate, or one of the two reduced rates, provided for in Article 98 to the supply of those goods or services, provided that the rate is not lower than 12 %.

The first paragraph shall not apply to the supply of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), subject to VAT in accordance with the margin scheme provided for in Articles 312 to 325 or the arrangements for sales by public auction.

Article 119

For the purposes of applying Article 118, Austria may apply a reduced rate to wines produced on an agricultural holding by the producer-farmer, provided that the rate is not lower than 12 %.

Article 120

Greece may apply rates up to 30 % lower than the corresponding rates applied in mainland Greece in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the islands of Thassos, the Northern Sporades, Samothrace and Skiros.

Article 121

Member States which, at 1 January 1993, regarded work under contract as the supply of goods may apply to the delivery of work under contract the rate applicable to the goods obtained after execution of the work under contract.

For the purposes of applying the first paragraph, 'delivery of work under contract' shall mean the handing over 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 that purpose, whether or not the contractor has provided any part of the materials used.

Article 122

Member States may apply a reduced rate to the supply of live plants and other floricultural products, including bulbs, roots and the like, cut flowers and ornamental foliage, and of wood for use as firewood.

CHAPTER 5

Temporary provisions

Article 123

The Czech Republic may, until 31 December 2007, continue to apply a reduced rate of not less than 5 % to the following transactions:

- (a) the supply of heat energy used by households and small entrepreneurs who are not subject to VAT for heating and the production of hot water, excluding raw materials used to generate heat energy;
- (b) the supply of construction work for residential housing not provided as part of a social policy, excluding building materials.

Article 124

Estonia may, until 30 June 2007, continue to apply a reduced rate of not less than 5 % to the supply of heating sold to natural persons, housing associations, apartment associations, churches, congregations, and institutions or bodies financed from the State, rural municipality or city budget, as well as to the supply of peat, fuel briquettes, coal and firewood to natural persons.

Article 125

1 Cyprus may, until 31 December 2007, continue to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of pharmaceuticals and foodstuffs for human consumption, with the exception of ice cream, ice lollies, frozen yoghurt, water ice and similar products and savoury food products (potato crisps/sticks, puffs and similar products packaged for human consumption without further preparation).

2 Cyprus may continue to apply a reduced rate of not less than 5 % to the supply of restaurant services, until 31 December 2007 or until the introduction of definitive arrangements, as referred to in Article 402, whichever is the earlier.

Article 126

Hungary may continue to apply a reduced rate of not less than 12 % to the following transactions:

- (a) the supply of coal, coal-brick and coke, firewood and charcoal, and the supply of district heating services, until 31 December 2007;
- (b) the supply of restaurant services and of foodstuffs sold on similar premises, until 31 December 2007 or until the introduction of definitive arrangements, as referred to in Article 402, whichever is the earlier.

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Article 127

Malta may, until 1 January 2010, continue to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of foodstuffs for human consumption and pharmaceuticals.

Article 128

1 Poland may, until 31 December 2007 grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of certain books and specialist periodicals.

2 Poland may, until 31 December 2007 or until the introduction of definitive arrangements, as referred to in Article 402, whichever is the earlier, continue to apply a reduced rate of not less than 7 % to the supply of restaurant services.

3 Poland may, until 30 April 2008, continue to apply a reduced rate of not less than 3 % to the supply of foodstuffs as referred to in point (1) of Annex III.

4 Poland may, until 30 April 2008, continue to apply a reduced rate of not less than 3 % to the supply of goods and services of a kind normally intended for use in agricultural production, but excluding capital goods such as machinery or buildings, as referred to in point (11) of Annex III.

5 Poland may, until 31 December 2007, continue to apply a reduced rate of not less than 7 % to the supply of services, not provided as part of a social policy, for construction, renovation and alteration of housing, excluding building materials, and to the supply before first occupation of residential buildings or parts of residential buildings, as referred to in point (a) of Article 12(1).

Article 129

1 Slovenia may, until 31 December 2007 or until the introduction of definitive arrangements as referred to in Article 402, whichever is the earlier, continue to apply a reduced rate of not less than 8,5 % to the preparation of meals.

2 Slovenia may, until 31 December 2007, continue to apply a reduced rate of not less than 5 % to the supply of construction, renovation and maintenance work for residential housing not provided as part of a social policy, excluding building materials.

Article 130

Slovakia may continue to apply a reduced rate of not less than 5 % to the following transactions:

- (a) the supply of construction work for residential housing not provided as part of a social policy, excluding building materials, until 31 December 2007;
- (b) the supply of heat energy used by private households and small entrepreneurs who are not subject to VAT for heating and the production of hot water, excluding raw materials used to generate heat energy, until 31 December 2008.

TITLE IX

EXEMPTIONS

CHAPTER 1

General provisions

Article 131

The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.

CHAPTER 2

Exemptions for certain activities in the public interest

Article 132

- 1 Member States shall exempt the following transactions:
 - a the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;
 - b hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;
 - c the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;
 - d the supply of human organs, blood and milk;
 - e the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;
 - f the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;
 - g the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing;
 - h the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised by the Member State concerned as being devoted to social wellbeing;
 - i the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

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- j tuition given privately by teachers and covering school or university education;
- k the supply of staff by religious or philosophical institutions for the purpose of the activities referred to in points (b), (g), (h) and (i) and with a view to spiritual welfare;
- l the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;
- m the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education;
- n the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies recognised by the Member State concerned;
- o the supply of services and goods, by organisations whose activities are exempt pursuant to points (b), (g), (h), (i), (l), (m) and (n), in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;
- p the supply of transport services for sick or injured persons in vehicles specially designed for the purpose, by duly authorised bodies;
- q the activities, other than those of a commercial nature, carried out by public radio and television bodies.

2 For the purposes of point (o) of paragraph 1, Member States may introduce any restrictions necessary, in particular as regards the number of events or the amount of receipts which give entitlement to exemption.

Article 133

Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

- (a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;
- (b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;
- (c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;
- (d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

Member States which, pursuant to Annex E of Directive 77/388/EEC, on 1 January 1989 applied VAT to the transactions referred to in Article 132(1)(m) and (n) may also apply the conditions provided for in point (d) of the first paragraph when the said supply of goods or services by bodies governed by public law is granted exemption.

Article 134

The supply of goods or services shall not be granted exemption, as provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1), in the following cases:

- (a) where the supply is not essential to the transactions exempted;
- (b) where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.

CHAPTER 3

Exemptions for other activities

Article 135

- 1 Member States shall exempt the following transactions:
 - a insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;
 - b the granting and the negotiation of credit and the management of credit by the person granting it;
 - c the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;
 - d transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;
 - e transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;
 - f transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2);
 - g the management of special investment funds as defined by Member States;
 - h the supply at face value of postage stamps valid for use for postal services within their respective territory, fiscal stamps and other similar stamps;
 - i betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State;
 - j the supply of a building or parts thereof, and of the land on which it stands, other than the supply referred to in point (a) of Article 12(1);
 - k the supply of land which has not been built on other than the supply of building land as referred to in point (b) of Article 12(1);
 - l the leasing or letting of immovable property.
- 2 The following shall be excluded from the exemption provided for in point (l) of paragraph 1:
 - a the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites;

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- b the letting of premises and sites for the parking of vehicles;
- c the letting of permanently installed equipment and machinery;
- d the hire of safes.

Member States may apply further exclusions to the scope of the exemption referred to in point (1) of paragraph 1.

Article 136

Member States shall exempt the following transactions:

- (a) the supply of goods used solely for an activity exempted under Articles 132, 135, 371, 375, 376 and 377, Article 378(2), Article 379(2) and Articles 380 to 390, if those goods have not given rise to deductibility;
- (b) the supply of goods on the acquisition or application of which VAT was not deductible, pursuant to Article 176.

Article 137

1 Member States may allow taxable persons a right of option for taxation in respect of the following transactions:

- a the financial transactions referred to in points (b) to (g) of Article 135(1);
- b the supply of a building or of parts thereof, and of the land on which the building stands, other than the supply referred to in point (a) of Article 12(1);
- c the supply of land which has not been built on other than the supply of building land referred to in point (b) of Article 12(1);
- d the leasing or letting of immovable property.

2 Member States shall lay down the detailed rules governing exercise of the option under paragraph 1.

Member States may restrict the scope of that right of option.

CHAPTER 4

Exemptions for intra-community transactions

Section 1

Exemptions related to the supply of goods

Article 138

1 Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.

2 In addition to the supply of goods referred to in paragraph 1, Member States shall exempt the following transactions:

- a the supply of new means of transport, dispatched or transported to the customer at a destination outside their respective territory but within the Community, by or on behalf

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- of the vendor or the customer, for taxable persons, or non-taxable legal persons, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1), or for any other non-taxable person;
- b the supply of products subject to excise duty, dispatched or transported to a destination outside their respective territory but within the Community, to the customer, by or on behalf of the vendor or the customer, for taxable persons, or non-taxable legal persons, whose intra-Community acquisitions of goods other than products subject to excise duty are not subject to VAT pursuant to Article 3(1), where those products have been dispatched or transported in accordance with Article 7(4) and (5) or Article 16 of Directive 92/12/EEC;
 - c the supply of goods, consisting in a transfer to another Member State, which would have been entitled to exemption under paragraph 1 and points (a) and (b) if it had been made on behalf of another taxable person.

Article 139

1 The exemption provided for in Article 138(1) shall not apply to the supply of goods carried out by taxable persons who are covered by the exemption for small enterprises provided for in Articles 282 to 292.

Nor shall that exemption apply to the supply of goods to taxable persons, or non-taxable legal persons, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1).

2 The exemption provided for in Article 138(2)(b) shall not apply to the supply of products subject to excise duty by taxable persons who are covered by the exemption for small enterprises provided for in Articles 282 to 292.

3 The exemption provided for in Article 138(1) and (2)(b) and (c) shall not apply to the supply of goods subject to VAT in accordance with the margin scheme provided for in Articles 312 to 325 or the special arrangements for sales by public auction.

The exemption provided for in Article 138(1) and (2)(c) shall not apply to the supply of second-hand means of transport, as defined in Article 327(3), subject to VAT in accordance with the transitional arrangements for second-hand means of transport.

Section 2

Exemptions for intra-Community acquisitions of goods

Article 140

Member States shall exempt the following transactions:

- (a) the intra-Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within their respective territory;
- (b) the intra-Community acquisition of goods the importation of which would in all circumstances be exempt under points (a), (b) and (c) and (e) to (l) of Article 143;
- (c) the intra-Community acquisition of goods where, pursuant to Articles 170 and 171, the person acquiring the goods would in all circumstances be entitled to full reimbursement of the VAT due under Article 2(1)(b).

Article 141

Each Member State shall take specific measures to ensure that VAT is not charged on the intra-Community acquisition of goods within its territory, made in accordance with Article 40, where the following conditions are met:

- (a) the acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;
- (b) the acquisition of goods is made for the purposes of the subsequent supply of those goods, in the Member State concerned, by the taxable person referred to in point (a);
- (c) the goods thus acquired by the taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;
- (d) the person to whom the subsequent supply is to be made is another taxable person, or a non-taxable legal person, who is identified for VAT purposes in the Member State concerned;
- (e) the person referred to in point (d) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not established in the Member State in which the tax is due.

Section 3

Exemptions for certain transport services

Article 142

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

CHAPTER 5

Exemptions on importation

Article 143

Member States shall exempt the following transactions:

- (a) the final importation of goods of which the supply by a taxable person would in all circumstances be exempt within their respective territory;
- (b) the final importation of goods governed by Council Directives 69/169/EEC⁽¹⁾, 83/181/EEC⁽²⁾ and 2006/79/EC⁽³⁾;
- (c) the final importation of goods, in free circulation from a third territory forming part of the Community customs territory, which would be entitled to exemption under point (b) if they had been imported within the meaning of the first paragraph of Article 30;
- (d) the importation of goods dispatched or transported from a third territory or a third country into a Member State other than that in which the dispatch or transport of the

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- goods ends, where the supply of such goods by the importer designated or recognised under Article 201 as liable for payment of VAT is exempt under Article 138;
- (e) the reimportation, by the person who exported them, of goods in the state in which they were exported, where those goods are exempt from customs duties;
 - (f) the importation, under diplomatic and consular arrangements, of goods which are exempt from customs duties;
 - (g) the importation of goods by international bodies recognised as such by the public authorities of the host Member State, or by members of such bodies, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;
 - (h) the importation of goods, into Member States party to the North Atlantic Treaty, by the armed forces of other States party to that Treaty for the use of those forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort;
 - (i) the importation of goods by the armed forces of the United Kingdom stationed in the island of Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus, dated 16 August 1960, which are for the use of those forces or the civilian staff accompanying them or for supplying their messes or canteens;
 - (j) the importation into ports, by sea fishing undertakings, of their catches, unprocessed or after undergoing preservation for marketing but before being supplied;
 - (k) the importation of gold by central banks;
 - (l) the importation of gas through the natural gas distribution system, or of electricity.

Article 144

Member States shall exempt the supply of services relating to the importation of goods where the value of such services is included in the taxable amount in accordance with Article 86(1)(b).

Article 145

1 The Commission shall, where appropriate, as soon as possible, present to the Council proposals designed to delimit the scope of the exemptions provided for in Articles 143 and 144 and to lay down the detailed rules for their implementation.

2 Pending the entry into force of the rules referred to in paragraph 1, Member States may maintain their national provisions in force.

Member States may adapt their national provisions so as to minimise distortion of competition and, in particular, to prevent non-taxation or double taxation within the Community.

Member States may use whatever administrative procedures they consider most appropriate to achieve exemption.

3 Member States shall notify to the Commission, which shall inform the other Member States accordingly, the provisions of national law which are in force, in so far as these have not already been notified, and those which they adopt pursuant to paragraph 2.

CHAPTER 6

Exemptions on exportation

Article 146

- 1 Member States shall exempt the following transactions:
 - a the supply of goods dispatched or transported to a destination outside the Community by or on behalf of the vendor;
 - b the supply of goods dispatched or transported to a destination outside the Community by or on behalf of a customer not established within their respective territory, with the exception of goods transported by the customer himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use;
 - c the supply of goods to approved bodies which export them out of the Community as part of their humanitarian, charitable or teaching activities outside the Community;
 - d the supply of services consisting in work on movable property acquired or imported for the purpose of undergoing such work within the Community, and dispatched or transported out of the Community by the supplier, by the customer if not established within their respective territory or on behalf of either of them;
 - e the supply of services, including transport and ancillary transactions, but excluding the supply of services exempted in accordance with Articles 132 and 135, where these are directly connected with the exportation or importation of goods covered by Article 61 and Article 157(1)(a).
- 2 The exemption provided for in point (c) of paragraph 1 may be granted by means of a refund of the VAT.

Article 147

- 1 Where the supply of goods referred to in point (b) of Article 146(1) relates to goods to be carried in the personal luggage of travellers, the exemption shall apply only if the following conditions are met:
 - a the traveller is not established within the Community;
 - b the goods are transported out of the Community before the end of the third month following that in which the supply takes place;
 - c the total value of the supply, including VAT, is more than EUR 175 or the equivalent in national currency, fixed annually by applying the conversion rate obtaining on the first working day of October with effect from 1 January of the following year.

However, Member States may exempt a supply with a total value of less than the amount specified in point (c) of the first subparagraph.

- 2 For the purposes of paragraph 1, 'a traveller who is not established within the Community' shall mean a traveller whose permanent address or habitual residence is not located within the Community. In that case 'permanent address or habitual residence' means the place entered as such in a passport, identity card or other document recognised as an identity document by the Member State within whose territory the supply takes place.

Proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office of exit from the Community.

Each Member State shall send to the Commission specimens of the stamps it uses for the endorsement referred to in the second subparagraph. The Commission shall forward that information to the tax authorities of the other Member States.

CHAPTER 7

EXEMPTIONS RELATED TO INTERNATIONAL TRANSPORT

Article 148

Member States shall exempt the following transactions:

- (a) the supply of goods for the fuelling and provisioning of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing, with the exception, in the case of vessels used for inshore fishing, of ships' provisions;
- (b) the supply of goods for the fuelling and provisioning of fighting ships, falling within the combined nomenclature (CN) code 8906 10 00, leaving their territory and bound for ports or anchorages outside the Member State concerned;
- (c) the supply, modification, repair, maintenance, chartering and hiring of the vessels referred to in point (a), and the supply, hiring, repair and maintenance of equipment, including fishing equipment, incorporated or used therein;
- (d) the supply of services other than those referred to in point (c), to meet the direct needs of the vessels referred to in point (a) or of their cargoes;
- (e) the supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- (f) the supply, modification, repair, maintenance, chartering and hiring of the aircraft referred to in point (e), and the supply, hiring, repair and maintenance of equipment incorporated or used therein;
- (g) the supply of services, other than those referred to in point (f), to meet the direct needs of the aircraft referred to in point (e) or of their cargoes.

Article 149

Portugal may treat sea and air transport between the islands making up the autonomous regions of the Azores and Madeira and between those regions and the mainland as international transport.

Article 150

1 The Commission shall, where appropriate, as soon as possible, present to the Council proposals designed to delimit the scope of the exemptions provided for in Article 148 and to lay down the detailed rules for their implementation.

2 Pending the entry into force of the provisions referred to in paragraph 1, Member States may limit the scope of the exemptions provided for in points (a) and (b) of Article 148.

CHAPTER 8

Exemptions relating to certain Transactions treated as exports

Article 151

1 Member States shall exempt the following transactions:

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- a the supply of goods or services under diplomatic and consular arrangements;
- b the supply of goods or services to international bodies recognised as such by the public authorities of the host Member State, and to members of such bodies, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;
- c the supply of goods or services within a Member State which is a party to the North Atlantic Treaty, intended either for the armed forces of other States party to that Treaty for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort;
- d the supply of goods or services to another Member State, intended for the armed forces of any State which is a party to the North Atlantic Treaty, other than the Member State of destination itself, for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort;
- e the supply of goods or services to the armed forces of the United Kingdom stationed in the island of Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus, dated 16 August 1960, which are for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens.

Pending the adoption of common tax rules, the exemptions provided for in the first subparagraph shall be subject to the limitations laid down by the host Member State.

2 In cases where the goods are not dispatched or transported out of the Member State in which the supply takes place, and in the case of services, the exemption may be granted by means of a refund of the VAT.

Article 152

Member States shall exempt the supply of gold to central banks.

CHAPTER 9

Exemptions for the supply of services by intermediaries

Article 153

Member States shall exempt the supply of services by intermediaries, acting in the name and on behalf of another person, where they take part in the transactions referred to in Chapters 6, 7 and 8, or of transactions carried out outside the Community.

The exemption referred to in the first paragraph shall not apply to travel agents who, in the name and on behalf of travellers, supply services which are carried out in other Member States.

CHAPTER 10

Exemptions for transactions relating to international trade

Section 1

Customs warehouses, warehouses other than customs warehouses and similar arrangements

Article 154

For the purposes of this Section, ‘warehouses other than customs warehouses’ shall, in the case of products subject to excise duty, mean the places defined as tax warehouses by Article 4(b) of Directive 92/12/EEC and, in the case of products not subject to excise duty, the places defined as such by the Member States.

Article 155

Without prejudice to other Community tax provisions, Member States may, after consulting the VAT Committee, take special measures designed to exempt all or some of the transactions referred to in this Section, provided that those measures are not aimed at final use or consumption and that the amount of VAT due on cessation of the arrangements or situations referred to in this Section corresponds to the amount of tax which would have been due had each of those transactions been taxed within their territory.

Article 156

- 1 Member States may exempt the following transactions:
 - a the supply of goods which are intended to be presented to customs and, where applicable, placed in temporary storage;
 - b the supply of goods which are intended to be placed in a free zone or in a free warehouse;
 - c the supply of goods which are intended to be placed under customs warehousing arrangements or inward processing arrangements;
 - d the supply of goods which are intended to be admitted into territorial waters in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland;
 - e the supply of goods which are intended to be admitted into territorial waters for the fuelling and provisioning of drilling or production platforms.
- 2 The places referred to in paragraph 1 shall be those defined as such by the Community customs provisions in force.

Article 157

- 1 Member States may exempt the following transactions:
 - a the importation of goods which are intended to be placed under warehousing arrangements other than customs warehousing;
 - b the supply of goods which are intended to be placed, within their territory, under warehousing arrangements other than customs warehousing.

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2 Member States may not provide for warehousing arrangements other than customs warehousing for goods which are not subject to excise duty where those goods are intended to be supplied at the retail stage.

Article 158

1 By way of derogation from Article 157(2), Member States may provide for warehousing arrangements other than customs warehousing in the following cases:

- a where the goods are intended for tax-free shops, for the purposes of the supply of goods to be carried in the personal luggage of travellers taking flights or sea crossings to third territories or third countries, where that supply is exempt pursuant to point (b) of Article 146(1);
- b where the goods are intended for taxable persons, for the purposes of carrying out supplies to travellers on board an aircraft or a ship in the course of a flight or sea crossing where the place of arrival is situated outside the Community;
- c where the goods are intended for taxable persons, for the purposes of carrying out supplies which are exempt from VAT pursuant to Article 151.

2 Where Member States exercise the option of exemption provided for in point (a) of paragraph 1, they shall take the measures necessary to ensure the correct and straightforward application of this exemption and to prevent any evasion, avoidance or abuse.

3 For the purposes of point (a) of paragraph 1, 'tax-free shop' shall mean any establishment which is situated within an airport or port and which fulfils the conditions laid down by the competent public authorities.

Article 159

Member States may exempt the supply of services relating to the supply of goods referred to in Article 156, Article 157(1)(b) or Article 158.

Article 160

1 Member States may exempt the following transactions:

- a the supply of goods or services carried out in the locations referred to in Article 156(1), where one of the situations specified therein still applies within their territory;
- b the supply of goods or services carried out in the locations referred to in Article 157(1)(b) or Article 158, where one of the situations specified in Article 157(1)(b) or in Article 158(1) still applies within their territory.

2 Where Member States exercise the option under point (a) of paragraph 1 in respect of transactions effected in customs warehouses, they shall take the measures necessary to provide for warehousing arrangements other than customs warehousing under which point (b) of paragraph 1 may be applied to the same transactions when they concern goods listed in Annex V and are carried out in warehouses other than customs warehouses.

Article 161

Member States may exempt supply of the following goods and of services relating thereto:

- (a) the supply of goods referred to in the first paragraph of Article 30 while they remain covered by arrangements for temporary importation with total exemption from import duty or by external transit arrangements;

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- (b) the supply of goods referred to in the second paragraph of Article 30 while they remain covered by the internal Community transit procedure referred to in Article 276.

Article 162

Where Member States exercise the option provided for in this Section, they shall take the measures necessary to ensure that the intra-Community acquisition of goods intended to be placed under one of the arrangements or in one of the situations referred to in Article 156, Article 157(1)(b) or Article 158 is covered by the same provisions as the supply of goods carried out within their territory under the same conditions.

Article 163

If the goods cease to be covered by the arrangements or situations referred to in this Section, thus giving rise to importation for the purposes of Article 61, the Member State of importation shall take the measures necessary to prevent double taxation.

Section 2

Transactions exempted with a view to export and in the framework of trade between the Member States

Article 164

1 Member States may, after consulting the VAT Committee, exempt the following transactions carried out by, or intended for, a taxable person up to an amount equal to the value of the exports carried out by that person during the preceding 12 months:

- a intra-Community acquisitions of goods made by the taxable person, and imports for and supplies of goods to the taxable person, with a view to their exportation from the Community as they are or after processing;
- b supplies of services linked with the export business of the taxable person.

2 Where Member States exercise the option of exemption under paragraph 1, they shall, after consulting the VAT Committee, apply that exemption also to transactions relating to supplies carried out by the taxable person, in accordance with the conditions specified in Article 138, up to an amount equal to the value of the supplies carried out by that person, in accordance with the same conditions, during the preceding 12 months.

Article 165

Member States may set a common maximum amount for transactions which they exempt pursuant to Article 164.

Section 3

Provisions common to Sections 1 and 2

Article 166

The Commission shall, where appropriate, as soon as possible, present to the Council proposals concerning common arrangements for applying VAT to the transactions referred to in Sections 1 and 2.

TITLE X

DEDUCTIONS

CHAPTER 1

Origin and scope of right of deduction

Article 167

A right of deduction shall arise at the time the deductible tax becomes chargeable.

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

- (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;
- (b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;
- (c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);
- (d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;
- (e) the VAT due or paid in respect of the importation of goods into that Member State.

Article 169

In addition to the deduction referred to in Article 168, the taxable person shall be entitled to deduct the VAT referred to therein in so far as the goods and services are used for the purposes of the following:

- (a) transactions relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;
- (b) transactions which are exempt pursuant to Articles 138, 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, Article 157(1)(b), Articles 158 to 161 or Article 164;
- (c) transactions which are exempt pursuant to points (a) to (f) of Article 135(1), where the customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community.

Article 170

All taxable persons who, within the meaning of Article 1 of Directive 79/1072/EEC⁽⁴⁾, Article 1 of Directive 86/560/EEC⁽⁵⁾ and Article 171 of this Directive, are not established in the Member State in which they purchase goods and services or import goods subject

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to VAT shall be entitled to obtain a refund of that VAT in so far as the goods and services are used for the purposes of the following:

- (a) transactions referred to in Article 169;
- (b) transactions for which the tax is solely payable by the customer in accordance with Articles 194 to 197 or Article 199.

Article 171

1 VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed implementing rules laid down in Directive 79/1072/EEC.

The taxable persons referred to in Article 1 of Directive 79/1072/EEC shall also, for the purposes of applying that Directive, be regarded as taxable persons who are not established in the Member State concerned where, in the Member State in which they purchase goods and services or import goods subject to VAT, they have only carried out the supply of goods or services to a person designated in accordance with Articles 194 to 197 or Article 199 as liable for payment of VAT.

2 VAT shall be refunded to taxable persons who are not established within the territory of the Community in accordance with the detailed implementing rules laid down in Directive 86/560/EEC.

The taxable persons referred to in Article 1 of Directive 86/560/EEC shall also, for the purposes of applying that Directive, be regarded as taxable persons who are not established in the Community where, in the Member State in which they purchase goods and services or import goods subject to VAT, they have only carried out the supply of goods or services to a person designated in accordance with Articles 194 to 197 or Article 199 as liable for payment of VAT.

3 Directives 79/1072/EEC and 86/560/EEC shall not apply to the supply of goods which is, or may be, exempted pursuant to Article 138 where the goods thus supplied are dispatched or transported by or on behalf of the person acquiring the goods.

Article 172

1 Any person who is regarded as a taxable person by reason of the fact that he supplies, on an occasional basis, a new means of transport in accordance with the conditions specified in Article 138(1) and (2)(a) shall, in the Member State in which the supply takes place, be entitled to deduct the VAT included in the purchase price or paid in respect of the importation or the intra-Community acquisition of this means of transport, up to an amount not exceeding the amount of VAT for which he would be liable if the supply were not exempt.

A right of deduction shall arise and may be exercised only at the time of supply of the new means of transport.

2 Member States shall lay down detailed rules for the implementation of paragraph 1.

CHAPTER 2

Proportional deduction

Article 173

1 In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

2 Member States may take the following measures:

- a authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;
- b require the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;
- c authorise or require the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;
- d authorise or require the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, in respect of all goods and services used for all transactions referred to therein;
- e provide that, where the VAT which is not deductible by the taxable person is insignificant, it is to be treated as nil.

Article 174

1 The deductible proportion shall be made up of a fraction comprising the following amounts:

- a as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions in respect of which VAT is deductible pursuant to Articles 168 and 169;
- b as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which VAT is not deductible.

Member States may include in the denominator the amount of subsidies, other than those directly linked to the price of supplies of goods or services referred to in Article 73.

2 By way of derogation from paragraph 1, the following amounts shall be excluded from the calculation of the deductible proportion:

- a the amount of turnover attributable to supplies of capital goods used by the taxable person for the purposes of his business;
- b the amount of turnover attributable to incidental real estate and financial transactions;
- c the amount of turnover attributable to the transactions specified in points (b) to (g) of Article 135(1) in so far as those transactions are incidental.

3 Where Member States exercise the option under Article 191 not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

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Article 175

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

2 The provisional proportion for a year shall be that calculated on the basis of the preceding year's transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated provisionally, under the supervision of the tax authorities, by the taxable person on the basis of his own forecasts.

However, Member States may retain the rules in force at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

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

CHAPTER 3

Restrictions on the right of deduction

Article 176

The Council, acting unanimously on a proposal from the Commission, shall determine the expenditure in respect of which VAT shall not be deductible. VAT shall in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

Article 177

After consulting the VAT Committee, each Member State may, for cyclical economic reasons, totally or partly exclude all or some capital goods or other goods from the system of deductions.

In order to maintain identical conditions of competition, Member States may, instead of refusing deduction, tax goods manufactured by the taxable person himself or goods which he has purchased within the Community, or imported, in such a way that the tax does not exceed the amount of VAT which would be charged on the acquisition of similar goods.

CHAPTER 4

Rules governing exercise of the right of deduction

Article 178

In order to exercise the right of deduction, a taxable person must meet the following conditions:

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- (a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;
- (b) for the purposes of deductions pursuant to Article 168(b), in respect of transactions treated as the supply of goods or services, he must comply with the formalities as laid down by each Member State;
- (c) for the purposes of deductions pursuant to Article 168(c), in respect of the intra-Community acquisition of goods, he must set out in the VAT return provided for in Article 250 all the information needed for the amount of the VAT due on his intra-Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Articles 220 to 236;
- (d) for the purposes of deductions pursuant to Article 168(d), in respect of transactions treated as intra-Community acquisitions of goods, he must complete the formalities as laid down by each Member State;
- (e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated;
- (f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.

Article 179

The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.

Article 180

Member States may authorise a taxable person to make a deduction which he has not made in accordance with Articles 178 and 179.

Article 181

Member States may authorise a taxable person who does not hold an invoice drawn up in accordance with Articles 220 to 236 to make the deduction referred to in Article 168(c) in respect of his intra-Community acquisitions of goods.

Article 182

Member States shall determine the conditions and detailed rules for applying Articles 180 and 181.

Article 183

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

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

CHAPTER 5

Adjustment of deductions

Article 184

The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.

Article 185

1 Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

2 By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.

Article 186

Member States shall lay down the detailed rules for applying Articles 184 and 185.

Article 187

1 In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

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

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

2 The annual adjustment shall be made only in respect of one-fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired, manufactured or, where applicable, used for the first time.

Article 188

1 If supplied during the adjustment period, capital goods shall be treated as if they had been applied to an economic activity of the taxable person up until expiry of the adjustment period.

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The economic activity shall be presumed to be fully taxed in cases where the supply of the capital goods is taxed.

The economic activity shall be presumed to be fully exempt in cases where the supply of the capital goods is exempt.

2 The adjustment provided for in paragraph 1 shall be made only once in respect of all the time covered by the adjustment period that remains to run. However, where the supply of capital goods is exempt, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which VAT is deductible.

Article 189

For the purposes of applying Articles 187 and 188, Member States may take the following measures:

- (a) define the concept of capital goods;
- (b) specify the amount of the VAT which is to be taken into consideration for adjustment;
- (c) adopt any measures needed to ensure that adjustment does not give rise to any unjustified advantage;
- (d) permit administrative simplifications.

Article 190

For the purposes of Articles 187, 188, 189 and 191, Member States may regard as capital goods those services which have characteristics similar to those normally attributed to capital goods.

Article 191

If, in any Member State, the practical effect of applying Articles 187 and 188 is negligible, that Member State may, after consulting the VAT Committee, refrain from applying those provisions, having regard to the overall impact of VAT in the Member State concerned and the need for administrative simplification, and provided that no distortion of competition thereby arises.

Article 192

Where a taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all measures necessary to ensure that the taxable person does not enjoy unjustified advantage or sustain unjustified harm.

TITLE XI

OBLIGATIONS OF TAXABLE PERSONS AND CERTAIN NON-TAXABLE PERSONS

CHAPTER 1

Obligation to pay

Section 1

Persons liable for payment of VAT to the tax authorities

Article 193

VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202.

Article 194

1 Where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due, Member States may provide that the person liable for payment of VAT is the person to whom the goods or services are supplied.

2 Member States shall lay down the conditions for implementation of paragraph 1.

Article 195

VAT shall be payable by any person who is identified for VAT purposes in the Member State in which the tax is due and to whom goods are supplied in the circumstances specified in Articles 38 or 39, if the supplies are carried out by a taxable person not established within that Member State.

Article 196

VAT shall be payable by any taxable person to whom the services referred to in Article 56 are supplied or by any person identified for VAT purposes in the Member State in which the tax is due to whom the services referred to in Articles 44, 47, 50, 53, 54 and 55 are supplied, if the services are supplied by a taxable person not established in that Member State.

Article 197

1 VAT shall be payable by the person to whom the goods are supplied when the following conditions are met:

- a the taxable transaction is a supply of goods carried out in accordance with the conditions laid down in Article 141;
- b the person to whom the goods are supplied is another taxable person, or a non-taxable legal person, identified for VAT purposes in the Member State in which the supply is carried out;
- c the invoice issued by the taxable person not established in the Member State of the person to whom the goods are supplied is drawn up in accordance with Articles 220 to 236.

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2 Where a tax representative is appointed as the person liable for payment of VAT pursuant to Article 204, Member States may provide for a derogation from paragraph 1 of this Article.

Article 198

1 Where specific transactions relating to investment gold between a taxable person who is a member of a regulated gold bullion market and another taxable person who is not a member of that market are taxed pursuant to Article 352, Member States shall designate the customer as the person liable for payment of VAT.

If the customer who is not a member of the regulated gold bullion market is a taxable person required to be identified for VAT purposes in the Member State in which the tax is due solely in respect of the transactions referred to in Article 352, the vendor shall fulfil the tax obligations on behalf of the customer, in accordance with the law of that Member State.

2 Where gold material or semi-manufactured products of a purity of 325 thousandths or greater, or investment gold as defined in Article 344(1) is supplied by a taxable person exercising one of the options under Articles 348, 349 and 350, Member States may designate the customer as the person liable for payment of VAT.

3 Member States shall lay down the procedures and conditions for implementation of paragraphs 1 and 2.

Article 199

1 Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

- a the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods pursuant to Article 14(3);
- b the supply of staff engaged in activities covered by point (a);
- c the supply of immovable property, as referred to in Article 135(1)(j) and (k), where the supplier has opted for taxation of the supply pursuant to Article 137;
- d the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI;
- e the supply of goods provided as security by one taxable person to another in execution of that security;
- f the supply of goods following the cession of a reservation of ownership to an assignee and the exercising of this right by the assignee;
- g the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.

2 When applying the option provided for in paragraph 1, Member States may specify the supplies of goods and services covered, and the categories of suppliers or recipients to whom these measures may apply.

3 For the purposes of paragraph 1, Member States may take the following measures:

- a provide that a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2 shall be regarded as a taxable person in respect of supplies received as referred to in paragraph 1 of this Article;

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- b provide that a non-taxable body governed by public law, shall be regarded as a taxable person in respect of supplies received as referred to in points (e), (f) and (g) of paragraph 1.

4 Member States shall inform the VAT Committee of national legislative measures adopted pursuant to paragraph 1 in so far as these are not measures authorised by the Council prior to 13 August 2006 in accordance with Article 27(1) to (4) of Directive 77/388/EEC, and which are continued under paragraph 1 of this Article.

Article 200

VAT shall be payable by any person making a taxable intra-Community acquisition of goods.

Article 201

On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation.

Article 202

VAT shall be payable by any person who causes goods to cease to be covered by the arrangements or situations listed in Articles 156, 157, 158, 160 and 161.

Article 203

VAT shall be payable by any person who enters the VAT on an invoice.

Article 204

1 Where, pursuant to Articles 193 to 197 and Articles 199 and 200, the person liable for payment of VAT is a taxable person who is not established in the Member State in which the VAT is due, Member States may allow that person to appoint a tax representative as the person liable for payment of the VAT.

Furthermore, where the taxable transaction is carried out by a taxable person who is not established in the Member State in which the VAT is due and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that provided for in Directive 76/308/EEC⁽⁶⁾ and Regulation (EC) No 1798/2003⁽⁷⁾, Member States may take measures to provide that the person liable for payment of VAT is to be a tax representative appointed by the non-established taxable person.

However, Member States may not apply the option referred to in the second subparagraph to a non-established taxable person, within the meaning of point (1) of Article 358, who has opted for the special scheme for electronically supplied services.

2 The option under the first subparagraph of paragraph 1 shall be subject to the conditions and procedures laid down by each Member State.

Article 205

In the situations referred to in Articles 193 to 200 and Articles 202, 203 and 204, Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.

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Section 2

Payment arrangements

Article 206

Any taxable person liable for payment of VAT must pay the net amount of the VAT when submitting the VAT return provided for in Article 250. Member States may, however, set a different date for payment of that amount or may require interim payments to be made.

Article 207

Member States shall take the measures necessary to ensure that persons who are regarded as liable for payment of VAT in the stead of a taxable person not established in their respective territory, in accordance with Articles 194 to 197 and Articles 199 and 204, comply with the payment obligations set out in this Section.

Member States shall also take the measures necessary to ensure that those persons who, in accordance with Article 205, are held to be jointly and severally liable for payment of the VAT comply with these payment obligations.

Article 208

Where Member States designate the customer for investment gold as the person liable for payment of VAT pursuant to Article 198(1) or if, in the case of gold material, semi-manufactured products, or investment gold as defined in Article 344(1), they exercise the option provided for in Article 198(2) of designating the customer as the person liable for payment of VAT, they shall take the measures necessary to ensure that he complies with the payment obligations set out in this Section.

Article 209

Member States shall take the measures necessary to ensure that non-taxable legal persons who are liable for payment of VAT due in respect of intra-Community acquisitions of goods, as referred to in Article 2(1)(b)(i), comply with the payment obligations set out in this Section.

Article 210

Member States shall adopt arrangements for payment of VAT on intra-Community acquisitions of new means of transport, as referred to in Article 2(1)(b)(ii), and on intra-Community acquisitions of products subject to excise duty, as referred to in Article 2(1)(b)(iii).

Article 211

Member States shall lay down the detailed rules for payment in respect of the importation of goods.

In particular, Member States may provide that, in the case of the importation of goods by taxable persons or certain categories thereof, or by persons liable for payment of VAT or certain categories thereof, the VAT due by reason of the importation need not be paid at the time of importation, on condition that it is entered as such in the VAT return to be submitted in accordance with Article 250.

Article 212

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

CHAPTER 2

Identification

Article 213

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

Member States shall allow, and may require, the statement to be made by electronic means, in accordance with conditions which they lay down.

2 Without prejudice to the first subparagraph of paragraph 1, every taxable person or non-taxable legal person who makes intra-Community acquisitions of goods which are not subject to VAT pursuant to Article 3(1) must state that he makes such acquisitions if the conditions, laid down in that provision, for not making such transactions subject to VAT cease to be fulfilled.

Article 214

1 Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number:

- a every taxable person, with the exception of those referred to in Article 9(2), who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, other than supplies of goods or services in respect of which VAT is payable solely by the customer or the person for whom the goods or services are intended, in accordance with Articles 194 to 197 and Article 199;
- b every taxable person, or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 2(1)(b) and every taxable person, or non-taxable legal person, who exercises the option under Article 3(3) of making their intra-Community acquisitions subject to VAT;
- c every taxable person who, within their respective territory, makes intra-Community acquisitions of goods for the purposes of transactions which relate to the activities referred to in the second subparagraph of Article 9(1) and which are carried out outside that territory.

2 Member States need not identify certain taxable persons who carry out transactions on an occasional basis, as referred to in Article 12.

Article 215

Each individual VAT identification number shall have a prefix in accordance with ISO code 3166 — alpha 2 — by which the Member State of issue may be identified.

Nevertheless, Greece may use the prefix ‘EL’.

Article 216

Member States shall take the measures necessary to ensure that their identification systems enable the taxable persons referred to in Article 214 to be identified and to

ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions, as referred to in Article 402.

CHAPTER 3

Invoicing

Section 1

Definition

Article 217

For the purposes of this Chapter, ‘transmission or provision by electronic means’ shall mean transmission or provision to the addressee of data using electronic equipment for processing (including digital compression) and storage, and employing wire, radio, optical or other electromagnetic means.

Section 2

Concept of invoice

Article 218

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

Article 219

Any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice.

Section 3

Issue of invoices

Article 220

Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party:

- (1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person;
- (2) supplies of goods as referred to in Article 33;
- (3) supplies of goods carried out in accordance with the conditions specified in Article 138;
- (4) any payment on account made to him before one of the supplies of goods referred to in points (1), (2) and (3) was carried out;

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- (5) any payment on account made to him by another taxable person or non-taxable legal person before the provision of services was completed.

Article 221

1 Member States may impose on taxable persons an obligation to issue an invoice in respect of supplies of goods or services made in their territory, other than those referred to in Article 220.

Member States may, in respect of the invoices referred to in the first subparagraph, impose fewer obligations than those laid down in Articles 226, 230, 233, 244 and 246.

2 Member States may release taxable persons from the obligation laid down in Article 220 to issue an invoice in respect of supplies of goods or services which they have made in their territory and which are exempt, with or without deductibility of the VAT paid at the preceding stage, pursuant to Articles 110 and 111, Article 125(1), Article 127, Article 128(1), Articles 132, 135, 136, 371, 375, 376 and 377, Article 378(2), Article 379(2) and Articles 380 to 390.

Article 222

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

Article 223

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

Article 224

1 Invoices may be drawn up by the customer in respect of the supply to him, by a taxable person, of goods or services, if there is a prior agreement between the two parties and provided that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services.

2 The Member States in whose territory the goods or services are supplied shall determine the terms and conditions of such prior agreements and of the acceptance procedures between the taxable person and the customer.

3 Member States may impose further conditions on taxable persons supplying goods or services in their territory concerning the issue of invoices by the customer. They may, in particular, require that such invoices be issued in the name and on behalf of the taxable person.

The conditions referred to in the first subparagraph must always be the same wherever the customer is established.

Article 225

Member States may impose specific conditions on taxable persons supplying goods or services in their territory in cases where the third party, or the customer, who issues invoices is established in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 76/308/EEC and Regulation (EC) No 1798/2003.

Section 4

Content of invoices

Article 226

Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

- (1) the date of issue;
- (2) a sequential number, based on one or more series, which uniquely identifies the invoice;
- (3) the VAT identification number referred to in Article 214 under which the taxable person supplied the goods or services;
- (4) the customer's VAT identification number, as referred to in Article 214, under which the customer received a supply of goods or services in respect of which he is liable for payment of VAT, or received a supply of goods as referred to in Article 138;
- (5) the full name and address of the taxable person and of the customer;
- (6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;
- (7) the date on which the supply of goods or services was made or completed or the date on which the payment on account referred to in points (4) and (5) of Article 220 was made, in so far as that date can be determined and differs from the date of issue of the invoice;
- (8) the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price;
- (9) the VAT rate applied;
- (10) the VAT amount payable, except where a special arrangement is applied under which, in accordance with this Directive, such a detail is excluded;
- (11) in the case of an exemption or where the customer is liable for payment of VAT, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt or subject to the reverse charge procedure;
- (12) in the case of the supply of a new means of transport made in accordance with the conditions specified in Article 138(1) and (2)(a), the characteristics as identified in point (b) of Article 2(2);
- (13) where the margin scheme for travel agents is applied, reference to Article 306, or to the corresponding national provisions, or any other reference indicating that the margin scheme has been applied;
- (14) where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques is applied, reference to Articles 313, 326 or 333, or to the corresponding national provisions, or any other reference indicating that one of those arrangements has been applied;

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- (15) where the person liable for payment of VAT is a tax representative for the purposes of Article 204, the VAT identification number, referred to in Article 214, of that tax representative, together with his full name and address.

Article 227

Member States may require taxable persons established in their territory and supplying goods or services there to indicate the VAT identification number, referred to in Article 214, of the customer in cases other than those referred to in point (4) of Article 226.

Article 228

Member States in whose territory goods or services are supplied may allow some of the compulsory details to be omitted from documents or messages treated as invoices pursuant to Article 219.

Article 229

Member States shall not require invoices to be signed.

Article 230

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of VAT payable is expressed in the national currency of the Member State in which the supply of goods or services takes place, using the conversion mechanism laid down in Article 91.

Article 231

For control purposes, Member States may require invoices in respect of supplies of goods or services in their territory and invoices received by taxable persons established in their territory to be translated into their national languages.

Section 5

Sending invoices by electronic means

Article 232

Invoices issued pursuant to Section 2 may be sent on paper or, subject to acceptance by the recipient, they may be sent or made available by electronic means.

Article 233

1 Invoices sent or made available by electronic means shall be accepted by Member States provided that the authenticity of the origin and the integrity of their content are guaranteed by one of the following methods:

- a by means of an advanced electronic signature within the meaning of point (2) of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures⁽⁸⁾;
- b by means of electronic data interchange (EDI), as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange⁽⁹⁾, if the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.

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Invoices may, however, be sent or made available by other electronic means, subject to acceptance by the Member States concerned.

2 For the purposes of point (a) of the first subparagraph of paragraph 1, Member States may also ask for the advanced electronic signature to be based on a qualified certificate and created by a secure-signature-creation device, within the meaning of points (6) and (10) of Article 2 of Directive 1999/93/EC.

3 For the purposes of point (b) of the first subparagraph of paragraph 1, Member States may also, subject to conditions which they lay down, require that an additional summary document on paper be sent.

Article 234

Member States may not impose on taxable persons supplying goods or services in their territory any other obligations or formalities relating to the sending or making available of invoices by electronic means.

Article 235

Member States may lay down specific conditions for invoices issued by electronic means in respect of goods or services supplied in their territory from a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 76/308/EEC and Regulation (EC) No 1798/2003.

Article 236

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

Article 237

The Commission shall present, at the latest on 31 December 2008, a report and, if appropriate, a proposal amending the conditions applicable to electronic invoicing in order to take account of future technological developments in that field.

Section 6

Simplification measures

Article 238

1 After consulting the VAT Committee, Member States may, in accordance with conditions which they may lay down, provide that in the following cases some of the information required under Article 226 and 230, subject to options taken up by Member States under Articles 227, 228 and 231, need not be entered on invoices in respect of supplies of goods or services in their territory:

- a where the amount of the invoice is minor;
- b where commercial or administrative practice in the business sector concerned or the technical conditions under which the invoices are issued make it difficult to comply with all the obligations referred to in Articles 226 and 230.

2 Invoices must, in any event, contain the following information:

- a the date of issue;

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- b identification of the taxable person;
- c identification of the type of goods or services supplied;
- d the VAT amount payable or the information needed to calculate it.

3 The simplified arrangements provided for in paragraph 1 may not be applied to the transactions referred to in Articles 20, 21, 22, 33, 36, 138 and 141.

Article 239

In cases where Member States make use of the option under point (b) of the first subparagraph of Article 272(1) of not allocating a VAT identification number to taxable persons who do not carry out any of the transactions referred to in Articles 20, 21, 22, 33, 36, 138 and 141, and where the supplier or the customer has not been allocated an identification number of that type, another number called the tax reference number, as defined by the Member States concerned, shall be entered on the invoice instead.

Article 240

Where the taxable person has been allocated a VAT identification number, the Member States exercising the option under point (b) of the first subparagraph of Article 272(1) may also require the invoice to show the following:

- (1) in respect of the supply of services, as referred to in Articles 44, 47, 50, 53, 54 and 55, and the supply of goods, as referred to in Articles 138 and 141, the VAT identification number and the tax reference number of the supplier;
- (2) in respect of other supplies of goods or services, only the tax reference number of the supplier or only the VAT identification number.

CHAPTER 4

Accounting

Section 1

Definition

Article 241

For the purposes of this Chapter, ‘storage of an invoice by electronic means’ shall mean storage of data using electronic equipment for processing (including digital compression) and storage, and employing wire, radio, optical or other electromagnetic means.

Section 2

General obligations

Article 242

Every taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities.

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Article 243

1 Every taxable person shall keep a register of the goods dispatched or transported, by that person or on his behalf, to a destination outside the territory of the Member State of departure but within the Community for the purposes of transactions consisting in work on those goods or their temporary use as referred to in points (f), (g) and (h) of Article 17(2).

2 Every taxable person shall keep accounts in sufficient detail to enable the identification of goods dispatched to him from another Member State, by or on behalf of a taxable person identified for VAT purposes in that other Member State, and used for services consisting in valuations of those goods or work on those goods as referred to in point (c) of Article 52.

Section 3

Specific obligations relating to the storage of all invoices

Article 244

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

Article 245

1 For the purposes of this Directive, the taxable person may decide the place of storage of all invoices provided that he makes the invoices or information stored in accordance with Article 244 available to the competent authorities without undue delay whenever they so request.

2 Member States may require taxable persons established in their territory to notify them of the place of storage, if it is outside their territory.

Member States may also require taxable persons established in their territory to store within that territory invoices issued by themselves or by their customers or, in their name and on their behalf, by a third party, as well as all the invoices that they have received, when the storage is not by electronic means guaranteeing full on-line access to the data concerned.

Article 246

The authenticity of the origin and the integrity of the content of the invoices stored, as well as their legibility, must be guaranteed throughout the storage period.

In respect of the invoices referred to in the second subparagraph of Article 233(1), the details they contain may not be altered and must remain legible throughout the storage period.

Article 247

1 Each Member State shall determine the period throughout which taxable persons must ensure the storage of invoices relating to the supply of goods or services in its territory and invoices received by taxable persons established in its territory.

2 In order to ensure that the conditions laid down in Article 246 are met, the Member State referred to in paragraph 1 may require that invoices be stored in the original form in which they were sent or made available, whether paper or electronic. Additionally, in the case of invoices stored by electronic means, the Member State may require that the data guaranteeing

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the authenticity of the origin of the invoices and the integrity of their content, as provided for in the first paragraph of Article 246, also be stored.

3 The Member State referred to in paragraph 1 may lay down specific conditions prohibiting or restricting the storage of invoices in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 76/308/EEC and Regulation (EC) No 1798/2003 or to the right referred to in Article 249 to access by electronic means, to download and to use.

Article 248

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

Section 4

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

Article 249

Where a taxable person stores invoices which he issues or receives by electronic means guaranteeing on-line access to the data and where the place of storage is in a Member State other than that in which he is established, the competent authorities in the Member State in which he is established shall, for the purposes of this Directive, have the right to access those invoices by electronic means, to download and to use them, within the limits set by the rules of the Member State in which the taxable person is established and in so far as those authorities require for control purposes.

CHAPTER 5

Returns

Article 250

1 Every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions.

2 Member States shall allow, and may require, the VAT return referred to in paragraph 1 to be submitted by electronic means, in accordance with conditions which they lay down.

Article 251

In addition to the information referred to in Article 250, the VAT return covering a given tax period shall show the following:

- (a) the total value, exclusive of VAT, of the supplies of goods referred to in Article 138 in respect of which VAT has become chargeable during this tax period;
- (b) the total value, exclusive of VAT, of the supplies of goods referred to in Articles 33 and 36 carried out within the territory of another Member State, in respect of which VAT has become chargeable during this tax period, where the place where dispatch or transport of the goods began is situated in the Member State in which the return must be submitted;

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- (c) the total value, exclusive of VAT, of the intra-Community acquisitions of goods, or transactions treated as such, pursuant to Articles 21 or 22, made in the Member State in which the return must be submitted and in respect of which VAT has become chargeable during this tax period;
- (d) the total value, exclusive of VAT, of the supplies of goods referred to in Articles 33 and 36 carried out in the Member State in which the return must be submitted and in respect of which VAT has become chargeable during this tax period, where the place where dispatch or transport of the goods began is situated within the territory of another Member State;
- (e) the total value, exclusive of VAT, of the supplies of goods carried out in the Member State in which the return must be submitted and in respect of which the taxable person has been designated, in accordance with Article 197, as liable for payment of VAT and in respect of which VAT has become chargeable during this tax period.

Article 252

1 The VAT return shall be submitted by a deadline to be determined by Member States. That deadline may not be more than two months after the end of each tax period.

2 The tax period shall be set by each Member State at one month, two months or three months.

Member States may, however, set different tax periods provided that those periods do not exceed one year.

Article 253

Sweden may apply a simplified procedure for small and medium-sized enterprises, whereby taxable persons carrying out only transactions taxable at national level may submit VAT returns three months after the end of the annual direct tax period.

Article 254

In the case of supplies of new means of transport carried out in accordance with the conditions specified in Article 138(2)(a) by a taxable person identified for VAT purposes for a customer not identified for VAT purposes, or by a taxable person as defined in Article 9(2), Member States shall take the measures necessary to ensure that the vendor communicates all the information needed for VAT to be applied and its application checked by the tax authorities.

Article 255

Where Member States designate the customer of investment gold as the person liable for payment of VAT pursuant to Article 198(1) or if, in the case of gold material, semi-manufactured products or investment gold as defined in Article 344(1), they exercise the option provided for in Article 198(2) of designating the customer as the person liable for payment of VAT, they shall take the measures necessary to ensure that he complies with the obligations relating to submission of a VAT return set out in this Chapter.

Article 256

Member States shall take the measures necessary to ensure that persons who are regarded as liable for payment of VAT in the stead of a taxable person not established within their territory, in accordance with Articles 194 to 197 and Article 204, comply with the obligations relating to submission of a VAT return, as laid down in this Chapter.

Article 257

Member States shall take the measures necessary to ensure that non-taxable legal persons who are liable for payment of VAT due in respect of intra-Community acquisitions of goods, as referred to in Article 2(1)(b)(i), comply with the obligations relating to submission of a VAT return, as laid down in this Chapter.

Article 258

Member States shall lay down detailed rules for the submission of VAT returns in respect of intra-Community acquisitions of new means of transport, as referred to in Article 2(1)(b)(ii), and intra-Community acquisitions of products subject to excise duty, as referred to in Article 2(1)(b)(iii).

Article 259

Member States may require persons who make intra-Community acquisitions of new means of transport as referred to in Article 2(1)(b)(ii), to provide, when submitting the VAT return, all the information needed for VAT to be applied and its application checked by the tax authorities.

Article 260

Member States shall lay down detailed rules for the submission of VAT returns in respect of the importation of goods.

Article 261

1 Member States may require the taxable person to submit a return showing all the particulars specified in Articles 250 and 251 in respect of all transactions carried out in the preceding year. That return shall provide all the information necessary for any adjustments.

2 Member States shall allow, and may require, the return referred to in paragraph 1 to be submitted by electronic means, in accordance with conditions which they lay down.

CHAPTER 6

Recapitulative statements

Article 262

Every taxable person identified for VAT purposes shall submit a recapitulative statement of the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and (2)(c), and of the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions referred to in Article 42.

Article 263

1 The recapitulative statement shall be drawn up for each calendar quarter within a period and in accordance with procedures to be determined by the Member States.

Member States may, however, provide that recapitulative statements are to be submitted on a monthly basis.

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2 Member States shall allow, and may require, the recapitulative statements referred to in paragraph 1 to be submitted by electronic means, in accordance with conditions which they lay down.

Article 264

- 1 The recapitulative statement shall set out the following information:
- a the VAT identification number of the taxable person in the Member State in which the recapitulative statement must be submitted and under which he has carried out the supply of goods in accordance with the conditions specified in Article 138(1);
 - b the VAT identification number of the person acquiring the goods in a Member State other than that in which the recapitulative statement must be submitted and under which the goods were supplied to him;
 - c the VAT identification number of the taxable person in the Member State in which the recapitulative statement must be submitted and under which he has carried out a transfer to another Member State, as referred to in Article 138(2)(c), and the number by means of which he is identified in the Member State in which the dispatch or transport ended;
 - d for each person who acquired goods, the total value of the supplies of goods carried out by the taxable person;
 - e in respect of supplies of goods consisting in transfers to another Member State, as referred to in Article 138(2)(c), the total value of the supplies, determined in accordance with Article 76;
 - f the amounts of adjustments made pursuant to Article 90.

2 The value referred to in point (d) of paragraph 1 shall be declared for the calendar quarter during which VAT became chargeable.

The amounts referred to in point (f) of paragraph 1 shall be declared for the calendar quarter during which the person acquiring the goods was notified of the adjustment.

Article 265

1 In the case of intra-Community acquisitions of goods, as referred to in Article 42, the taxable person identified for VAT purposes in the Member State which issued him with the VAT identification number under which he made such acquisitions shall set the following information out clearly on the recapitulative statement:

- a his VAT identification number in that Member State and under which he made the acquisition and subsequent supply of goods;
- b the VAT identification number, in the Member State in which dispatch or transport of the goods ended, of the person to whom the subsequent supply was made by the taxable person;
- c for each person to whom the subsequent supply was made, the total value, exclusive of VAT, of the supplies made by the taxable person in the Member State in which dispatch or transport of the goods ended.

2 The value referred to in point (c) of paragraph 1 shall be declared for the calendar quarter during which VAT became chargeable.

Article 266

By way of derogation from Articles 264 and 265, Member States may provide that additional information is to be given in recapitulative statements.

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Article 267

Member States shall take the measures necessary to ensure that those persons who, in accordance with Articles 194 and 204, are regarded as liable for payment of VAT, in the stead of a taxable person who is not established in their territory, comply with the obligation to submit a recapitulative statement as provided for in this Chapter.

Article 268

Member States may require that taxable persons who, in their territory, make intra-Community acquisitions of goods, or transactions treated as such, pursuant to Articles 21 or 22, submit statements giving details of such acquisitions, provided, however, that such statements are not required in respect of a period of less than one month.

Article 269

Acting unanimously on a proposal from the Commission, the Council may authorise any Member State to introduce the special measures provided for in Articles 270 and 271 to simplify the obligation, laid down in this Chapter, to submit a recapitulative statement. Such measures may not jeopardise the proper monitoring of intra-Community transactions.

Article 270

By virtue of the authorisation referred to in Article 269, Member States may permit taxable persons to submit annual recapitulative statements indicating the VAT identification numbers, in another Member State, of the persons to whom those taxable persons have supplied goods in accordance with the conditions specified in Article 138(1) and (2)(c), where the taxable persons meet the following three conditions:

- (a) the total annual value, exclusive of VAT, of their supplies of goods and services does not exceed by more than EUR 35 000, or the equivalent in national currency, the amount of the annual turnover which is used as a reference for application of the exemption for small enterprises provided for in Articles 282 to 292;
- (b) the total annual value, exclusive of VAT, of supplies of goods carried out by them in accordance with the conditions specified in Article 138 does not exceed EUR 15 000 or the equivalent in national currency;
- (c) none of the supplies of goods carried out by them in accordance with the conditions specified in Article 138 is a supply of new means of transport.

Article 271

By virtue of the authorisation referred to in Article 269, Member States which set at over three months the tax period in respect of which taxable persons must submit the VAT return provided for in Article 250 may permit such persons to submit recapitulative statements in respect of the same period where those taxable persons meet the following three conditions:

- (a) the total annual value, exclusive of VAT, of their supplies of goods and services does not exceed EUR 200 000 or the equivalent in national currency;
- (b) the total annual value, exclusive of VAT, of supplies of goods carried out by them in accordance with the conditions specified in Article 138 does not exceed EUR 15 000 or the equivalent in national currency;

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- (c) none of the supplies of goods carried out by them in accordance with the conditions specified in Article 138 is a supply of new means of transport.

CHAPTER 7

Miscellaneous provisions

Article 272

1 Member States may release the following taxable persons from certain or all obligations referred to in Chapters 2 to 6:

- a taxable persons whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1);
- b taxable persons carrying out none of the transactions referred to in Articles 20, 21, 22, 33, 36, 138 and 141;
- c taxable persons carrying out only supplies of goods or of services which are exempt pursuant to Articles 132, 135 and 136, Articles 146 to 149 and Articles 151, 152 or 153;
- d taxable persons covered by the exemption for small enterprises provided for in Articles 282 to 292;
- e taxable persons covered by the common flat-rate scheme for farmers.

Member States may not release the taxable persons referred to in point (b) of the first subparagraph from the invoicing obligations laid down in Articles 220 to 236 and Articles 238, 239 and 240.

2 If Member States exercise the option under point (e) of the first subparagraph of paragraph 1, they shall take the measures necessary to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions.

3 Member States may release taxable persons other than those referred to in paragraph 1 from certain of the accounting obligations referred to in Article 242.

Article 273

Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.

CHAPTER 8

Obligations relating to certain importations and exportations

Section 1

Importation

Article 274

Articles 275, 276 and 277 shall apply to the importation of goods in free circulation which enter the Community from a third territory forming part of the customs territory of the Community.

Article 275

The formalities relating to the importation of the goods referred to in Article 274 shall be the same as those laid down by the Community customs provisions in force for the importation of goods into the customs territory of the Community.

Article 276

Where dispatch or transport of the goods referred to in Article 274 ends at a place situated outside the Member State of their entry into the Community, they shall circulate in the Community under the internal Community transit procedure laid down by the Community customs provisions in force, in so far as they have been the subject of a declaration placing them under that procedure on their entry into the Community.

Article 277

Where, on their entry into the Community, the goods referred to in Article 274 are in one of the situations which would entitle them, if they were imported within the meaning of the first paragraph of Article 30, to be covered by one of the arrangements or situations referred to in Article 156, or by a temporary importation arrangement with full exemption from import duties, Member States shall take the measures necessary to ensure that the goods may remain in the Community under the same conditions as those laid down for the application of those arrangements or situations.

Section 2

Exportation

Article 278

Articles 279 and 280 shall apply to the exportation of goods in free circulation which are dispatched or transported from a Member State to a third territory forming part of the customs territory of the Community.

Article 279

The formalities relating to the exportation of the goods referred to in Article 278 from the territory of the Community shall be the same as those laid down by the Community customs provisions in force for the exportation of goods from the customs territory of the Community.

Article 280

In the case of goods which are temporarily exported from the Community, in order to be reimported, Member States shall take the measures necessary to ensure that, on reimportation into the Community, such goods may be covered by the same provisions as would have applied if they had been temporarily exported from the customs territory of the Community.

TITLE XII

SPECIAL SCHEMES

CHAPTER 1

Special scheme for small enterprises

Section 1

Simplified procedures for charging and collection

Article 281

Member States which might encounter difficulties in applying the normal VAT arrangements to small enterprises, by reason of the activities or structure of such enterprises, may, subject to such conditions and limits as they may set, and after consulting the VAT Committee, apply simplified procedures, such as flat-rate schemes, for charging and collecting VAT provided that they do not lead to a reduction thereof.

Section 2

Exemptions or graduated relief

Article 282

The exemptions and graduated tax relief provided for in this Section shall apply to the supply of goods and services by small enterprises.

Article 283

1 The arrangements provided for in this Section shall not apply to the following transactions:

- a transactions carried out on an occasional basis, as referred to in Article 12;
- b supplies of new means of transport carried out in accordance with the conditions specified in Article 138(1) and (2)(a);
- c supplies of goods or services carried out by a taxable person who is not established in the Member State in which the VAT is due.

2 Member States may exclude transactions other than those referred to in paragraph 1 from the arrangements provided for in this Section.

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Article 284

1 Member States which have exercised the option under Article 14 of Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax⁽¹⁰⁾ of introducing exemptions or graduated tax relief may retain them, and the arrangements for applying them, if they comply with the VAT rules.

2 Member States which, at 17 May 1977, exempted taxable persons whose annual turnover was less than the equivalent in national currency of 5 000 European units of account at the conversion rate on that date, may raise that ceiling up to EUR 5 000.

Member States which applied graduated tax relief may neither raise the ceiling for graduated tax relief nor render the conditions for the granting of it more favourable.

Article 285

Member States which have not exercised the option under Article 14 of Directive 67/228/EEC may exempt taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency.

The Member States referred to in the first paragraph may grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.

Article 286

Member States which, at 17 May 1977, exempted taxable persons whose annual turnover was equal to or higher than the equivalent in national currency of 5 000 European units of account at the conversion rate on that date, may raise that ceiling in order to maintain the value of the exemption in real terms.

Article 287

Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the following amounts at the conversion rate on the day of their accession:

- (1) Greece: 10 000 European units of account;
- (2) Spain: ECU 10 000;
- (3) Portugal: ECU 10 000;
- (4) Austria: ECU 35 000;
- (5) Finland: ECU 10 000;
- (6) Sweden: ECU 10 000;
- (7) Czech Republic: EUR 35 000;
- (8) Estonia: EUR 16 000;
- (9) Cyprus: EUR 15 600;
- (10) Latvia: EUR 17 200;
- (11) Lithuania: EUR 29 000;

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- (12) Hungary: EUR 35 000;
- (13) Malta: EUR 37 000 if the economic activity consists principally in the supply of goods, EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs), and EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs);
- (14) Poland: EUR 10 000;
- (15) Slovenia: EUR 25 000;
- (16) Slovakia: EUR 35 000.

Article 288

The turnover serving as a reference for the purposes of applying the arrangements provided for in this Section shall consist of the following amounts, exclusive of VAT:

- (1) the value of supplies of goods and services, in so far as they are taxed;
- (2) the value of transactions which are exempt, with deductibility of the VAT paid at the preceding stage, pursuant to Articles 110 or 111, Article 125(1), Article 127 or Article 128(1);
- (3) the value of transactions which are exempt pursuant to Articles 146 to 149 and Articles 151, 152 or 153;
- (4) the value of real estate transactions, financial transactions as referred to in points (b) to (g) of Article 135(1), and insurance services, unless those transactions are ancillary transactions.

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

Article 289

Taxable persons exempt from VAT shall not be entitled to deduct VAT in accordance with Articles 167 to 171 and Articles 173 to 177, and may not show the VAT on their invoices.

Article 290

Taxable persons who are entitled to exemption from VAT may opt either for the normal VAT arrangements or for the simplified procedures provided for in Article 281. In this case, they shall be entitled to any graduated tax relief provided for under national legislation.

Article 291

Subject to the application of Article 281, taxable persons enjoying graduated relief shall be regarded as taxable persons subject to the normal VAT arrangements.

Article 292

The arrangements provided for in this Section shall apply until a date to be fixed by the Council in accordance with Article 93 of the Treaty, which may not be later than that on which the definitive arrangements referred to in Article 402 enter into force.

Section 3

Reporting and review

Article 293

Every four years starting from the adoption of this Directive, the Commission shall present to the Council, on the basis of information obtained from the Member States, a report on the application of this Chapter, together, where appropriate and taking into account the need to ensure the long-term convergence of national regulations, with proposals on the following subjects:

- (1) improvements to the special scheme for small enterprises;
- (2) the adaptation of national systems as regards exemptions and graduated tax relief;
- (3) the adaptation of the ceilings provided for in Section 2.

Article 294

The Council shall decide, in accordance with Article 93 of the Treaty, whether a special scheme for small enterprises is necessary under the definitive arrangements and, if appropriate, shall lay down the common limits and conditions for the implementation of that scheme.

CHAPTER 2

Common flat-rate scheme for farmers

Article 295

- 1 For the purposes of this Chapter, the following definitions shall apply:
 - (1) ‘farmer’ means any taxable person whose activity is carried out in an agricultural, forestry or fisheries undertaking;
 - (2) ‘agricultural, forestry or fisheries undertaking’ means an undertaking regarded as such by each Member State within the framework of the production activities listed in Annex VII;
 - (3) ‘flat-rate farmer’ means any farmer covered by the flat-rate scheme provided for in this Chapter;
 - (4) ‘agricultural products’ means goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex VII;
 - (5) ‘agricultural services’ means services, and in particular those listed in Annex VIII, supplied by a farmer using his labour force or the equipment normally employed in the agricultural, forestry or fisheries undertaking operated by him and normally playing a part in agricultural production;
 - (6) ‘input VAT charged’ means the amount of the total VAT attaching to the goods and services purchased by all agricultural, forestry and fisheries undertakings of each Member State subject to the flat-rate scheme where such tax would be deductible in accordance with Articles 167, 168 and 169 and Articles 173 to 177 by a farmer subject to the normal VAT arrangements;

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- (7) ‘flat-rate compensation percentages’ means the percentages fixed by Member States in accordance with Articles 297, 298 and 299 and applied by them in the cases specified in Article 300 in order to enable flat-rate farmers to offset at a fixed rate the input VAT charged;
- (8) ‘flat-rate compensation’ means the amount arrived at by applying the flat-rate compensation percentage to the turnover of the flat-rate farmer in the cases specified in Article 300.

2 Where a farmer processes, using means normally employed in an agricultural, forestry or fisheries undertaking, products deriving essentially from his agricultural production, such processing activities shall be treated as agricultural production activities, as listed in Annex VII.

Article 296

1 Where the application to farmers of the normal VAT arrangements, or the special scheme provided for in Chapter 1, is likely to give rise to difficulties, Member States may apply to farmers, in accordance with this Chapter, a flat-rate scheme designed to offset the VAT charged on purchases of goods and services made by the flat-rate farmers.

2 Each Member State may exclude from the flat-rate scheme certain categories of farmers, as well as farmers for whom application of the normal VAT arrangements, or of the simplified procedures provided for in Article 281, is not likely to give rise to administrative difficulties.

3 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 VAT arrangements or, as the case may be, the simplified procedures provided for in Article 281.

Article 297

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

Member States shall notify the Commission of the flat-rate compensation percentages fixed in accordance with the first paragraph before applying them.

Article 298

The flat-rate compensation percentages shall be calculated on the basis of macro-economic statistics for flat-rate farmers alone for the preceding three years.

The percentages may be rounded up or down to the nearest half-point. Member States may also reduce such percentages to a nil rate.

Article 299

The flat-rate compensation percentages may not have the effect of obtaining for flat-rate farmers refunds greater than the input VAT charged.

Article 300

The flat-rate compensation percentages shall be applied to the prices, exclusive of VAT, of the following goods and services:

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- (1) agricultural products supplied by flat-rate farmers to taxable persons other than those covered, in the Member State in which these products were supplied, by this flat-rate scheme;
- (2) agricultural products supplied by flat-rate farmers, in accordance with the conditions specified in Article 138, to non-taxable legal persons whose intra-Community acquisitions of goods are subject to VAT, pursuant to Article 2(1)(b), in the Member State in which dispatch or transport of those agricultural products ends;
- (3) agricultural services supplied by flat-rate farmers to taxable persons other than those covered, in the Member State in which these services were supplied, by this flat-rate scheme.

Article 301

1 In the case of the supply of agricultural products or agricultural services specified in Article 300, Member States shall provide that the flat-rate compensation is to be paid either by the customer or by the public authorities.

2 In respect of any supply of agricultural products or agricultural services other than those specified in Article 300, the flat-rate compensation shall be deemed to be paid by the customer.

Article 302

If a flat-rate farmer is entitled to flat-rate compensation, he shall not be entitled to deduction of VAT in respect of activities covered by this flat-rate scheme.

Article 303

1 Where the taxable customer pays flat-rate compensation pursuant to Article 301(1), he shall be entitled, in accordance with the conditions laid down in Articles 167, 168 and 169 and Articles 173 to 177 and the procedures laid down by the Member States, to deduct the compensation amount from the VAT for which he is liable in the Member State in which his taxed transactions are carried out.

2 Member States shall refund to the customer the amount of the flat-rate compensation he has paid in respect of any of the following transactions:

- a the supply of agricultural products, carried out in accordance with the conditions specified in Article 138, to taxable persons, or to non-taxable legal persons, acting as such in another Member State within the territory of which their intra-Community acquisitions of goods are subject to VAT pursuant to Article 2(1)(b);
- b the supply of agricultural products, carried out in accordance with the conditions specified in Articles 146, 147, 148 and 156, Article 157(1)(b) and Articles 158, 160 and 161, to a taxable customer established outside the Community, in so far as the products are used by that customer for the purposes of the transactions referred to in Article 169(a) and (b) or for the purposes of supplies of services which are deemed to take place within the territory of the Member State in which the customer is established and in respect of which VAT is payable solely by the customer pursuant to Article 196;
- c the supply of agricultural services to a taxable customer established within the Community but in another Member State or to a taxable customer established outside the Community, in so far as the services are used by the customer for the purposes of the transactions referred to in Article 169(a) and (b) or for the purposes of supplies of services which are deemed to take place within the territory of the Member State in which the customer is established and in respect of which VAT is payable solely by the customer pursuant to Article 196.

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3 Member States shall determine the method by which the refunds provided for in paragraph 2 are to be made. In particular, they may apply the provisions of Directives 79/1072/EEC and 86/560/EEC.

Article 304

Member States shall take all measures necessary to verify payments of flat-rate compensation to flat-rate farmers.

Article 305

Whenever Member States apply this flat-rate scheme, they shall take all measures necessary to ensure that the supply of agricultural products between Member States, carried out in accordance with the conditions specified in Article 33, is always taxed in the same way, whether the supply is effected by a flat-rate farmer or by another taxable person.

CHAPTER 3

Special scheme for travel agents

Article 306

1 Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.

This special scheme shall not apply to travel agents where they act solely as intermediaries and to whom point (c) of the first paragraph of Article 79 applies for the purposes of calculating the taxable amount.

2 For the purposes of this Chapter, tour operators shall be regarded as travel agents.

Article 307

Transactions made, in accordance with the conditions laid down in Article 306, by the travel agent in respect of a journey shall be regarded as a single service supplied by the travel agent to the traveller.

The single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has carried out the supply of services.

Article 308

The taxable amount and the price exclusive of VAT, within the meaning of point (8) of Article 226, in respect of the single service provided by the travel agent shall be the travel agent's margin, that is to say, the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.

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Article 309

If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the supply of services carried out by the travel agent shall be treated as an intermediary activity exempted pursuant to Article 153.

If the transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

Article 310

VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in Article 307 and which are for the direct benefit of the traveller shall not be deductible or refundable in any Member State.

CHAPTER 4

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

Section 1

Definitions

Article 311

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

- (1) 'second-hand goods' means movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones as defined by the Member States;
- (2) 'works of art' means the objects listed in Annex IX, Part A;
- (3) 'collectors' items' means the objects listed in Annex IX, Part B;
- (4) 'antiques' means the objects listed in Annex IX, Part C;
- (5) 'taxable dealer' means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collectors' items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale;
- (6) 'organiser of a sale by public auction' means any taxable person who, in the course of his economic activity, offers goods for sale by public auction with a view to handing them over to the highest bidder;
- (7) 'principal of an organiser of a sale by public auction' means any person who transmits goods to an organiser of a sale by public auction pursuant to a contract under which commission is payable on a sale.

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2 Member States need not regard as works of art the objects listed in points (5), (6) or (7) of Annex IX, Part A.

3 The contract under which commission is payable on a sale, referred to in point (7) of paragraph 1, must provide that the organiser of the sale is to put up the goods for public auction in his own name but on behalf of his principal and that he is to hand over the goods, in his own name but on behalf of his principal, to the highest bidder at the public auction.

Section 2

Special arrangements for taxable dealers

Subsection 1

Margin scheme

Article 312

For the purposes of this Subsection, the following definitions shall apply:

- (1) 'selling price' means everything which constitutes the consideration obtained or to be obtained by the taxable dealer from the customer or from a third party, including subsidies directly linked to the transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the customer, but excluding the amounts referred to in Article 79;
- (2) 'purchase price' means everything which constitutes the consideration, for the purposes of point (1), obtained or to be obtained from the taxable dealer by his supplier.

Article 313

1 In respect of the supply of second-hand goods, works of art, collectors' items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.

2 Pending introduction of the definitive arrangements referred to in Article 402, the scheme referred to in paragraph 1 of this Article shall not apply to the supply of new means of transport, carried out in accordance with the conditions specified in Article 138(1) and (2)(a).

Article 314

The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where those goods have been supplied to him within the Community by one of the following persons:

- (a) a non-taxable person;
- (b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;
- (c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

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- (d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.

Article 315

The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.

Article 316

1 Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions:

- a the supply of works of art, collectors' items or antiques, which the taxable dealer has imported himself;
- b the supply of works of art supplied to the taxable dealer by their creators or their successors in title;
- c the supply of works of art supplied to the taxable dealer by a taxable person other than a taxable dealer where the reduced rate has been applied to that supply pursuant to Article 103.

2 Member States shall lay down the detailed rules for exercise of the option provided for in paragraph 1, which shall in any event cover a period of at least two calendar years.

Article 317

If a taxable dealer exercises the option under Article 316, the taxable amount shall be determined in accordance with Article 315.

In respect of the supply of works of art, collectors' items or antiques which the taxable dealer has imported himself, the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable amount on importation, determined in accordance with Articles 85 to 89, plus the VAT due or paid on importation.

Article 318

1 In order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 250.

In the event that such provision is made in accordance with the first subparagraph, the taxable amount in respect of supplies of goods to which the same rate of VAT is applied shall be the total profit margin made by the taxable dealer less the amount of VAT relating to that margin.

2 The total profit margin shall be equal to the difference between the following two amounts:

- a the total value of supplies of goods subject to the margin scheme and carried out by the taxable dealer during the tax period covered by the return, that is to say, the total of the selling prices;

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- b the total value of purchases of goods, as referred to in Article 314, effected by the taxable dealer during the tax period covered by the return, that is to say, the total of the purchase prices.

3 Member States shall take the measures necessary to ensure that the taxable dealers referred to in paragraph 1 do not enjoy unjustified advantage or sustain unjustified harm.

Article 319

The taxable dealer may apply the normal VAT arrangements to any supply covered by the margin scheme.

Article 320

1 Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art, a collectors' item or an antique which he has imported himself, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid on the import.

Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art supplied to him by its creator, or the creator's successors in title, or by a taxable person other than a taxable dealer, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid in respect of the work of art supplied to him.

2 A right of deduction shall arise at the time when the VAT due on the supply in respect of which the taxable dealer opts for application of the normal VAT arrangements becomes chargeable.

Article 321

If carried out in accordance with the conditions specified in Articles 146, 147, 148 or 151, the supply of second-hand goods, works of art, collectors' items or antiques subject to the margin scheme shall be exempt.

Article 322

In so far as goods are used for the purpose of supplies carried out by him and subject to the margin scheme, the taxable dealer may not deduct the following from the VAT for which he is liable:

- (a) the VAT due or paid in respect of works of art, collectors' items or antiques which he has imported himself;
- (b) the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by their creator or by the creator's successors in title;
- (c) the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a taxable dealer.

Article 323

Taxable persons may not deduct from the VAT for which they are liable the VAT due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the margin scheme.

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Article 324

Where the taxable dealer applies both the normal VAT arrangements and the margin scheme, he must show separately in his accounts the transactions falling under each of those arrangements, in accordance with the rules laid down by the Member States.

Article 325

The taxable dealer may not enter separately on the invoices which he issues the VAT relating to supplies of goods to which he applies the margin scheme.

Subsection 2

Transitional arrangements for second-hand means of transport

Article 326

Member States which, at 31 December 1992, were applying special tax arrangements other than the margin scheme to the supply by taxable dealers of second-hand means of transport may, pending introduction of the definitive arrangements referred to in Article 402, continue to apply those arrangements in so far as they comply with, or are adjusted to comply with, the conditions laid down in this Subsection.

Denmark is authorised to introduce tax arrangements as referred to in the first paragraph.

Article 327

1 These transitional arrangements shall apply to supplies of second-hand means of transport carried out by taxable dealers, and subject to the margin scheme.

2 These transitional arrangements shall not apply to the supply of new means of transport carried out in accordance with the conditions specified in Article 138(1) and (2)(a).

3 For the purposes of paragraph 1, the land vehicles, vessels and aircraft referred to in point (a) of Article 2(2) shall be regarded as 'second-hand means of transport' where they are second-hand goods which do not meet the conditions necessary to be regarded as new means of transport.

Article 328

The VAT due in respect of each supply referred to in Article 327 shall be equal to the amount of VAT that would have been due if that supply had been subject to the normal VAT arrangements, less the amount of VAT regarded as being incorporated by the taxable dealer in the purchase price of the means of transport.

Article 329

The VAT regarded as being incorporated by the taxable dealer in the purchase price of the means of transport shall be calculated in accordance with the following method:

- (a) the purchase price to be taken into account shall be the purchase price within the meaning of point (2) of Article 312;
- (b) that purchase price paid by the taxable dealer shall be deemed to include the VAT that would have been due if the taxable dealer's supplier had applied the normal VAT arrangements to the supply;

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- (c) the rate to be taken into account shall be the rate applicable, pursuant to Article 93, in the Member State in the territory of which the place of the supply to the taxable dealer, as determined in accordance with Articles 31 and 32, is deemed to be situated.

Article 330

The VAT due in respect of each supply of means of transport as referred to in Article 327(1), determined in accordance with Article 328, may not be less than the amount of VAT that would be due if that supply were subject to the margin scheme.

Member States may provide that, if the supply is subject to the margin scheme, the margin may not be less than 10 % of the selling price within the meaning of point (1) of Article 312.

Article 331

Taxable persons may not deduct from the VAT for which they are liable the VAT due or paid in respect of second-hand means of transport supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to VAT in accordance with these transitional arrangements.

Article 332

The taxable dealer may not enter separately on the invoices he issues the VAT relating to supplies to which he applies these transitional arrangements.

Section 3

Special arrangements for sales by public auction

Article 333

1 Member States may, in accordance with the provisions of this Section, apply special arrangements for taxation of the profit margin made by an organiser of a sale by public auction in respect of the supply of second-hand goods, works of art, collectors' items or antiques by that organiser, acting in his own name and on behalf of the persons referred to in Article 334, pursuant to a contract under which commission is payable on the sale of those goods by public auction.

2 The arrangements referred to in paragraph 1 shall not apply to the supply of new means of transport, carried out in accordance with the conditions specified in Article 138(1) and (2)(a).

Article 334

These special arrangements shall apply to supplies carried out by an organiser of a sale by public auction, acting in his own name, on behalf of one of the following persons:

- (a) a non-taxable person;
- (b) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is exempt pursuant to Article 136;
- (c) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

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- (d) a taxable dealer, in so far as the supply of goods, carried out by that taxable dealer in accordance with a contract under which commission is payable on a sale, is subject to VAT in accordance with the margin scheme.

Article 335

The supply of goods to a taxable person who is an organiser of sales by public auction shall be regarded as taking place when the sale of those goods by public auction takes place.

Article 336

The taxable amount in respect of each supply of goods referred to in this Section shall be the total amount invoiced in accordance with Article 339 to the purchaser by the organiser of the sale by public auction, less the following:

- (a) the net amount paid or to be paid by the organiser of the sale by public auction to his principal, as determined in accordance with Article 337;
- (b) the amount of the VAT payable by the organiser of the sale by public auction in respect of his supply.

Article 337

The net amount paid or to be paid by the organiser of the sale by public auction to his principal shall be equal to the difference between the auction price of the goods and the amount of the commission obtained or to be obtained by the organiser of the sale by public auction from his principal pursuant to the contract under which commission is payable on the sale.

Article 338

Organisers of sales by public auction who supply goods in accordance with the conditions laid down in Articles 333 and 334 must indicate the following in their accounts, in suspense accounts:

- (a) the amounts obtained or to be obtained from the purchaser of the goods;
- (b) the amounts reimbursed or to be reimbursed to the vendor of the goods.

The amounts referred to in the first paragraph must be duly substantiated.

Article 339

The organiser of the sale by public auction must issue to the purchaser an invoice itemising the following:

- (a) the auction price of the goods;
- (b) taxes, duties, levies and charges;
- (c) incidental expenses, such as commission, packing, transport and insurance costs, charged by the organiser to the purchaser of the goods.

The invoice issued by the organiser of the sale by public auction must not indicate any VAT separately.

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Article 340

1 The organiser of the sale by public auction to whom the goods have been transmitted pursuant to a contract under which commission is payable on a public auction sale must issue a statement to his principal.

The statement issued by the organiser of the sale by public auction must specify separately the amount of the transaction, that is to say, the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.

2 The statement drawn up in accordance with paragraph 1 shall serve as the invoice which the principal, where he is a taxable person, must issue to the organiser of the sale by public auction in accordance with Article 220.

Article 341

Member States which apply the arrangements provided for in this Section shall also apply these arrangements to supplies of second-hand means of transport, as defined in Article 327(3), carried out by an organiser of sales by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of a taxable dealer, in so far as those supplies by that taxable dealer would be subject to VAT in accordance with the transitional arrangements for second-hand means of transport.

Section 4

Measures to prevent distortion of competition and tax evasion

Article 342

Member States may take measures concerning the right of deduction in order to ensure that the taxable dealers covered by special arrangements as provided for in Section 2 do not enjoy unjustified advantage or sustain unjustified harm.

Article 343

Acting unanimously on a proposal from the Commission, the Council may authorise any Member State to introduce special measures to combat tax evasion, pursuant to which the VAT due under the margin scheme may not be less than the amount of VAT which would be due if the profit margin were equal to a certain percentage of the selling price.

The percentage of the selling price shall be fixed in the light of the normal profit margins made by economic operators in the sector concerned.

CHAPTER 5

SPECIAL SCHEME FOR INVESTMENT GOLD

Section 1

General provisions

Article 344

1 For the purposes of this Directive, and without prejudice to other Community provisions, 'investment gold' shall mean:

- (1) gold, in the form of a bar or a wafer of weights accepted by the bullion markets, of a purity equal to or greater than 995 thousandths, whether or not represented by securities;
- (2) gold coins of a purity equal to or greater than 900 thousandths and minted after 1800, which are or have been legal tender in the country of origin, and are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80 %.

2 Member States may exclude from this special scheme small bars or wafers of a weight of 1 g or less.

3 For the purposes of this Directive, the coins referred to in point (2) of paragraph 1 shall not be regarded as sold for numismatic interest.

Article 345

Starting in 1999, each Member State shall inform the Commission by 1 July each year of the coins meeting the criteria laid down in point (2) of Article 344(1) which are traded in that Member State. The Commission shall, before 1 December each year, publish a comprehensive list of those coins in the 'C' series of the *Official Journal of the European Union*. Coins included in the published list shall be deemed to fulfil those criteria throughout the year for which the list is published.

Section 2

Exemption from VAT

Article 346

Member States shall exempt from VAT the supply, the intra-Community acquisition and the importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claim in respect of investment gold, as well as transactions concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold.

Article 347

Member States shall exempt the services of agents who act in the name and on behalf of another person, when they take part in the supply of investment gold for their principal.

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Section 3

Taxation option

Article 348

Member States shall allow taxable persons who produce investment gold or transform gold into investment gold the right to opt for the taxation of supplies of investment gold to another taxable person which would otherwise be exempt pursuant to Article 346.

Article 349

1 Member States may allow taxable persons who, in the course of their economic activity, normally supply gold for industrial purposes, the right to opt for the taxation of supplies of gold bars or wafers, as referred to in point (1) of Article 344(1), to another taxable person, which would otherwise be exempt pursuant to Article 346.

2 Member States may restrict the scope of the option provided for in paragraph 1.

Article 350

Where the supplier has exercised the right under Articles 348 and 349 to opt for taxation, Member States shall allow the agent to opt for taxation of the services referred to in Article 347.

Article 351

Member States shall lay down detailed rules for the exercise of the options provided for in this Section, and shall inform the Commission accordingly.

Section 4

Transactions on a regulated gold bullion market

Article 352

Each Member State may, after consulting the VAT Committee, apply VAT to specific transactions relating to investment gold which take place in that Member State between taxable persons who are members of a gold bullion market regulated by the Member State concerned or between such a taxable person and another taxable person who is not a member of that market. However, the Member State may not apply VAT to supplies carried out in accordance with the conditions specified in Article 138 or to exports of investment gold.

Article 353

Member States which, pursuant to Article 352, tax transactions between taxable persons who are members of a regulated gold bullion market shall, for the purposes of simplification, authorise suspension of the tax to be collected and relieve taxable persons of the accounting requirements in respect of VAT.

Section 5

Special rights and obligations for traders in investment gold

Article 354

Where his subsequent supply of investment gold is exempt pursuant to this Chapter, the taxable person shall be entitled to deduct the following:

- (a) the VAT due or paid in respect of investment gold supplied to him by a person who has exercised the right of option under Articles 348 and 349 or supplied to him in accordance with Section 4;
- (b) the VAT due or paid in respect of a supply to him, or in respect of an intra-Community acquisition or importation carried out by him, of gold other than investment gold which is subsequently transformed by him or on his behalf into investment gold;
- (c) the VAT due or paid in respect of services supplied to him consisting in a change of form, weight or purity of gold including investment gold.

Article 355

Taxable persons who produce investment gold or transform gold into investment gold shall be entitled to deduct the VAT due or paid by them in respect of the supply, intra-Community acquisition or importation of goods or services linked to the production or transformation of that gold, as if the subsequent supply of the gold exempted pursuant to Article 346 were taxed.

Article 356

1 Member States shall ensure that traders in investment gold keep, as a minimum, accounts of all substantial transactions in investment gold and keep the documents which enable the customers in such transactions to be identified.

Traders shall keep the information referred to in the first subparagraph for a period of at least five years.

2 Member States may accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁽¹¹⁾, to comply with the requirements under paragraph 1.

3 Member States may lay down obligations which are more stringent, in particular as regards the keeping of special records or special accounting requirements.

CHAPTER 6

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

Section 1

General provisions*f¹* Article 357

This Chapter shall apply until 31 December 2008.]

Textual Amendments

- F1** Substituted by [Council Directive 2006/138/EC of 19 December 2006 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.](#)

Article 358

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

- (1) ‘non-established taxable person’ means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there and who is not otherwise required to be identified pursuant to Article 214;
- (2) ‘electronic services’ and ‘electronically supplied services’ mean the services referred to in point (k) of Article 56(1);
- (3) ‘Member State of identification’ means the Member State which the non-established taxable person chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Chapter;
- (4) ‘Member State of consumption’ means the Member State in which, pursuant to Article 57, the supply of the electronic services is deemed to take place;
- (5) ‘VAT return’ means the statement containing the information necessary to establish the amount of VAT due in each Member State.

Section 2

Special scheme for electronically supplied services*Article 359*

Member States shall permit any non-established taxable person supplying electronic services to a non-taxable person who is established in a Member State or who has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all electronic services supplied in the Community.

Article 360

The non-established taxable person shall state to the Member State of identification when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

Article 361

1 The information which the non-established taxable person must provide to the Member State of identification when he commences a taxable activity shall contain the following details:

- a name;
- b postal address;
- c electronic addresses, including websites;
- d national tax number, if any;
- e a statement that the person is not identified for VAT purposes within the Community.

2 The non-established taxable person shall notify the Member State of identification of any changes in the information provided.

Article 362

The Member State of identification shall allocate to the non-established taxable person an individual VAT identification number and shall notify him of that number by electronic means. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

Article 363

The Member State of identification shall strike the non-established taxable person from the identification register in the following cases:

- (a) if he notifies that Member State that he no longer supplies electronic services;
- (b) if it may otherwise be assumed that his taxable activities have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

Article 364

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

Article 365

The VAT return shall show the identification number and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of electronic services carried out during the tax period and the total amount of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.

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Article 366

1 The VAT return shall be made out in euro.

Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the non-established taxable person shall, for the purposes of completing the VAT return, use the exchange rate applying on the last day of the tax period.

2 The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

Article 367

The non-established taxable person shall pay the VAT when submitting the VAT return.

Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require payment to be made to a bank account denominated in their own currency.

Article 368

The non-established taxable person making use of this special scheme may not deduct VAT pursuant to Article 168 of this Directive. Notwithstanding Article 1(1) of Directive 86/560/EEC, the taxable person in question shall be refunded in accordance with the said Directive. Articles 2(2) and (3) and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to electronic services covered by this special scheme.

Article 369

1 The non-established taxable person shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

2 The records referred to in paragraph 1 must be made available electronically on request to the Member State of identification and to the Member State of consumption.

Those records must be kept for a period of ten years from the end of the year during which the transaction was carried out.

TITLE XIII

DEROGATIONS

CHAPTER 1

Derogations applying until the adoption of definitive arrangements

Section 1

Derogations for States which were members of the Community on 1 January 1978

Article 370

Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions.

Article 371

Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date.

Article 372

Member States which, at 1 January 1978, applied provisions derogating from the principle of immediate deduction laid down in the first paragraph of Article 179 may continue to apply those provisions.

Article 373

Member States which, at 1 January 1978, applied provisions derogating from Article 28 or from point (c) of the first paragraph of Article 79 may continue to apply those provisions.

Article 374

By way of derogation from Articles 169 and 309, Member States which, at 1 January 1978, exempted, without deductibility of the VAT paid at the preceding stage, the services of travel agents, as referred to in Article 309, may continue to exempt those services. That derogation shall apply also in respect of travel agents acting in the name and on behalf of the traveller.

Section 2

Derogations for States which acceded to the Community after 1 January 1978

Article 375

Greece may continue to exempt the transactions listed in points (2), (8), (9), (11) and (12) of Annex X, Part B, in accordance with the conditions applying in that Member State on 1 January 1987.

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Article 376

Spain may continue to exempt the supply of services performed by authors, listed in point (2) of Annex X, Part B, and the transactions listed in points (11) and (12) of Annex X, Part B, in accordance with the conditions applying in that Member State on 1 January 1993.

Article 377

Portugal may continue to exempt the transactions listed in points (2), (4), (7), (9), (10) and (13) of Annex X, Part B, in accordance with the conditions applying in that Member State on 1 January 1989.

Article 378

- 1 Austria may continue to tax the transactions listed in point (2) of Annex X, Part A.
- 2 For as long as the same exemptions are applied in any of the Member States which were members of the Community on 31 December 1994, Austria may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following transactions:
 - a the transactions listed in points (5) and (9) of Annex X, Part B;
 - b with deductibility of the VAT paid at the preceding stage, all parts of international passenger transport operations, carried out by air, sea or inland waterway, other than passenger transport operations on Lake Constance.

Article 379

- 1 Finland may continue to tax the transactions listed in point (2) of Annex X, Part A, for as long as the same transactions are taxed in any of the Member States which were members of the Community on 31 December 1994.
- 2 Finland may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the supply of services by authors, artists and performers, listed in point (2) of Annex X, Part B, and the transactions listed in points (5), (9) and (10) of Annex X, Part B, for as long as the same exemptions are applied in any of the Member States which were members of the Community on 31 December 1994.

Article 380

Sweden may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the supply of services by authors, artists and performers, listed in point (2) of Annex X, Part B, and the transactions listed in points (1), (9) and (10) of Annex X, Part B, for as long as the same exemptions are applied in any of the Member States which were members of the Community on 31 December 1994.

Article 381

The Czech Republic may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 382

Estonia may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 383

Cyprus may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following transactions:

- (a) the supply of building land referred to in point (9) of Annex X, Part B, until 31 December 2007;
- (b) the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 384

For as long as the same exemptions are applied in any of the Member States which were members of the Community on 30 April 2004, Latvia may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following transactions:

- (a) the supply of services by authors, artists and performers, as referred to in point (2) of Annex X, Part B;
- (b) the international transport of passengers, as referred to in point (10) of Annex X, Part B.

Article 385

Lithuania may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 386

Hungary may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 387

For as long as the same exemptions are applied in any of the Member States which were members of the Community on 30 April 2004, Malta may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following transactions:

- (a) without deductibility of the VAT paid at the preceding stage, the supply of water by a body governed by public law, as referred to in point (8) of Annex X, Part B;
- (b) without deductibility of the VAT paid at the preceding stage, the supply of buildings and building land, as referred to in point (9) of Annex X, Part B;

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- (c) with deductibility of the VAT paid at the preceding stage, inland passenger transport, international passenger transport and domestic inter-island sea passenger transport, as referred to in point (10) of Annex X, Part B.

Article 388

Poland may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 389

Slovenia may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Article 390

Slovakia may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004.

Section 3

Provisions common to Sections 1 and 2

Article 391

Member States which exempt the transactions referred to in Articles 371, 375, 376 or 377, Article 378(2), Article 379(2) or Articles 380 to 390 may grant taxable persons the right to opt for taxation of those transactions.

Article 392

Member States may provide that, in respect of the supply of buildings and building land purchased for the purpose of resale by a taxable person for whom the VAT on the purchase was not deductible, the taxable amount shall be the difference between the selling price and the purchase price.

Article 393

1 With a view to facilitating the transition to the definitive arrangements referred to in Article 402, the Council shall, on the basis of a report from the Commission, review the situation with regard to the derogations provided for in Sections 1 and 2 and shall, acting in accordance with Article 93 of the Treaty decide whether any or all of those derogations is to be abolished.

2 By way of definitive arrangements, passenger transport shall be taxed in the Member State of departure for that part of the journey taking place within the Community, in accordance with the detailed rules to be laid down by the Council, acting in accordance with Article 93 of the Treaty.

CHAPTER 2

Derogations subject to authorisation

Section 1

Simplification measures and measures to prevent tax evasion or avoidance

Article 394

Member States which, at 1 January 1977, applied special measures to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance may retain them provided that they have notified the Commission accordingly before 1 January 1978 and that such simplification measures comply with the criterion laid down in the second subparagraph of Article 395(1).

Article 395

1 The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

Measures intended to simplify the procedure for collecting VAT may not, except to a negligible extent, affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.

2 A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required.

Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.

3 Within three months of giving the notification referred to in the second subparagraph of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4 The procedure laid down in paragraphs 2 and 3 shall, in any event, be completed within eight months of receipt of the application by the Commission.

Section 2

International agreements

Article 396

1 The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country or an international body an agreement which may contain derogations from this Directive.

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2 A Member State wishing to conclude an agreement as referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required.

Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.

3 Within three months of giving the notification referred to in the second subparagraph of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4 The procedure laid down in paragraphs 2 and 3 shall, in any event, be completed within eight months of receipt of the application by the Commission.

TITLE XIV

MISCELLANEOUS

CHAPTER 1

Implementing measures

Article 397

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

CHAPTER 2

VAT Committee

Article 398

1 An advisory committee on value added tax, called 'the VAT Committee', is set up.

2 The VAT Committee shall consist of representatives of the Member States and of the Commission.

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

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

3 The VAT Committee shall adopt its own rules of procedure.

4 In addition to the points forming the subject of consultation pursuant to this Directive, the VAT Committee shall examine questions raised by its chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of Community provisions on VAT.

CHAPTER 3

Conversion rates

Article 399

Without prejudice to any other particular provisions, the equivalents in national currency of the amounts in euro specified in this Directive shall be determined on the basis of the euro conversion rate applicable on 1 January 1999. Member States having acceded to the European Union after that date, which have not adopted the euro as single currency, shall use the euro conversion rate applicable on the date of their accession.

Article 400

When converting the amounts referred to in Article 399 into national currencies, Member States may adjust the amounts resulting from that conversion either upwards or downwards by up to 10 %.

CHAPTER 4

Other taxes, duties and charges

Article 401

Without prejudice to other provisions of Community law, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties or, more generally, any taxes, duties or charges which cannot be characterised as turnover taxes, provided that the collecting of those taxes, duties or charges does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.

TITLE XV

FINAL PROVISIONS

CHAPTER 1

Transitional arrangements for the taxation of trade between Member States

Article 402

1 The arrangements provided for in this Directive for the taxation of trade between Member States are transitional and shall be replaced by definitive arrangements based in principle on the taxation in the Member State of origin of the supply of goods or services.

2 Having concluded, upon examination of the report referred to in Article 404, that the conditions for transition to the definitive arrangements are met, the Council shall, acting in accordance with Article 93 of the Treaty, adopt the provisions necessary for the entry into force and for the operation of the definitive arrangements.

Article 403

The Council shall, acting in accordance with Article 93 of the Treaty, adopt Directives appropriate for the purpose of supplementing the common system of VAT and, in particular, for the progressive restriction or the abolition of derogations from that system.

Article 404

Every four years starting from the adoption of this Directive, the Commission shall, on the basis of information obtained from the Member States, present a report to the European Parliament and to the Council on the operation of the common system of VAT in the Member States and, in particular, on the operation of the transitional arrangements for taxing trade between Member States. That report shall be accompanied, where appropriate, by proposals concerning the definitive arrangements.

CHAPTER 2

Transitional measures applicable in the context of accession to the European Union

Article 405

For the purposes of this Chapter, the following definitions shall apply:

- (1) ‘Community’ means the territory of the Community as defined in point (1) of Article 5 before the accession of new Member States;
- (2) ‘new Member States’ means the territory of the Member States which acceded to the European Union after 1 January 1995, as defined for each of those Member States in point (2) of Article 5;
- (3) ‘enlarged Community’ means the territory of the Community as defined in point (1) of Article 5 after the accession of new Member States.

Article 406

The provisions in force at the time the goods were placed under temporary importation arrangements with total exemption from import duty or under one of the arrangements or situations referred to in Article 156, or under similar arrangements or situations in one of the new Member States, shall continue to apply until the goods cease to be covered by these arrangements or situations after the date of accession, where the following conditions are met:

- (a) the goods entered the Community or one of the new Member States before the date of accession;
- (b) the goods were placed, on entry into the Community or one of the new Member States, under these arrangements or situations;
- (c) the goods have not ceased to be covered by these arrangements or situations before the date of accession.

Article 407

The provisions in force at the time the goods were placed under customs transit arrangements shall continue to apply until the goods cease to be covered by these arrangements after the date of accession, where the following conditions are met:

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- (a) the goods were placed, before the date of accession, under customs transit arrangements;
- (b) the goods have not ceased to be covered by these arrangements before the date of accession.

Article 408

1 The following shall be treated as an importation of goods where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

- a the removal, including irregular removal, of goods from temporary importation arrangements under which they were placed before the date of accession under the conditions provided for in Article 406;
- b the removal, including irregular removal, of goods either from one of the arrangements or situations referred to in Article 156 or from similar arrangements or situations under which they were placed before the date of accession under the conditions provided for in Article 406;
- c the cessation of one of the arrangements referred to in Article 407, started before the date of accession in the territory of one of the new Member States, for the purposes of a supply of goods for consideration effected before that date in the territory of that Member State by a taxable person acting as such;
- d any irregularity or offence committed during customs transit arrangements started under the conditions referred to in point (c).

2 In addition to the case referred to in paragraph 1, the use after the date of accession within the territory of a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the territory of the Community or one of the new Member States shall be treated as an importation of goods where the following conditions are met:

- a the supply of those goods has been exempted, or was likely to be exempted, either under points (a) and (b) of Article 146(1) or under a similar provision in the new Member States;
- b the goods were not imported into one of the new Member States or into the Community before the date of accession.

Article 409

In the cases referred to in Article 408(1), the place of import within the meaning of Article 61 shall be the Member State within whose territory the goods cease to be covered by the arrangements or situations under which they were placed before the date of accession.

Article 410

1 By way of derogation from Article 71, the importation of goods within the meaning of Article 408 shall terminate without the occurrence of a chargeable event if one of the following conditions is met:

- a the imported goods are dispatched or transported outside the enlarged Community;
- b the imported goods within the meaning of Article 408(1)(a) are other than means of transport and are redispached or transported to the Member State from which they were exported and to the person who exported them;
- c the imported goods within the meaning of Article 408(1)(a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member

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States or of one of the Member States of the Community or which have not been subject, by reason of their exportation, to any exemption from, or refund of, VAT.

- 2 The condition referred to in paragraph 1(c) shall be deemed to be fulfilled in the following cases:
- a when the date of first entry into service of the means of transport was more than eight years before the accession to the European Union.
 - b when the amount of tax due by reason of the importation is insignificant.

CHAPTER 3

Transposition and entry into force

Article 411

1 Directive 67/227/EEC and Directive 77/388/EEC are repealed, without prejudice to the obligations of the Member States concerning the time-limits, listed in Annex XI, Part B, for the transposition into national law and the implementation of those Directives.

2 References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XII.

Article 412

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2(3), Article 44, Article 59(1), Article 399 and Annex III, point (18) with effect from 1 January 2008. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 413

This Directive shall enter into force on 1 January 2007.

Article 414

This Directive is addressed to the Member States.

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- (1) Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by Law, Regulation or Administrative Action relating to exemption from turnover tax and excise duty on imports in international travel ([OJ L 133, 4.6.1969, p. 6](#)). Directive as last amended by Directive 2005/93/EC ([OJ L 346, 29.12.2005, p. 16](#)).
- (2) Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods ([OJ L 105, 23.4.1983, p. 38](#)). Directive as last amended by the 1994 Act of Accession.
- (3) Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (codified version) ([OJ L 286, 17.10.2006, p. 15](#)).
- (4) Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country ([OJ L 331, 27.12.1979, p. 11](#)). Directive as last amended by the 2003 Act of Accession.
- (5) Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory ([OJ L 326, 21.11.1986, p. 40](#)).
- (6) Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ([OJ L 73, 19.3.1976, p. 18](#)). Directive as last amended by the Act of Accession of 2003.
- (7) Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax ([OJ L 264, 15.10.2003, p. 1](#)). Regulation amended by Regulation (EC) No 885/2004 ([OJ L 168, 1.5.2004, p. 1](#)).
- (8) [OJ L 13, 19.1.2000, p. 12](#).
- (9) [OJ L 338, 28.12.1994, p. 98](#).
- (10) [OJ 71, 14.4.1967, p. 1303/67](#). Directive repealed by Directive 77/388/EEC.
- (11) [OJ L 309, 25.11.2005, p. 15](#).