

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

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.

*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

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of value added tax<sup>(1)</sup> 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;
- (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

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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.

#### *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.

### 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<sup>(2)</sup>, 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.

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## CHAPTER 6

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

#### Section 1

#### **General provisions**

#### *f<sup>1</sup>* Article 357

This Chapter shall apply until 31 December 2014.]

#### **Textual Amendments**

- F1** Substituted by [Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of 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.

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#### *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.

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- (1) [OJ 71, 14.4.1967, p. 1303/67](#). Directive repealed by Directive 77/388/EEC.
- (2) [OJ L 309, 25.11.2005, p. 15](#).