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COUNCIL DIRECTIVE

of 30 April 1968

on a common method for calculating the average rates provided for in Article 97 of the Treaty

(68/221/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Decision of 21 June 1960 of the Representatives of the Governments of the Member States meeting in the Council;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[1];

Having regard to the Opinion of the Economic and Social Committee[2];

Whereas, since the Treaty entered into force, the fixing of the average rates provided for in Article 97 of the Treaty to offset the burden of turnover taxes levied in accordance with the cumulative multi-stage tax system has constantly given rise to difficulties which interfere with the proper functioning of the common market; whereas such adverse effects increase with the elimination of customs duties in the Community;

Whereas the sole purpose of any future alignment of compensatory charges and refunds should be to ensure that existing cumulative multi-stage turnover tax systems are more neutral in their impact on international trade and enable the changeover to the common value added tax system to be made in the best possible conditions; whereas such alignments are therefore in accordance with the criteria recognised in the Decision of 21 June 1960 of the Representatives of the Governments of the Member States meeting in the Council;

Whereas the difficulties mentioned above result mainly from differences between the methods used by the Member States for calculating these rates;

Whereas it is therefore in the interest of the common market that, until the value added tax is introduced in all Member States, these different methods of calculation should be harmonised by the adoption of common and reasonable rules which ensure observance of the limits set by Article 97 of the Treaty and make it possible to keep under review the average rates thus obtained;

Whereas, in order to take into account as far as possible the actual conditions in which a product or group of products is produced, such rules must provide for weighting of the tax burdens;

Whereas such rules must leave open to Member States the possibility of resorting to certain flat-rate estimates;

Whereas the Commission should be authorised to lay down, by directives adopted after consulting Member States, the procedure for applying the common method of calculation;

Whereas, in order to make it easier for the Commission to ensure observance of the limits set for the average rates, it should be provided that the Member States must submit to the Commission, on their own initiative, calculations based on the common method before introducing or altering an average rate in any way;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Where, pursuant to Article 97 of the Treaty, a Member State introduces or alters an average rate in order to offset, with respect both to imports and to exports, the turnover tax which is directly or indirectly imposed on the manufacture of a product or group of products, that rate shall be calculated in

[1] OJ No C 10, 14.2.1968, p. 4.
[2] OJ No. 317, 28.12.1967, p. 9.

accordance with the provisions of this Directive, in the light of the actual conditions of production.

2. This Directive shall not apply to:

— average rates existing when this Directive enters into force, even if used for calculating previous tax burdens in accordance with the provisions of Article 6;

— adaptations of the average rates arising solely from a general change of the rate of turnover tax.

Article 2

1. The average tax burden on a product shall be equal to the weighted average of the tax burdens on that product at the different representative stages of production established for each stage in accordance with Articles 3 to 6. The weighted average shall be based on the importance of each stage in relation to the total production of the product.

2. The average tax burden on a group of products shall be equal to the weighted average of the average tax burdens on representative products for that group. The size of the group of products shall determine the number of representative products to be taken into account. For each representative product the average tax burden shall be calculated in accordance with the provisions of paragraph 1. The weighted average shall be based on the importance of the representative products in relation to the total production of the group of products.

Article 3

For purposes of calculating the tax burdens on a product at the final stage of production, the tax burdens on all factors in the cost price at that stage may be taken into account.

Article 4

1. For purposes of calculating the tax burden on a product at the penultimate stage, account may be taken of the burdens imposed at that stage on those raw materials, semi-finished products and finished products which are used in raw materials, semi-finished products or finished products taken into account at the final stage, or in any other factor or component taken into account at the final stage, if it represents at that stage not less than 3% of the selling price of the final product before tax.

2. For purposes of calculating the tax burden on a product at the other stages, account may be taken of the burdens imposed at each of these stages on those raw materials, semi-finished products and finished products which are intended for the manufacture of a raw material, semi-finished product or finished product taken into account at the final stage.

Article 5

1. If, for a factor or for a component taken into account at any stage, the tax burden at previous stages has not been calculated in accordance with Article 4, the bourden on that factor or that component may be increased at a standard rate of 50%. If, however, the amount of the tax burden on that factor or that component is due to the application of a special rate, that amount must be recalculated before application of the standard rate, on the basis of the standard rate of turnover tax. Where that special rate covers one or more previous stages, the burden resulting from the application of that rate shall not be increased at a standard rate.

2. The burden thus calculated for previous stages may not exceed that which would result from applying Articles 4 and 6 to that factor or component.

Article 6

If, for a factor or component taken into account at any stage, an average rate exists, that may be used for calculating the previous tax burden on that factor or that component where it is in accordance with Article 97. This rate shall be applied if it is supported by calculations submitted to the Commission in accordance with Article 10.

Article 7

1. Where, in the case of a product or group of products, a Member State does not calculate the average tax burden in accordance with Articles 2 to 6, that burden may be estimated at a standard rate corresponding to 100%, 75%, 50% or 30% of the standard rate of turnover tax, according to whether the factors and components of the product or group of products which may be taken into account at the final stage and are liable to the standard rate or to the increased rate of turnover tax represent 65%, 50%, 35% or less than 35%, respectively, of the selling price of the product or group of products before tax.

2. The burden thus estimated may not exceed the average tax burden which would result from applying Articles 2, 3, 4 and 6.

Article 8

The average rates shall be rounded to the next half point above or below according to whether the decimal fraction of the rate obtained reaches or does not reach 0·75 or 0·25.

Article 9

After consulting the Member States, the Commission shall, if necessary, lay down by directive the procedure for application of Articles 1 to 8.

Article 10

1. Where a Member State intends to introduce or to alter an average rate, it shall submit to the Commission the calculations by which the average tax burden was established in accordance with Articles 1 to 8.

2. Where the Commission considers that a tax burden established at a standard rate in accordance with Article 5 or 7 exceeds the limits set in paragraph 2 of those Articles, the Member State shall submit to the Commission, on request, the calculation by which that burden was established under Articles 2, 3, 4 and 6.

Article 11

Member States shall communicate to the Commission the text of the main provisions of national law which they subsequently adopt in the field covered by this Directive.

This Directive is addressed to the Member States.

Done at Luxembourg, 30 April 1968.

For the Council

The President

M. COUVE de MURVILLE