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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC, EURATOM, ECSC) No 3625/83

of 19 December 1983

amending Regulation (EEC, Euratom, ECSC) No 2892/77 implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources [1], and in particular Article 6 (2) thereof,

Having regard to the proposal from the Commission [2],

Having regard to the opinion of the European Parliament [3],

Having regard to the opinion of the Court of Auditors [4],

Whereas Regulation (ECSC, EEC, Euratom) No 3550/82 [5] extended, until 31 December 1985, Regulation (EEC, Euratom, ECSC) No 2892/77 [6];

Whereas the material application of Regulation (EEC, Euratom, ECSC) No 2892/77 has revealed, since its entry into force, the need to adapt and supplement certain provisions on a number of points without awaiting the adoption of definitive uniform arrangements;

Whereas the statistical analysis of the data necessary for calculating the weighted average rate should be supplemented and improved;

Whereas, on the one hand, the procedures for presenting the annual summary account should be supplemented and, on the other hand, the necessary procedures laid down for correcting the said summary;

Whereas provision should be made for the Commission to present, before 31 December 1984, a report on the application of Regulation (EEC, Euratom, ECSC) No 2892/77, as amended by this Regulation, at the same time as the guidelines relating to the definitive uniform arrangements levying VAT own resources,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom, ECSC) No 2892/77 is hereby amended in accordance with the following Articles.

Article 2

Article 2 (3) is hereby replaced by the following:

'3. By way of derogation from paragraph 1, Member States shall have the option of leaving out of account, for the purpose of determining VAT own resources, transactions performed by taxable persons whose annual turnover, determined according to the rules laid down in Article 24 (4) of Directive 77/388/EEC, does not exceed 10 000 ECU converted into the national currencies at the average rate for the financial year concerned. Member States may round upwards or downwards, by up to 10 %, the amounts which result from the conversion.'

Article 3

Article 3 is hereby amended as follows:

(a) The following is added to the first paragraph:

'..., informing the Commission of the method they propose to apply.'

(b) The second paragraph is deleted.

(c) The latest paragraph is replaced by the following:

'The Commission shall communicate the information referred to in the first and second paragraphs to the Member States.'

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[1] OJ No L 94, 28. 4. 1970, p. 19.
[2] OJ No C 200, 4. 8. 1982, p. 12.
[3] OJ No C 13, 17. 1. 1983, p. 218.
[4] OJ No C 151, 9. 6. 1983, p. 6.
[5] OJ No L 373, 31. 12. 1982, p. 1.
[6] OJ No L 336, 27. 12. 1977, p. 8.

Article 4

In Article 4 (3), 'in the absence of any such returns, owing to failure of the taxable person to fulfil his obligations, from the estimated assessment made by the competent authority of the Member State' is hereby replaced by 'derived from the estimated assessment made by the competent authority of the Member State'.

Article 5

Article 6 is hereby replaced by the following:

'*Article 6*

For a given year, and without prejudice to Article 9, the VAT own resources basis shall be calculated by dividing the total net VAT revenue collected by a Member State by the rate at which VAT is levied during the same year.

If several VAT rates are applied in a Member State, the VAT own resources basis shall be calculated by dividing the total net VAT revenue collected by the weighted average rate of VAT. In this case, the Member State shall determine the weighted average rate, calculated to four decimal places, by applying the common method of calculation defined in Article 7. This weighted average shall be expressed per hundred currency units.'

Article 6

Article 7 is hereby replaced by the following:

'*Article 7*

1. In order to calculate the weighting of the various rates as referred to in Article 6, the Member State shall break down, by rate of VAT applied, all transactions which are taxable under its national legislation and which do not give rise to deduction of VAT in the hands of a purchaser or customer, taking into account Article 17 of Directive 77/388/EEC, and consumption on the farm by flat-rate farmers and their direct sales to final consumers.

The VAT rates used for the purposes of such calculation shall be those which, in accordance with paragraph 7, affect the VAT revenue collected during the year in question.

Transactions which are subject, pursuant to Article 28 (2) of Directive 77/388/EEC, to an exemption with reimbursement of the taxes paid at the previous stage shall be regarded as zero-rated transactions.

2. The breakdown by rate of VAT shall be applied to the following categories:

(a) the following categories of transaction, subject to non-deductible VAT:

— final consumption of households on the territory referred to in Article 3 of Directive 77/388/EEC for the Member State in question, if not covered by subparagraph (b), and intermediate consumption of private non-profit institutions and public services,

— intermediate consumption of other sectors,

— gross fixed-capital formation of public services,

— gross fixed-capital formation of other sectors,

— improved and unimproved building land, as defined in Article 4 (3) (b) of Directive 77/388/EEC;

(b) consumption on the farm by flat-rate farmers and their direct sales to final consumers.

3. For the purposes of the breakdown referred to in paragraph 2, transactions by the flat-rate farmers referred to in subparagraph (b) thereof shall be subject to a rate equivalent to the charge on inputs.

4. The breakdown of transactions by statistical category shall be effected by means of data taken from national accounts prepared in accordance with the European system of integrated economic accounts (ESA). In order to calculate the VAT own resources basis for any given financial year, reference shall be made to the national accounts relating to the penultimate year preceding that financial year.

A Member State may be authorized, pursuant to the procedure provided for in Article 13, to use data relating to another year, but which may not be prior to the fifth year preceding the financial year in question.

5. For the purpose of identifying transactions subject to non-deductible VAT and effecting the breakdown by rate of VAT, Member States may, in addition, refer to data taken from sources other than the ESA and, in the first instance, from internal national accounts, if they provide the necessary breakdown, or in the absence of such accounts, to any other appropriate source.

6. In order to determine the weighting of each rate, Member States shall calculate the ratio between the value of the transactions to which that rate applies and the aggregate value of all relevant transactions.

7. Should a Member State amend the VAT rate applicable to all or some transactions or the tax treatment for certain transactions in such a way as to affect the VAT revenue collected, it shall calculate a new weighted average rate. The new weighted average rate shall be applied to the revenue derived from application of the amended rate or tax treatment.

By way of derogation from the foregoing subparagraph, the Member State may calculate a single weighted average rate. To this end, transactions in respect of which the rate or treatment has been changed shall be allocated to the old and new rates or to the old and new treatments *pro rata temporis*, by taking account of the average period of time elapsing between entry into force of the new rate or treatment and the collection of revenue resulting therefrom ; this calculation shall apply to the whole of the year in question. This average period may be rounded up to the full month.'

Article 7

Article 9 is hereby amended as follows :

(a) In the third indent of paragraph 2, 'paragraphs 1 (a) and (2)' is replaced by 'paragraph 1 (a)'.

(b) The second subparagraph of paragraph 3 is deleted.

(c) The following second subparagraph is added to paragraph 4 :

'The preceding subparagraph shall apply, in relation to the second subparagraph of Article 17 (6) of Directive 77/388/EEC, only in respect of the purchase of petroleum products and passenger cars used for business purposes.'

Article 8

Article 10 is hereby amended as follows :

(a) The second subparagraph of paragraph 1 is replaced by the following :

'The summary account shall contain all the necessary data used to determine the basis which are required for the checks referred to in Article 12. It shall indicate separately the basis resulting from the transactions referred to in Articles 5 (1) to (3), 8 and 9 (1) to (4).'

(b) The third subparagraph of paragraph 1 is deleted.

(c) At the end of the first indent of the first subparagraph of paragraph 2, 'or any other continuous 12-month period to be determined by the Member States' is deleted.

(d) At the end of the second indent of the first subparagraph of paragraph 2, 'or any other continuous 12-month period to be determined by the Member States' is deleted.

(e) The third subparagraph of paragraph 2 is deleted.

(f) Paragraph 4 is deleted.

Article 9

The following Articles 10a and 10b are hereby inserted :

'*Article 10a*

Member States shall forward to the Commission by 30 April each year an estimate of the VAT own resources basis for the following financial year.

Article 10b

1. The corrections to the summary accounts relating to previous financial years referred to in Article 10 (1) shall be made by the Commission in agreement with the Member State.

In the absence of such agreement, and following a renewed examination, the Commission shall take the steps it considers necessary to ensure the correct application of this Regulation.

The corrections to the accounts shall be incorporated in a summary estimate adopted on 30 June.

2. No further corrections may be made to the annual summary account referred to in Article 10 (1) after three years have elapsed from the end of a given financial year, unless they concern points previously notified either by the Commission or by the Member State concerned.'

Article 10

The first and second subparagraphs of Article 11 (1) are hereby replaced by the following :

'1. Member States shall inform the Commission by 30 April of each financial year of the solutions they propose to adopt in order to determine the VAT own resources basis for each of the categories of transaction referred to in Articles 5 (2) and (3), 8 and 9 (1) to (4), indicating, where applicable, the nature of the data which they consider appropriate and an estimate of the value of the assessment basis for each of these categories of transaction.

They shall inform the Commission of the modifications they intend to make to the solutions adopted under Article 13 for previous financial years, subject to the same conditions.'

Article 11

The following paragraph 3 is hereby added to Article 12 :

'3. Following the checks referred to in paragraph 1, the annual summary account for a given financial year shall be corrected in accordance with Article 10b.'

Article 12

Article 13 (2) is hereby amended as follows :

(a) The beginning of the first subparagraph shall read as follows :

'Member States applying for the authorization provided for in Article 5 (3), 7 (4) or 9 (3) shall refer ...' (remainder unchanged).

(b) The beginning of the second subparagraph shall read as follows :

'The Commission representative shall submit to the Committee as soon as possible and not later than 31 December of this financial year, a draft of the decision ...'

Article 13

In Article 14 the following subparagraph is hereby inserted between the second and third subparagraphs :

'The Commission will present, before 31 December 1984, a report on the application of this Regulation, at the same time as it presents proposals in respect of a uniform method for determining the assessment basis. In this connection, account shall be taken of possible disparities in administrative burdens incurred by taxable persons, or by the public administration.'

Article 14

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

It shall apply with effect from 1 January 1983.

However, it shall not apply to the drawing up or correction of the summaries indicating the total definitive amount of the VAT resources basis for the years preceding 1983.

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

Done at Brussels, 19 December 1983.

For the Council

The President

G. VARFIS