

GENERAL AGREEMENT ON
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NOTIFICATIONS OF CHANGES IN TAX ADJUSTMENTS

BELGIUM

This notification is made pursuant to paragraph 40 of L/3464 -- Report by the Working Party on Border Tax Adjustments

BORDER TAX ADJUSTMENTS

Act of 3 July 1969 Establishing the Code Concerning Tax on Value Added

Act of 23 December 1970 Concerning Progressive Tax Exemption for Exports
Within the Context of Tax on Value Added

The Act of 3 July 1969 establishing the Code concerning tax on value added entered into force on 1 January 1971. This tax replaces most of the taxes assimilated to stamp duty (transmission tax, invoice tax, luxury tax and tax on transport) which had been in existence for nearly fifty years.

The Act of 23 December 1970 concerning progressive tax exemption for exports within the context of tax on value added also took effect on 1 January 1971.

The principal provisions of these two Acts are examined below.

I. Act of 3 July 1970, on the tax on value added (TVA)

1. General principles

The TVA has been introduced within the context of the objective of harmonizing turnover taxes to the fullest possible extent in the six member countries of the European Communities. The essential objective of the Rome Treaty is to establish, within the immediate framework of an economic union, a common market in which sound competition exists and which has characteristics similar to those of a large domestic market. With a view to attaining this objective in respect of indirect taxation, on 11 April 1967 the Council of Ministers of the European Communities adopted two directives concerning harmonization of the legislation of member States in regard to turnover tax.

The Belgian Act on the TVA is in conformity with these two directives. It is characterized by the transparency of the tax which enables any distortion at the border to be eliminated; it also allows economic circuits to be organized and to develop fully, without any hindrance of a fiscal nature. The TVA will act as an incentive to economic growth by eliminating double taxation of the fixed capital assets of undertakings.

On each transaction, the TVA is calculated on the basis of the price of the goods or services concerned at the rate applicable thereto, a deduction being made by the amount of TVA directly charged on the cost of the various component elements of that price.

The TVA is thus a single consumption tax, exactly proportional to the price of goods and services, whatever the number of transactions occurring in the production and distribution process, but it is charged in the form of fragmented payments.

Since the TVA has the characteristics of a general tax on expenditure, in macro-economic terms it is charged on the major part of private consumption, current purchases of goods and services by the public authorities, investments in residential buildings, investments by non-taxable undertakings, investments by the State and by the private education sector, and certain expenses of intermediary demand.

Certain services enumerated in Article 44 of the Act are, however, excluded from the field of application of the TVA. These exemptions have been provided because of over-riding social considerations. Thus, for example, medical and quasi-medical services are exempted, as are teaching services in the broad sense and certain services of a cultural or sporting character.

A special régime is provided for small undertakings and agricultural undertakings.

So far as small undertakings are concerned, the tax is charged on a standard-rate basis, while the tax payable by small retailers is collected in the form of an equalization charge which is entered in their account by their suppliers. So far as agricultural undertakings are concerned, in respect of each delivery or service furnished to a taxable contracting partner, the latter reimburses to them the amount of the standard-rate taxes which have been charged on the component elements of the price of the delivery or service concerned.

The maximum rates of the TVA are determined under Article 37 as follows:

- 6 per cent for deliveries and imports of essential goods and for services of a social character;
- 15 per cent for deliveries and imports of current consumer goods and for services which are of particular interest from the economic, social or cultural aspect;

- 20 per cent for transactions relating to goods or services not elsewhere specified;
- 25 per cent for certain products of a luxury character.

Article 102 stipulates that, notwithstanding the provisions of Article 37, for the first year of application the maximum rates are to be 6 per cent, 14 per cent, 18 per cent and 25 per cent.

The King determines the rates, and likewise determines which rate is to be applicable to which goods and services. Under the Royal Order of 20 July 1970, the rates were established at the maximum levels indicated above.

In the event that economic or social contingencies make such action necessary, the King may amend the distribution and the rates, within the limit of maximum margins determined by the Act.

2. Régime applicable to external trade and international relations

(a) Imports

The technique of the TVA has been so devised as to ensure maximum tax neutrality as between Belgian and foreign products, whether in respect of equipment goods or consumer goods. Thus, in accordance with the general principle of deductibility of TVA paid at the time of purchase, the amount of TVA paid at the time of importation can subsequently be deducted from the amount payable on sales.

In pursuance of Articles 3 and 23 of the Code, imports effected by any person whatsoever are subject to the TVA. The tax-triggering operation is the material fact of crossing the frontier.

In certain cases, the Code provides for tax relief or exemption; such cases include goods intended for export, as well as raw materials and auxiliary materials entering into the manufacture of such goods.

The rates of TVA payable at importation of goods are those provided in respect of deliveries within the country. The same applies to rates of the equalization charge.

Where imported goods have been purchased against payment of a certain price, the tax base is that price increased by the amount of certain costs (transport, insurance, duties, taxes, charges, levies, other than the TVA itself). In the case of imports without payment of any price, the tax base is the normal value of the goods concerned.

(b) Exports

Deliveries of goods which the supplier exports or causes to be exported are exempt from taxes, and likewise services in relation to goods which the party rendering such services exports or causes to be exported. Through the operation of the deduction procedure, the exporter can recover the taxes he has disbursed.

Exemption for exports can also be obtained at the stage preceding export. If the exporter is taxable, he can have delivered to him in the country or can import, free of tax, such goods as he intends to export, raw materials and auxiliary materials entering into the manufacture of those goods, and can obtain free of tax the services involved in manufacture. The person who delivers goods to the exporter or who furnishes services to him can also recover the taxes he has paid, through the deduction system. The mechanism combining exemption for exports with maintenance of the deduction entitlement has the effect of completely relieving from the TVA all exported goods and services relating to exported goods.

(c) International traffic

Under Article 42, paragraph 1 of the Code, deliveries of means of transport normally used in international traffic, such as ships, vessels and aircraft, are exempt from the tax and likewise deliveries of goods intended for the construction of vessels and aircraft and services rendered in connexion with such construction. The exemption is motivated by the special destination of these goods, which is related to export trade.

(d) Embassies and consulates

Under Article 42, paragraph 2, sub-paragraph 1 of the Code, exemption from the tax, subject to the conditions and within the limits set by the Minister of Finance or his designated representatives, is granted on deliveries and imports of goods and on services rendered:

- to foreign embassies, legations and consulates accredited in Belgium, for their official use;
- to diplomatic and consular officials and members of the administrative and technical staff of diplomatic missions or consulates, for their personal use.

The following are assimilated to embassies for the purposes of application of Article 42, paragraph 2, sub-paragraph 1:

- permanent delegations of member countries to the North Atlantic Treaty Organization, excluding the Belgian permanent delegation;

- permanent delegations of member countries to the European Communities, excluding the Belgian permanent delegation;
- missions of third States to the European Communities.

3. Transitional provisions

In accordance with Article 45, any taxpayer may deduct from the amount of tax payable by him in respect of deliveries made and services rendered by him such taxes as have been charged on the goods and services furnished to him or such taxes as he has paid upon importation.

This deduction is immediate and applies to all the taxable elements entering into the formation of the price of goods and services, including taxes on equipment goods.

During a transitional period, however, while the deduction of taxes on equipment goods will be immediate, it will be only partial.

This provision was necessary in order to avoid any slowing down of investments. Indeed, a sudden shift on 1 January 1971 from a system of taxation of equipment goods to a system of total deduction would inevitably have caused serious disruption in the rate of investments. Partial and progressive deduction will limit economic disturbances.

Likewise for budgetary reasons, it was not possible to apply immediately and in full the principle of deduction provided for in the act.

Accordingly, equipment goods will be taxed degressively according to the following scale:

- 10 per cent for equipment purchased in 1971
- 7.5 per cent for equipment purchased in 1972
- 5 per cent for equipment purchased in 1973
- 2.5 per cent for equipment purchased in 1974

Total tax exemption for equipment purchased as from 1975.

With respect to motor vehicles and trailers for such vehicles, these percentages are fixed at 12 per cent, 9 per cent, 6 per cent and 3 per cent respectively.

The degressive tax on equipment goods will probably be passed on to selling prices, through the amortization process. It should be emphasized in this connexion that the hidden tax burden which will result will not be the subject of any adjustment at the border.

II. Act of 23 December 1970 concerning progressive tax exemption for exports within the context of tax on value added.

Under Article 39 of the Code concerning tax on value added, deliveries of goods exported by the supplier and services rendered in relation to exported goods are exempt from TVA.

Under the system of taxes assimilated to stamp duty, standard-rate rebates were already granted on exports, but these rebates did not cover the entire amount of the taxes incorporated therein. It has been estimated on the basis of studies that in 1971 the tax burden of exports would still have amounted to approximately BF 9,000 million.

The shift to the TVA system, and in particular the action taken with respect to the rates applicable to goods and services with a view to reducing to a strict minimum the incidence on prices, have given rise to a budgetary problem of some magnitude. Indeed, in the absence of any other measures of conservation, the ordinary budget would have incurred a deficit equivalent to approximately 4.5 per cent of ordinary expenditure.

A shortfall of such importance could not be borne, having regard to the general economic situation and in particular the price situation, and in view of the fact that in Belgium capital expenditure by the State is traditionally financed from credit sources.

With a view to solving the budgetary problem, certain temporary measures have been taken and one of these concerns foreign trade. This measure, which is the subject of the Act of 23 December 1970, provides for the collection of a special charge until 31 December 1971 on goods consigned abroad.

The rate of the export charge is fixed at:

- 0.50 per cent for goods which at 31 December 1970 were eligible for a standard-rate export rebate or similar tax relief;
- 1.75 per cent for all other goods.

In principle the charge is calculated on the total of the price and the charges passed on to the purchaser. It is not payable in respect of temporary exports, re-exports without processing or certain special operations (goods of little value, removal, gifts, etc.).

The tax burden on exports in 1971 is estimated at 4,500 million francs. It will be entirely eliminated as from 1 January 1972.

In fact, the system which has been introduced consists of tax exemption for exports, to be achieved in two stages. During the first year - that is to say in 1971 - Belgian export prices should, all things remaining equal - decline by approximately 0.6 per cent according to the macro-economic approach. A second reduction of the same magnitude will occur as from 1 January 1972.

