

A/P2/7/96 PROTOCOL ESTABLISHING VALUE ADDED TAX IN ECOWAS MEMBER STATES

THE HIGH CONTRACTING PARTIES

MINDFUL of Article 7 of the Economic Community of West African States (ECOWAS) Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

CONSIDERING the need to introduce within the Community, a uniform indirect tax which might encourage increased intra-Community trade on a non-discriminatory basis;

CONSIDERING that the value-added tax, by virtue of its mode of operation and its scope, may assist Member States to achieve their set objectives within the Community;

DESIRING to conclude a Protocol establishing value added tax in ECOWAS Member States;

HAVE AGREED AS FOLLOWS:

CHAPTER I

DEFINITIONS AND PURPOSE

1. TAXABLE AND NON-TAXABLE OPERATIONS

Article 1

In this Protocol

"Treaty" means the Treaty of the Economic Community of West African States.

"Community" means the Economic Community of West African States whose establishment is reaffirmed by Article 2 of the Treaty.

"Member State" or "Member States" means a Member State or Member States of the Economic Community of West African States.

"Council" means the Council of Ministers established by Article 10 of the Treaty of the Economic Community of West African States.

"Executive Secretary" or "Executive Secretariat" means the Executive Secretary or the Executive Secretariat of the Economic Community of West African States referred to in Article 17 of the Treaty.

Article 2

1. There is hereby established within the Member States of the Economic Community of West African States (ECOWAS) a consumer tax known as "value-added tax" (VAT) which shall replace the other indirect taxes on turnover.
2. Taxes on certain products and services, particularly those which rely on banking or insurance operations, along with excise duties shall remain applicable.
3. The structure and application of this tax shall be as defined by Member States in this Protocol.

CHAPTER II

SCOPE

Article 3

All operations shall be subject to value added tax which involve an economic activity carried out in exchange for payment within a Member State by any natural or legal person engaged habitually or occasionally in acts pertaining to an industrial, commercial, non-commercial or artisanal activity, with the exception of salaried activities.

Of particular importance are:

- a) **Imports** - by imports is meant the crossing of a customs area and the release for consumption of goods, in the customs;
- b) **Sales** - by sales is meant any operation involving the transfer of ownership of tangible goods to a third person, in return for payment;

- c) **Construction works** - by this is meant all works executed by the different lots involved in construction, maintenance and repair of buildings and all aspects of building, public works, heavy boiler work, metal construction works, demolition work and all secondary or preliminary works connected with construction works;
- d) Operations involving the transformation of agricultural and piscicultural produce and all other operations; even where undertaken by the farmers, fishermen or their cooperatives and which, by virtue of their importance, can be likened to activities undertaken by industrialists or traders, whether or not such activities are a continuation of agricultural or piscicultural activity;
- e) **Services** - covers all operations other than those referred to above carried out between two legally distinct persons and involving payment in cash or in kind.
- f) Deliveries by natural or legal persons of tangible goods, movable properties for their own use or for use by their enterprises or deliveries to be transferred free of charge to third parties;
- g) Generally, any lucrative activity other than salaried employment.
- registered seagoing vessels;
- registered river craft navigating in international waters;
3. Fuelling of ships and aircraft travelling abroad;
4. sales, repairs, conversions and maintenance of aircraft for use by airlines operating international flight schedules;
5. All goods under suspensory customs systems;
6. Operations carried out by insurance companies and any other insurers, irrespective of the nature of the risks insured which are liable to insurance tax;
7. Sales of fiscal stamps and stamped papers;
8. Transfer of ownership or usufruct or registered fixed assets, goodwill or clientele.

II. TAXPAYERS

Article 5

Any natural or legal persons undertaking taxable activities as defined in Articles 3 above shall be subject to value-added tax, particularly:

1. Importers;
2. Producers.

By producers is meant:

- a) Natural or legal persons who undertake as their principal or secondary activity, the extraction, manufacture or transformation of goods, whether for the purpose of manufacturing other products or for final use;
- b) Natural or legal persons who in effect, act as manufacturers and carry out, within or outside their factories, all operations involving the manufacture or final

Article 4

The following are exempt from VAT:

1. Direct export of products or goods;
2. Sales, repairs or conversion of:

commercial presentation of products whether or not such products are sold under the mark or name of the person carrying out these operations;

- c) Natural or legal persons who engage the services of a third person to carry out the operations enumerated in subparagraph (a) and (b) above;
 - d) *Workmen*: persons who give a product its definitive shape and who are hired by an employer to work principally on or with movable assets which do not belong to them and to which they generally only apply their expertise.
3. Construction firms and any natural or legal persons engaged in construction works on their own account on behalf of others.
 4. Leasing or credit leasing firms.
 5. *Traders* - those persons who habitually buy for resale, movable or immovable property either unprocessed or after preparation.
 6. Providers of services.
 7. Natural or legal persons, irrespective of their official designation or obligations with regard to all other taxes who:
 - a) have been authorised to receive goods or services, duty-free or at preferential rates, where the conditions justifying such tax exemptions or reductions have ceased to be valid, thus rendering them liable for the tax or supplementary tax;
 - b) sell or deliver on behalf of other taxable persons;
 - c) undertake taxable transactions on behalf of foreign firms.

CHAPTER III

TERRITORIALITY

Article 6

A transaction shall be considered to have been carried out in a Member State:

- in respect of sales where the sale has taken place in accordance with the conditions governing delivery of goods in that Member State;
- in respect of any other transaction - where the service provided, the right transferred or the object leased are utilised in that Member State.

Article 7

Where a taxpayer is not resident in a Member State, he must appoint a resident representative who shall fulfil all obligations pertaining to value added tax on his behalf. Failing this, all such obligations shall be honoured by the person on whose account the operations are undertaken.

CHAPTER IV

TAXABLE STAGE AND TAX LIABILITY

Article 8

The following shall be considered taxable stages of VAT:

1. — in respect of sales, upon delivery of goods or products;
- in respect of imports, upon delivery of goods for home use;
- in respect of construction works, upon execution or handing over of the building or works;
- in respect of services, once the service has been provided;
- in respect of deliveries for own use, upon initial use of the goods.

2. Value added tax shall be payable during the month following that in which the taxable stage took place, under conditions to be determined by each Member State.

In case of importation, value added tax shall be liable for payment at the taxable stage.

Article 9

A taxable stage may only be assessed prior to total or partial invoicing.

In the case of operations other than importation, payment of an advance shall be the taxable event for VAT.

CHAPTER V

TAXABLE BASE

Article 10

The taxable base shall be determined by the price demanded from the client to obtain a product or service and charges, inclusive of all taxes and exclusive of value added tax itself or the value of the object submitted for payment.

However, the taxable base shall be determined.

- For imports, by the customs value of the goods, to which shall be added duties and taxes of all descriptions, except value added tax itself.
- For deliveries for own use by the cost price of goods or works carried out.
- For construction works — by the cost of statements, agreements, invoices or deposits.
- For second hand goods — by the difference between the sales price and the actual price at which the goods are purchased.

Article 11

The taxable base defined above shall exclude any rebate, reduction or discount granted to the client on an invoice, within reasonable limits.

CHAPTER VI

RATES

Article 12

It shall be left to the discretion of each member State, provisionally, to determine the rates to be applied to goods and services subject to value added tax.

Article 13

The list of goods prepared in accordance with the ECOWAS Customs and Statistical Nomenclature, which are exempt from value added tax or subject to VAT rates other than the normal rate is annexed to the related text of each Member State.

The list of services which are exempt or which are subject to rates other than the normal rates is also annexed to the above text.

CHAPTER VII

TAX DEDUCTIBILITY

I. PRINCIPLE

Article 14

Deductibility shall be granted to all VAT taxpayers.

Article 15

Tax deductibility is assessed from the point at which the tax becomes payable. Value added tax paid on individual components which go into the price of a taxable operation is deductible from the value added tax applicable to the entire operation.

Article 16

1. Tax on operations is deductible by the tax payer if value added tax has been calculated and paid upon the purchase or importation of the following:
 - a. raw materials or similar items used in the manufacture of taxable products;

- b. goods for resale as part of a taxable operation;
 - c. services required as part of a taxable operation;
 - d. supplies of movable or immovable property acquired for the operation;
 - e. goods, products or merchandise exported.
2. The following are also tax deductible:
- a. value added tax on delivery for own use;
 - b. value added tax charged on leasing or hire-purchase on goods liable for deduction;
 - c. Value added on tax built into the ex-warehouse cost price or connected with the maintenance or preservation of tax deductible goods.
3. The above list is in no way exhaustive and may be amended during the transitional phase by legislation passed in Member States.

Article 17

To become eligible for deductions a tax payer must have in his possession:

- either invoices issued by his supplier, himself liable to tax; or
- a customs certificate of entry for home use showing that he is the genuine consignee.

Article 18

The total deductible amount shall be charged by the tax payer against all taxes due for the period covered by the declaration eligible for deduction and paid on goods and services.

Article 19

In the event of approved deductions exceeding the

amount due as taxes for the declared period, Member States may either carry over the surplus to the next year or may effect a refund according to modalities fixed by themselves.

III. LIMITATIONS

Article 20

In determining deductibility, tax payers who do not engage solely in taxable activities shall adopt a pro-rata system, whether in respect of fixed or other assets and services. The pro-rata is the ratio of yearly earnings from tax deductible operations to the total annual proceeds from all operations combined, expressed as a percentage.

CHAPTER VIII

OBLIGATIONS OF THE TAXPAYER

Article 21

The taxpayer shall declare, within a time limit to be fixed by each Member State, the date of commencement, change and cessation of his/her activity

Article 22

The taxpayer shall maintain regular and complete accounts in order to justify taxable and non-taxable operations carried out by him.

Article 23

A taxpayer delivering goods or services to a client or making a claim from that client for a taxable advance payment shall be required to issue an invoice or equivalent document to the client a copy of which shall be kept by the taxpayer.

The invoice or equivalent document, duly dated, shall state clearly:

1. the identification of the supplier, specifically his name, company name, address, tax identification number, bank references;
2. The nature of business transacted;

3. the pre-tax cost of goods delivered, services rendered or works executed;
4. the rate applicable and the amount payable as tax;
5. identity of the client, specifically name or business name, address, and, if necessary, tax identification number.

- determination of rates;
- classification of goods and services;
- scope of tax deductibility;
- credit stock management;
- control;
- disputes.

Article 24

Any reference to value added tax on an invoice shall automatically render a person liable for VAT.

Article 25

All taxpayers shall submit a declaration on operations within a time-limit to be fixed by Member States. The frequency of declaration and content shall be supplied by each Member State.

CHAPTER IX

TRANSITIONAL PROVISIONS

Article 26

Laws and regulations in force in Member States may continue to be applicable during a 3-year transition period from the date of entry into force of this protocol.

Article 27

At the end of the transitional period, the following areas shall be encapsulated within a harmonised text:

- liability, assessment and collection
- refund of value added tax
- sanctions and penalties;
- forfeit system;
- treatment applicable to small and medium scale enterprises;
- treatment applicable to agriculture;

CHAPTER X

FINAL PROVISIONS

Article 28

Settlement of disputes

Any dispute among Member States regarding the interpretation or application of this Protocol shall be amicably settled by the Council of Ministers. In the event of failure to settle such disputes, the matter may be referred to the Community Court of Justice by one of the parties and the decision of the Court shall be binding and final.

Article 29

Amendment and Revision

Any Member State may propose any amendment or revision of this protocol.

All proposals shall be submitted to the Executive Secretariat which shall transmit them to Member State within thirty (30) days of receipt. The Authority of Heads of State and Government shall consider the proposals for amendment and revision at the expiration of the three-month period granted to Member States.

Article 30

Deposit and Entry into Force

1. This Protocol shall enter into force, provisionally, upon signature by the Heads of State and Government and, definitively, upon ratification by at least nine (9) signatory States, in accordance with the

constitutional procedure applicable in each Member State.

2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat of the Community which shall transmit certified true copies thereof to all Member States and notify them of the dates of deposit of the instrument of ratification and shall register the Protocol with the Organisation of African Unity, the United Nations Organisations and such other Organisations as the Council of Ministers shall designate.
3. Each Member State shall inform the

Executive Secretariat of such provisions as it shall have made to ensure implementation of this Protocol. The Executive Secretariat shall convey this information to all other Member States.

IN FAITH WHEREOF, WE THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS PROTOCOL.

**DONE AT ABUJA,
THIS 27TH DAY OF JULY, 1996**

(IN SINGLE ORIGINAL IN ENGLISH, FRENCH AND PORTUGUESE, ALL THREE TEXTS BEING EQUALLY AUTHENTIC).



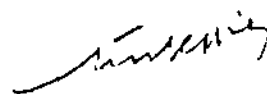
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President, Head of State, and Head of Government of the Republic of BENIN



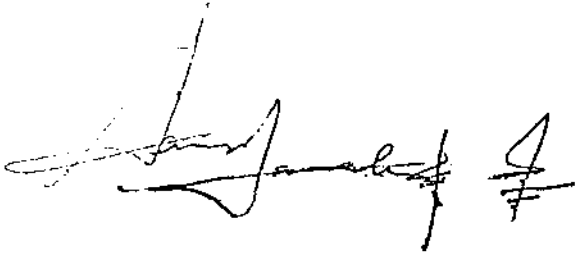
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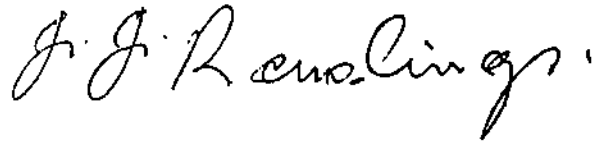
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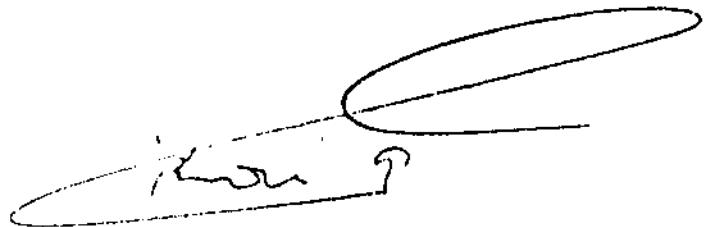
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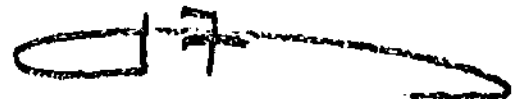
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Minister of African Economic Integration, for and on behalf of the President of the Republic of SENEGAL



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