Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING REGULATION (EU) 2017/2459

of 5 December 2017

amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[(1)], and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Implementing Regulation (EU) No 282/2011[(2)] lays down detailed provisions for the presumption of the location of the customer for determining the place of supply of telecommunications, broadcasting or electronically supplied services provided to non-taxable person.

(2) The evaluation of the requirements for the application of those presumptions has shown that for the taxable person established in a Member State and supplying such services to a non-taxable person in other Member States, to obtain, under certain circumstances, two items of non-contradictory evidence of the place where his customer is established or has his permanent address or usually resides, is extremely burdensome.

(3) The burden is particularly onerous for small and medium-sized companies. The requirement for one piece of evidence should simplify the obligations for such companies whose intra-Community supplies to consumers in other Member States are below a certain threshold.

(4) The simplification of the requirement to prove the customer's location is complementary to the amendments introduced by Article 1 of Council Directive (EU) 2017/2455[(3)] to the special schemes laid down in Chapter 6 of Title XII of Directive 2006/112/EC and should therefore apply from the same date.

(5) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 24b of Implementing Regulation (EU) No 282/2011 is replaced by the following:

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) 2017/2459. (See end of Document for details)*

Article 24b

For the application of Article 58 of Directive 2006/112/EC, where telecommunications, broadcasting or electronically supplied services are supplied to a non-taxable person:

(a) through his fixed land line, it shall be presumed that the customer is established, has his permanent address or usually resides at the place of installation of the fixed land line;

(b) through mobile networks, it shall be presumed that the place where the customer is established, has his permanent address or usually resides is the country identified by the mobile country code of the SIM card used when receiving those services;

(c) for which the use of a decoder or similar device or a viewing card is needed and a fixed land line is not used, it shall be presumed that the customer is established, has his permanent address or usually resides at the place where that decoder or similar device is located, or if that place is not known, at the place to which the viewing card is sent with a view to being used there;

(d) under circumstances other than those referred to in Article 24a and in points (a), (b) and (c) of this Article, it shall be presumed that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of two items of non-contradictory evidence as listed in Article 24f of this Regulation.

Without prejudice to point (d) of the first paragraph, for supplies of services falling under that point, where the total value of such supplies, exclusive of VAT, provided by a taxable person from his business establishment or a fixed establishment located in a Member State, does not exceed EUR 100 000, or the equivalent in national currency, in the current and the preceding calendar year, the presumption shall be that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of one item of evidence provided by a person involved in the supply of the services other than the supplier or the customer, as listed in points (a) to (e) of Article 24f.

Where, during a calendar year, the threshold provided in the second paragraph has been exceeded, that paragraph shall not apply as of that time and until such time as the conditions provided in that paragraph are fulfilled again.

The corresponding value in national currency of the amount shall be calculated by applying the exchange rate published by the European Central Bank on the date of adoption of Council Implementing Regulation (EU) 2017/2459[(4)]..

Article 2

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

It shall apply from 1 January 2019.

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