Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services

COUNCIL IMPLEMENTING REGULATION (EU) No 1042/2013

of 7 October 2013

amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services

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) Directive 2006/112/EC provides that as from 1 January 2015, all telecommunications, radio and television broadcasting and electronically supplied services supplied to a non-taxable person are to be taxed in the Member State in which the customer is established, has his permanent address or usually resides, regardless of where the taxable person supplying those services is established. Most other services supplied to a non-taxable person continue to be taxed in the Member State in which the supplier is established.

(2) In order to determine which services must be taxed in the Member State of the customer, it is essential to define telecommunications, radio and television broadcasting and electronically supplied services. In particular, the concept of radio and television broadcasting (hereinafter 'broadcasting') services should be clarified, drawing from definitions laid down in Directive 2010/13/EU of the European Parliament and of the Council[(2)].

(3) To clarify matters, transactions identified as electronically supplied services have been listed in Council Implementing Regulation (EU) No 282/2011[(3)], without the list being exhaustive. The list should be updated, and similar lists should be drawn up for telecommunications and broadcasting services.

(4) It is necessary to specify who is the supplier for value added tax (VAT) purposes where electronically supplied services, or telephone services provided through the internet, are supplied to a customer through telecommunications networks or via an interface or a portal.

(5) To ensure the uniform application of the rules governing the place of supply of hiring of means of transport and the place of supply of telecommunications, broadcasting and electronically supplied services, it is necessary to specify where a non-taxable legal person should be considered to be established.

(6) With a view to determining who is liable for payment of the VAT on the supply of telecommunications, broadcasting or electronically supplied services, and taking into account that the place of taxation is the same regardless of whether the customer is a taxable or a non-taxable person, the supplier should be able to determine the status of a customer solely based on whether the customer communicates his individual VAT identification number. This status must, in accordance with the general rules, be amended if such a communication is subsequently made by the customer. If no such communication is received, the supplier should remain liable for payment of the VAT.

(7) Where a non-taxable person is established in more than one country or has his permanent address in one country but usually resides in another, priority is to be given to the place that best ensures taxation at the place of actual consumption. To avoid conflicts concerning jurisdiction between Member States, the place of actual consumption should be specified.

(8) Rules should be established in order to clarify the tax treatment of the supply of hiring of means of transport and telecommunications, broadcasting and electronically supplied services to a non-taxable person whose place of establishment, permanent address or usual residence is practically impossible to determine or which cannot be determined with certainty. It is appropriate for those rules to be based on presumptions.

(9) Where information is available to determine the actual location at which the customer is established, has his permanent address or usually resides, it is necessary to provide for a presumption to be rebuttable.

(10) In certain cases where the service is occasional, habitually involves small amounts and requires the physical presence of the customer, such as the supply of telecommunications, broadcasting or electronically supplied services at a wi-fi hot spot or an internet café, or habitually does not give rise to payment receipts or other evidence of the service provided, as is the case with telephone boxes, the provision and control of evidence with respect to the place of establishment of the customer or his permanent address or usual residence would impose a disproportionate burden, or could pose problems of data protection.

(11) As the tax treatment of the supply of hiring of means of transport and telecommunications, broadcasting and electronically supplied services to a non-taxable person depends on where the customer is established, has his permanent address or usually resides, it is necessary to clarify, in cases for which no specific presumptions are established or for the rebuttal of presumptions, what evidence the supplier should have to identify the location of the customer. To that end an indicative, non-exhaustive list of evidence should be drawn up.

(12) In order to ensure the uniform tax treatment of supplies of services connected with immovable property, the concept of immovable property needs to be defined. The proximity required for there to be a connection with an immovable property should be specified, and a non-exhaustive list of examples of transactions identified as services connected with immovable property should also be provided.

(13) It is also necessary to clarify the tax treatment of the supply of services putting equipment at a customer's disposal with a view to carrying out work on immovable property.

(14) For practical reasons, it should be clarified that telecommunications, broadcasting or electronically supplied services provided by a taxable person acting in his own name in connection with the provision of accommodation in the hotel sector or sectors with a similar function should be regarded, for the purpose of determining the place of supply, as being supplied at those locations.

(15) In accordance with Directive 2006/112/EC, admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events must in all circumstances be taxed at the place where the event actually takes place. It should be made clear that this also applies where tickets to such events are not sold directly by the organiser, but are distributed through intermediaries.

(16) Under Directive 2006/112/EC, VAT can become chargeable prior to, at the time of or soon after the supply of goods or services. In relation to telecommunications, broadcasting or electronically supplied services supplied during the period of transition to the new rules on the place of supply, conditions linked to the supply or differences in application between Member States could result in double taxation or non-taxation. In order to avoid that, and to ensure uniform application in Member States, it is necessary to lay down transitional provisions.

(17) For the purposes of this Regulation, it may be appropriate for Member States to adopt legislative measures limiting certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council[(4)] in order to safeguard an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters, where such measures are necessary and proportionate in view of the risk of tax fraud and tax evasion in Member States, and in view of the need to ensure the correct collection of VAT covered by this Regulation.

(18) The concept of immovable property should be introduced in order to ensure a uniform tax treatment by Member States of supplies of services connected with immovable property. The introduction of that concept could have a considerable impact on the legislation and administrative practices in Member States. Without prejudice to such legislation or practices already applied in Member States and in order to ensure a smooth transition, that concept should be introduced at a later date.

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

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 282/2011 is amended as follows:

(1) Chapter IV is amended as follows:

(a) the following Articles are inserted:

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1042/2013. (See end of Document for details)*

Article 6a

1 Telecommunications services within the meaning of Article 24(2) of Directive 2006/112/EC shall cover, in particular, the following:

a fixed and mobile telephone services for the transmission and switching of voice, data and video, including telephone services with an imaging component (videophone services);

b telephone services provided through the internet, including voice over internet Protocol (VoIP);

c voice mail, call waiting, call forwarding, caller identification, three-way calling and other call management services;

d paging services;

e audiotext services;

f facsimile, telegraph and telex;

g access to the internet, including the World Wide Web;

h private network connections providing telecommunications links for the exclusive use of the client.

2 Telecommunications services within the meaning of Article 24(2) of Directive 2006/112/EC shall not cover the following:

a electronically supplied services;

b radio and television broadcasting (hereinafter "broadcasting") services.

Article 6b

1 Broadcasting services shall include services consisting of audio and audiovisual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule.

2 Paragraph 1 shall cover, in particular, the following:

a radio or television programmes transmitted or retransmitted over a radio or television network;

b radio or television programmes distributed via the internet or similar electronic network (IP streaming), if they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.

3 Paragraph 1 shall not cover the following:

a telecommunications services;

b electronically supplied services;

c the provision of information about particular programmes on demand;

d the transfer of broadcasting or transmission rights;

e the leasing of technical equipment or facilities for use to receive a broadcast;

f radio or television programmes distributed via the internet or similar electronic network (IP streaming), unless they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.;

***Changes to legislation:** There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1042/2013. (See end of Document for details)*

(b) in Article 7, paragraph 3 is amended as follows:

(i) the introductory phrase is replaced by the following:

3. Paragraph 1 shall not cover the following:;

(ii) point (a) is replaced by the following:

(a) broadcasting services;;

(iii) points (q), (r) and (s) are deleted;

(iv) the following points are added:

(t) tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online;

(u) accommodation, car-hire, restaurant services, passenger transport or similar services booked online.;

(c) the following Article is inserted:

Article 9a

1 For the application of Article 28 of Directive 2006/112/EC, where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties.

In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions shall be met:

a the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof;

b the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof.

For the purposes of this paragraph, a taxable person who, with regard to a supply of electronically supplied services, authorises the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply, shall not be permitted to explicitly indicate another person as the supplier of those services.

2 Paragraph 1 shall also apply where telephone services provided through the internet, including voice over internet Protocol (VoIP), are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications and are supplied under the same conditions as set out in that paragraph.

3 This Article shall not apply to a taxable person who only provides for processing of payments in respect of electronically supplied services or of telephone services provided through the internet, including voice over