Council Regulation (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons

COUNCIL REGULATION (EU) No 967/2012

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amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons

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, broadcasting and electronic services are to be taxed in the Member State in which the customer is established or has his permanent address or usual residence (hereinafter the 'Member State of consumption') regardless of where the taxable person supplying those services is established.

(2) In order to facilitate compliance with fiscal obligations where such services are supplied to non-taxable persons, a special scheme has been put in place for taxable persons established within the Community but not in the Member State where the services are supplied (hereinafter the 'Union scheme'). The other special scheme, for taxable persons not established within the Community (hereinafter the 'non-Union scheme') currently in place, has been extended to cover all of those services. This will enable non-established taxable persons to designate a Member State of identification as a single point of electronic contact for value added tax (VAT) identification and VAT declarations.

(3) A taxable person with establishments in more than one Member State should, under the Union scheme, be able to designate any of the Member States concerned as the Member State of identification, unless he has his place of business within the Community. In that case the Member State of identification is where the taxable person has his place of business.

(4) In order to avoid disproportionate burdens for taxable persons using the Union scheme, it should be clarified how a change of the Member State of identification can be effected where the taxable person changes his fixed establishment or business establishment in

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 967/2012. (See end of Document for details)*

such a way that a change in the Member State of identification is necessary in order for him to continue using the scheme.

(5) Telecommunications, broadcasting and electronic services supplied in Member States where the taxable person has established his business or has a fixed establishment are not covered by either of the special schemes. It should be made clear that such supplies should be declared directly to the Member State concerned.

(6) Since both of the special schemes are optional, a non-established taxable person is able to decide at any time to cease using them. It is necessary to clarify when such decisions take effect.

(7) However, to avoid unnecessary burdens for tax authorities, a taxable person who decides to cease using one of the special schemes should, for a certain period, be refused re-entry into that scheme.

(8) To keep the registration details in its database up-to-date, the Member State of identification relies on the information received from the taxable person. In order to ensure that databases are updated without delay, it is necessary to lay down a time limit within which the taxable person using the special schemes should communicate any relevant information on ceasing or changing activities and on changes to any relevant information already supplied.

(9) A VAT identification number needs to be allocated to a non-established taxable person who wants to make use of a special scheme. To prevent unintended retroactive use by taxable persons who are already identified for VAT purposes, it is necessary to clarify from which moment the special schemes should apply.

(10) To avoid doubt as to which Member State has jurisdiction, the Member State which may exclude a taxable person from using a special scheme should be specified. The circumstances in which that Member State is to take its decision on exclusion should also be specified, as should the time from which that decision takes effect.

(11) The concept of a non-established taxable person's cessation of activities eligible for one of the special schemes should be clarified, as should the concept of persistent failure on the part of a non-established taxable person.

(12) To promote compliance and avoid unnecessary burdens for tax authorities, a taxable person who is excluded from one of the special schemes due to persistent failure, should, for a certain period, be refused entry to any of the special schemes.

(13) It should be made clear that where a taxable person ceases to use one of the special schemes, is excluded from one of the special schemes, or changes the Member State of identification, all tax obligations regarding return periods prior to that cessation, exclusion or change are to be discharged with the Member State which was the Member State of identification prior to the cessation, exclusion or change.

(14) Each return period should be treated separately so as to facilitate control by the Member States of consumption and amendments should be made only to the VAT return concerned.

(15) It is appropriate, for reasons of control, to require non-established taxable persons to submit VAT returns to Member States of identification, even where no services have been supplied during the return period. It should also be clarified that the exact amount of VAT must be stated without any rounding up or down.

(16) It is necessary, in respect of amendments to VAT returns, to establish a time limit within which returns can be submitted electronically to the Member State of identification. Member States of consumption should, in any event, be able to accept or request relevant information directly from the taxable person and process VAT assessments according to their national rules.

(17) Where the Member State of identification does not have the euro as its currency, non-established taxable persons should be bound by the decision of that Member State as to the currency in which all VAT returns under the special schemes should be made.

(18) Without affecting the national rules of Member States of consumption on offsetting excess payments and for the sole purpose of ensuring efficient administration of the special schemes by the Member State of identification and avoiding an excessive administrative burden on both that Member State and the Member States of consumption, it should be ensured that taxable persons cannot allocate amounts of VAT paid to more than one return, whether from the outset or by subsequent adjustment.

(19) In the case of non-payment, underpayment or payment in excess made by non-established taxable persons and with regard to interest, penalties and other incidental charges, it is important to specify the respective obligations of the Member State of identification and the Member States of consumption so as to facilitate the collection of VAT and to ensure that the right amount is paid in respect of the services supplied under the special schemes.

(20) The records kept by non-established taxable persons need to be sufficiently detailed to enable the tax authorities of Member States of consumption to verify that the VAT return is correct. What information is, as a minimum, required to be kept in such records should therefore be specified.

(21) To facilitate the implementation of the special schemes and with a view to enabling services supplied as of 1 January 2015 to be covered by those schemes, it should be possible for non-established taxable persons to submit their registration details to the Member State which is designated by them as Member State of identification as from 1 October 2014.

(22) Council Implementing Regulation (EU) No 282/2011[(2)] should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Implementing Regulation (EU) No 282/2011, Section 2 of Chapter XI is replaced by the following:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 967/2012. (See end of Document for details)*

SECTION 2

Special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons (Articles 358 to 369k of Directive 2006/112/EC)

Subsection 1

Definitions
Article 57a

For the purposes of this Section, the following definitions shall apply:

(1) "non-Union scheme" means the special scheme for telecommunications services, broadcasting services or electronic services supplied by taxable persons not established within the Community provided for in Section 2 of Chapter 6 of Title XII of Directive 2006/112/EC;

(2) "Union scheme" means the special scheme for telecommunications services, broadcasting services or electronic services supplied by taxable persons established within the Community but not established in the Member State of consumption provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC;

(3) "special scheme" means the "non-Union scheme" and/or the "Union scheme" as the context requires;

(4) "taxable person" means a taxable person not established within the Community as defined in point (1) of Article 358a of Directive 2006/112/EC, or a taxable person not established in the Member State of consumption, as defined in point (1) of the first paragraph of Article 369a of that Directive.

Subsection 2

Application of the Union scheme
Article 57b

Where a taxable person using the Union scheme has established his business within the Community, the Member State in which his place of business is established shall be the Member State of identification.

Where a taxable person using the Union scheme has established his business outside the Community, but has more than one fixed establishment in the Community, he may choose any Member State in which he has a fixed establishment as the Member State of identification, in accordance with the second paragraph of Article 369a of Directive 2006/112/EC.

Subsection 3

Scope of the Union scheme
Article 57c

The Union scheme shall not apply to telecommunications, broadcasting or electronic services supplied in a Member State where the taxable person has established his business or has a fixed

establishment. The supplies of those services shall be declared to the competent tax authorities of that Member State in the VAT return as provided for under Article 250 of Directive 2006/112/EC.

Subsection 4

Identification

Article 57d

When a taxable person informs the Member State of identification that he intends to make use of one of the special schemes, that special scheme shall apply as from the first day of the following calendar quarter.

However, where the first supply of services to be covered by that special scheme takes place before the date referred to in the first paragraph, the special scheme shall apply as from the date of that first supply, provided the taxable person informs the Member State of identification of the commencement of his activities to be covered by the scheme no later than the tenth day of the month following that first supply.

Article 57e

The Member State of identification shall identify the taxable person using the Union scheme by means of his VAT identification number as referred to in Articles 214 and 215 of Directive 2006/112/EC.

Article 57f

1 Where a taxable person using the Union scheme ceases to meet the conditions of the definition laid down in point (2) of the first paragraph of Article 369a of Directive 2006/112/EC, the Member State in which he has been identified shall cease to be the Member State of identification. Where that taxable person still fulfils the conditions for using that special scheme, he shall, to continue using that scheme, indicate as the new Member State of identification the Member State in which he has established his business or, if he has not established his business in the Community, a Member State where he has a fixed establishment.

2 Where the Member State of identification changes in accordance with paragraph 1, that change shall apply as from the date on which the taxable person ceases to have a business establishment or a fixed establishment in the Member State previously indicated as the Member State of identification.

Article 57g

A taxable person using a special scheme may cease using that special scheme regardless of whether he continues to supply services which can be eligible for that special scheme. The taxable person shall inform the Member State of identification at least 15 days before the end of the calendar quarter prior to that in which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next calendar quarter.

VAT obligations relating to supplies of telecommunications, broadcasting or electronic services arising after the date on which the cessation became effective shall be discharged directly with the tax authorities of the Member State of consumption concerned.

Where a taxable person ceases using a special scheme in accordance with the first paragraph, he shall be excluded from using that scheme in any Member State for two calendar quarters from the date of cessation.