Commission Implementing Regulation (EU) No 79/2012 of 31 January 2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax (recast)

COMMISSION IMPLEMENTING REGULATION (EU) No 79/2012

of 31 January 2012

laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax

(recast)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax[(1)] and, in particular Articles 14, 32, 48 and 49 and Article 51(1) thereof,

Whereas:

(1) To improve and supplement the instruments to combat fraud, Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92[(2)] has been recast and repealed by Regulation (EU) No 904/2010. The rules as they can be found in Regulation (EU) No 904/2010 should be reflected at the level of the acts implementing Regulation (EU) No 904/2010.

(2) Commission Regulation (EC) No 1925/2004 of 29 October 2004 laying down detailed rules for implementing certain provisions of Council Regulation (EC) No 1798/2003 concerning administrative cooperation in the field of value-added tax[(3)] has been substantially amended. Since further amendments are to be made following the adoption of Regulation (EU) No 904/2010 and in order to have a single set of rules on the exchange of information it should be recast in the interests of clarity together with Commission Regulation (EC) No 1174/2009 of 30 November 2009 laying down rules for the implementation of Articles 34a and 37 of Council Regulation (EC) No 1798/2003 as regards refunds of value added tax under Council Directive 2008/9/EC[(4)].

(3) In order to facilitate the exchange of information between Member States it is necessary to specify the exact categories of information to be exchanged without prior request, as well as the frequency with which those exchanges are to be made, and the relevant practical arrangements. To the extent that Member States intend to abstain from such exchange, they should notify it to the Commission in accordance with Article 14(1) of Regulation (EU) No 904/2010.

(4) Pursuant to Article 51 of Regulation (EU) No 904/2010 information shall be communicated between tax authorities as far as possible by electronic means. Consequently, the practical arrangements and technical details should be laid down.

(5) Practical arrangements should be determined for the provision of information relating to invoicing rules, value added tax (VAT) rates applicable in the context of the special schemes applicable to non-established taxable persons and the additional electronic coded information referred to in Article 9(2) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State[(5)].

(6) In order to ensure that Member States are able to effectively make use of the possibilities to require the information foreseen by certain provisions of Directive 2008/9/EC, it is necessary to specify the relevant harmonised codes to be applied when exchanging the relevant information, including the means through which such exchange should take place, in accordance with Regulation (EU) No 904/2010.

(7) Article 9(2) of Directive 2008/9/EC provides that the Member State of refund may require the applicant to provide additional electronic coded information supplementing the codes set out in Article 9(1) of Directive 2008/9/EC, to the extent that such information is necessary due to any restrictions on the right of deduction under Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[(6)], or for the implementation of a derogation received by the Member State of refund under Article 395 or 396 of that Directive.

(8) Pursuant to Article 48(2) of Regulation (EU) No 904/2010, the competent authorities of the Member State of refund are to notify by electronic means the competent authorities of the other Member States of any information required by them under Article 9(2) of Directive 2008/9/EC.

(9) For that purpose, the technical details for the transmission of the additional information required by Member States under Article 9(2) of Directive 2008/9/EC should be determined. In particular, the codes to be used for the transmission of this information should be specified. The codes set out in Annex III to this Regulation have been developed by the Standing Committee on Administrative Cooperation (SCAC) on the basis of the information required by Member States for the purposes of applying Article 9(2) of Directive 2008/9/EC.

(10) Applicants may be required according to Article 11 of Directive 2008/9/EC to provide a description of their business activity using harmonised codes. For that purpose, the commonly used codes provided for in Article 2(1)(d) of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains[(7)] should be employed.

(11) Article 25 of Regulation (EU) No 904/2010 states that the requested authority shall, at the request of the requesting authority, notify the addressee of all instruments and

decisions emanating from the administrative authorities and concerning the application of VAT legislation in the Member State in which the requesting authority is established.

(12) Where a Member State of refund requests the Member State of establishment to notify the applicant of its decisions and instruments for the purposes of the application of Directive 2008/9/EC, for reasons of data protection, it should be possible that such notification be made via the common communication network/common system interface (CCN/CSI) as defined in Article 2(1)(q) of Regulation (EU) No 904/2010.

(13) Rules should be laid down implementing, inter alia, Article 48 of Regulation (EU) No 904/2010 as regards the introduction of administrative cooperation and the exchange of information concerning the rules relating to the place of supply of services, the special schemes and the refund procedure for value added tax.

(14) Finally, it is necessary to establish a list of the statistical data needed for the evaluation of Regulation (EU) No 904/2010.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Administrative Cooperation,

HAS ADOPTED THIS REGULATION:

[F1 Article 1

Subject matter

This Regulation lays down detailed rules for implementing Articles 14, 17(1)(f), 21(2)(e), 21(2a)(d), 21a(1) and (2), 32, 48, 49 and Article 51(1) of Regulation (EU) No 904/2010.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2019/1129 of 2 July 2019 amending Implementing Regulation (EU) No 79/2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax.

Article 2

Categories of information to be exchanged without prior request

The categories of information subject to automatic exchange, in accordance with Article 13 of Regulation (EU) No 904/2010, shall be the following:

(1) information on non-established traders;

(2) information on new means of transport.

Article 3

Subcategories of information to be exchanged without prior request

1 In respect of non-established traders the information subject to automatic exchange shall be the following:

a information on the allocation of VAT identification numbers to taxable persons established in another Member State;

b information on VAT refunds to taxable persons not established in the Member State of refund but established in another Member State pursuant to Council Directive 2008/9/EC.

2 In respect of new means of transport, the information subject to automatic exchange shall be the following:

a information on supplies exempted in accordance with Article 138(2)(a) of Directive 2006/112/EC, of new means of transport as defined in Article 2(2), (a) and (b)of that Directive, by persons regarded as taxable persons pursuant to Article 9(2) of that Directive who are identified for VAT purposes;

b information on supplies exempted in accordance with Article 138(2)(a) of Directive 2006/112/EC, of new vessels and aircraft as defined in Article 2(2), (a) and (b) of that Directive, by taxable persons identified for VAT purposes, other than those referred to in point (a), to persons not identified for VAT purposes;

c information on supplies exempted in accordance with Article 138(2)(a) of Directive 2006/112/EC, of new motorised land vehicles as defined in Article 2(2), (a) and (b) of that Directive, by taxable persons identified for VAT purposes, other than those referred to in point (a), to persons not identified for VAT purposes.

Article 4

Notification of abstention from participation in the exchange of information without prior request

By 20 May 2012 each Member State shall notify the Commission in writing of its decision, taken in accordance with the second subparagraph of Article 14(1) of Regulation (EU) No 904/2010, as to whether it is going to abstain from taking part in the automatic exchange of one or more categories or subcategories of information referred to in Articles 2 and 3 of this Regulation. **[**[F2]Croatia shall notify the Commission of its decision, referred to in the previous sentence, to abstain from taking part in the automatic exchange of information by 1 July 2013.**]** The Commission shall inform the other Member States accordingly of the categories for which a Member State has abstained.

Textual Amendments

F2 Inserted by Commission Regulation (EU) No 519/2013 of 21 February 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, right of establishment and freedom to provide services, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, fisheries, transport policy, energy, taxation, statistics,

social policy and employment, environment, customs union, external relations, and foreign, security and defence policy, by reason of the accession of Croatia.

Article 5

Frequency of the transmission of the information

In cases where the automatic exchange system is being used, information concerning the categories and subcategories referred to respectively in Articles 2 and 3 shall be provided as soon as it becomes available, and in any event within 3 months of the end of the calendar quarter during which that information has become available.

[F3 Article 5a

Exchange of customs information

1 The storage of and automated access by competent authorities to the information referred to in Article 17(1)(f) of Regulation (EU) No 904/2010 shall take place using the electronic system referred to in Article 56(1) of Commission Implementing Regulation (EU) 2015/2447[8].

2 Automated access pursuant to Article 21(2a) of Regulation (EU) No 904/2010 shall be granted at the level of the goods item of a customs declaration as provided for in Section 3 of Chapter 2, and Column H1 of Section 1 of Chapter 3, in Title I of Annex B to Commission Delegated Regulation (EU) 2015/2446[9].

3 Each goods item shall be identified by the following information as required in accordance with Article 226 of Implementing Regulation (EU) 2015/2447:

a the Master Reference Number; and

b the customs declaration acceptance date.

4 Annex VII to this Regulation sets out which piece of information referred to in Article 17(1)(f) of Regulation (EU) No 904/2010 corresponds to which data element of the customs system as defined in Annex B to Implementing Regulation (EU) 2015/2447.

Textual Amendments

F3 Inserted by Commission Implementing Regulation (EU) 2019/1129 of 2 July 2019 amending Implementing Regulation (EU) No 79/2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax.

Article 5b

Exchange of vehicle registration information

1 Automated enquiry of the information referred to in Article 21a(1) of Regulation (EU) No 904/2010 (‘vehicle registration data’) shall be conducted using a version of the European Vehicle and Driving Licence Information System (EUCARIS) software application especially designed for the purposes of Article 21a of that Regulation, and amended versions of that software.