Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast)

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(recast)

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) A number of substantial changes are to be made to Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388/EEC on the common system of value added tax[(2)]. It is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast.

(2) Directive 2006/112/EC contains rules on value added tax (VAT) which, in some cases, are subject to interpretation by the Member States. The adoption of common provisions implementing Directive 2006/112/EC should ensure that application of the VAT system complies more fully with the objective of the internal market, in cases where divergences in application have arisen or may arise which are incompatible with the proper functioning of such internal market. These implementing measures are legally binding only from the date of the entry into force of this Regulation and are without prejudice to the validity of the legislation and interpretation previously adopted by the Member States.

(3) Changes resulting from the adoption of Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services[(3)] should be reflected in this Regulation.

(4) The objective of this Regulation is to ensure uniform application of the current VAT system by laying down rules implementing Directive 2006/112/EC, in particular in respect of taxable persons, the supply of goods and services, and the place of taxable transactions. In accordance with the principle of proportionality as set out in Article 5(4) of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve this objective. Since it is binding and directly applicable in all Member States, uniformity of application will be best ensured by a Regulation.

(5) These implementing provisions contain specific rules in response to selective questions of application and are designed to bring uniform treatment throughout the Union to those specific circumstances only. They are therefore not conclusive for other cases and, in view of their formulation, are to be applied restrictively.

(6) If a non-taxable person changes residence and transfers a new means of transport, or a new means of transport returns to the Member State from which it was originally supplied exempt of VAT to the non-taxable person returning it, it should be clarified that such a transfer does not constitute the intra-Community acquisition of a new means of transport.

(7) For certain services, it is sufficient for the supplier to demonstrate that the customer for these services, whether or not a taxable person, is located outside the Community for the supply of those services to fall outside the scope of VAT.

(8) It should be specified that the allocation of a VAT identification number to a taxable person who makes or receives a supply of services to or from another Member State, and for which the VAT is payable solely by the customer, does not affect the right of that taxable person to benefit from non-taxation of his intra-Community acquisitions of goods. However, if the taxable person communicates his VAT identification number to the supplier in respect of an intra-Community acquisition of goods, he is in any event deemed to have opted to make those transactions subject to VAT.

(9) The further integration of the internal market has led to an increased need for cooperation by economic operators established in different Member States across internal borders and the development of European economic interest groupings (EEIGs), constituted in accordance with Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)[(4)]. It should therefore be clarified that EEIGs are taxable persons where they supply goods or services for consideration.

(10) It is necessary to clearly define restaurant and catering services, the distinction between the two, and the appropriate treatment of these services.

(11) In order to enhance clarity, the transactions identified as electronically supplied services should be listed without the lists being definitive or exhaustive.

(12) It is necessary, on the one hand, to establish that a transaction which consists solely of assembling the various parts of a machine provided by a customer must be considered as a supply of services, and, on the other hand, to establish the place of such supply when the service is supplied to a non-taxable person.

(13) The sale of an option as a financial instrument should be treated as a supply of services separate from the underlying transactions to which the option relates.

(14) To ensure the uniform application of rules relating to the place of taxable transactions, concepts such as the place where a taxable person has established his business, fixed establishment, permanent address and the place where a person usually resides should be clarified. While taking into account the case law of the Court of Justice, the use

of criteria which are as clear and objective as possible should facilitate the practical application of these concepts.

(15) Rules should be established to ensure the uniform treatment of supplies of goods once a supplier has exceeded the distance selling threshold for supplies to another Member State.

(16) It should be clarified that the journey of the means of transport determines the section of a passenger transport operation effected within the Community, and not the journey of the passengers within it.

(17) In the case of intra-Community acquisition of goods, the right of the Member State of acquisition to tax the acquisition should remain unaffected by the VAT treatment of the transaction in the Member States of departure.

(18) The correct application of the rules governing the place of supply of services relies mainly on the status of the customer as a taxable or non-taxable person, and on the capacity in which he is acting. In order to determine the customer's status as a taxable person, it is necessary to establish what the supplier should be required to obtain as evidence from his customer.

(19) It should be clarified that when services supplied to a taxable person are intended for private use, including use by the customer's staff, that taxable person cannot be deemed to be acting in his capacity as a taxable person. Communication by the customer of his VAT identification number to the supplier is sufficient to establish that the customer is acting in his capacity as a taxable person, unless the supplier has information to the contrary. It should also be ensured that a single service acquired for the business but also used for private purposes is only taxed in one place.

(20) In order to determine the customer's place of establishment precisely, the supplier of the service is required to verify the information provided by the customer.

(21) Without prejudice to the general rule on the place of supply of services to a taxable person, where services are supplied to a customer established in more than one place, there should be rules to help the supplier determine the customer's fixed establishment to which the service is provided, taking account of the circumstances. If the supplier of the services is not able to determine that place, there should be rules to clarify the supplier's obligations. Those rules should not interfere with or change the customer's obligations.

(22) The time at which the supplier of the service must determine the status, the capacity and the location of the customer, whether a taxable person or not, should also be specified.

(23) Without prejudice to the general application of the principle with respect to abusive practices to the provisions of this Regulation, it is appropriate to draw specific attention to its application to certain provisions of this Regulation.

(24) Certain specific services such as the assignment of television broadcasting rights in respect of football matches, the translation of texts, services for claiming VAT refunds, and services as an intermediary to a non-taxable person involve cross-border scenarios or even the participation of economic operators established outside the Community.

The place of supply of these services needs to be clearly determined in order to create greater legal certainty.

(25) It should be specified that services supplied by an intermediary acting in the name and on behalf of another person who takes part in the provision of accommodation in the hotel sector are not governed by the specific rule for the supply of services connected with immovable property.

(26) Where various services supplied in the framework of organising a funeral form part of a single service, the rule on the place of supply should also be determined.

(27) In order to ensure uniform treatment of supplies of cultural, artistic, sporting, scientific, educational, entertainment and similar services, admission to such events and ancillary services which are related to admission need to be defined.

(28) It is necessary to clarify the treatment of restaurant services and catering services supplied on board a means of transport when passenger transport is being carried out on the territory of several countries.

(29) Given that particular rules for the hiring of a means of transport depend on the duration of its possession or use, it is necessary not only to establish which vehicles should be considered means of transport, but also to clarify the treatment of such a supply where one successive contract follows another. It is also necessary to determine the place where a means of transport is actually put at the disposal of the customer.

(30) In certain specific circumstances a credit or debit card handling fee which is paid in connection with a transaction should not reduce the taxable amount for that transaction.

(31) It is necessary to clarify that the reduced rate may be applied to the hiring out of tents, caravans and mobile homes installed on camping sites and used as accommodation.

(32) Vocational training or retraining should include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes, regardless of the duration of a course.

(33) Platinum nobles should be treated as being excluded from the exemptions for currency, bank notes and coins.

(34) It should be specified that the exemption of the supply of services relating to the importation of goods the value of which is included in the taxable amount of those goods should cover transport services carried out during a change of residence.

(35) Goods transported outside the Community by the purchaser thereof and used for the equipping, fuelling or provisioning of means of transport used for non-business purposes by persons other than natural persons, such as bodies governed by public law and associations, should be excluded from the exemption for export transactions.

(36) To guarantee uniform administrative practices for the calculation of the minimum value for exemption on exportation of goods carried in the personal luggage of travellers, the provisions on such calculations should be harmonised.

(37) It should be specified that the exemption for certain transactions treated as exports should also apply to services covered by the special scheme for electronically supplied services.

(38) A body to be set up under the legal framework for a European Research Infrastructure Consortium (ERIC) should only qualify as an international body for the purposes of exemption from VAT where it fulfils certain conditions. The features necessary for it to benefit from exemption should therefore be identified.

(39) Supplies of goods and services under diplomatic and consular arrangements, or to recognised international bodies, or to certain armed forces are exempt from VAT subject to certain limits and conditions. In order that a taxable person making such a supply from another Member State can establish that the conditions and limits for this exemption are met, an exemption certificate should be established.

(40) Electronic import documents should also be admitted to exercise the right to deduct, where they fulfil the same requirements as paper-based documents.

(41) Where a supplier of goods or services has a fixed establishment within the territory of the Member State where the tax is due, the circumstances under which that establishment should be liable for payment of VAT should be specified.

(42) It should be clarified that a taxable person who has established his business within the territory of the Member State where the tax is due must be deemed to be a taxable person established in that Member State for the purposes of liability for the tax, even when that place of business is not involved in the supply of goods or services.

(43) It should be clarified that every taxable person is required to communicate his VAT identification number, as soon as he has one, for certain taxable transactions in order to ensure fairer collection of the tax.

(44) Weights for investment gold which are definitely accepted by the bullion market should be named and a common date for establishing the value of gold coins be determined to ensure equal treatment of economic operators.

(45) The special scheme for taxable persons not established in the Community, supplying services electronically to non-taxable persons established or resident within the Community, is subject to certain conditions. Where those conditions are no longer fulfilled, the consequences thereof should, in particular, be made clear.

(46) Certain changes result from Directive 2008/8/EC. Since those changes concern, on the one hand, the taxation of the long-term hiring of means of transport as from 1 January 2013 and, on the other, the taxation of electronically supplied services as from 1 January 2015, it should be specified that the corresponding Articles of this Regulation apply only as from those dates,

HAS ADOPTED THIS REGULATION: