Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast)

COUNCIL REGULATION (EU) No 904/2010

of 7 October 2010

on administrative cooperation and combating fraud in the field of value added tax

(recast)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax[(3)] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The instruments to combat fraud in the field of value added tax (hereinafter 'VAT') in Regulation (EC) No 1798/2003 should be improved and supplemented subsequent to the Council Conclusions of 7 October 2008; the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a coordinated strategy to improve the fight against VAT fraud in the European Union; and the Report from the Commission to the Council and the European Parliament on the application of Council Regulation (EC) No 1798/2003 concerning administrative cooperation in the field of VAT (hereinafter the 'Commission's report'). Editorial and practical clarifications of the provisions of Regulation (EC) No 1798/2003 are also required.

(3) Tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation. They are also liable to bring about distortions of capital movements and of the conditions of competition. They thus affect the operation of the internal market.

(4) Combating VAT evasion calls for close cooperation between the competent authorities in each Member State responsible for the application of the provisions in that field.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 904/2010. (See end of Document for details)*

(5) The tax harmonisation measures taken to complete the internal market should include the establishment of a common system for cooperation between the Member States, in particular as concerns exchange of information, whereby the Member States' competent authorities are to assist each other and to cooperate with the Commission in order to ensure the proper application of VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods.

(6) Administrative cooperation should not lead to an undue shift of administrative burdens between Member States.

(7) For the purposes of collecting the tax owed, Member States should cooperate to help ensure that VAT is correctly assessed. They must therefore not only monitor the correct application of tax owed in their own territory, but should also provide assistance to other Member States for ensuring the correct application of tax relating to activity carried out on their own territory but owed in another Member State.

(8) Monitoring the correct application of VAT on cross-border transactions taxable in a Member State other than that where the supplier is established depends in many cases on information which is held by the Member State of establishment or which can be much more easily obtained by that Member State. Effective supervision of such transactions is therefore dependent on the Member State of establishment collecting, or being in a position to collect, that information.

(9) In order to establish the one-stop shop scheme provided for by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[(4)], and to apply the refund procedure for taxable persons not established in the Member State of refund provided for in 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)], rules on the exchange and storage of information by Member States are required.

(10) In cross-border situations, it is important to specify the obligations of each Member State so that the tax can be effectively monitored in the Member State in which it is owed.

(11) Electronic storage and transmission of certain data for VAT control purposes are indispensable for the proper functioning of the VAT system. They allow for rapid information exchange and automated access to information, which strengthen the fight against fraud. That can be achieved by enhancing the databases on VAT-taxable persons and their intra-Community transactions through the inclusion in those databases of a range of information on the taxable persons and their transactions.

(12) The Member States should implement proper verification procedures to ensure that the information is up-to-date, comparable and of good quality, thereby increasing its reliability. The conditions for the exchange of, and the automated access of Member States to, electronically stored data should be clearly defined.

(13) In order to fight fraud effectively, it is necessary to provide for information exchange without prior request. To facilitate the exchange of information, the categories for which an automatic exchange needs to be established should be specified.

(14) As indicated in the Commission's report, feedback is an appropriate means to ensure continual improvement of the quality of the information exchanged. A framework for the provision of feedback should therefore be put in place.

(15) For the effective monitoring of VAT on cross-border transactions, it is necessary to provide for the possibility of simultaneous controls by Member States and of the presence of officials of one Member State in the territory of another Member State, within the framework of administrative cooperation.

(16) Online confirmation of the validity of VAT identification numbers is a tool which is increasingly used by operators. The system for confirming the validity of VAT identification numbers should provide automated confirmation of the relevant information to operators.

(17) Some taxable persons are subject to specific obligations which are different from those in force in the Member State in which they are established, particularly as regards invoicing, when they supply goods or services to customers established on the territory of another Member State. A mechanism should be established to make information on such obligations readily available for those taxable persons.

(18) Recent practical experience of the application of Regulation (EC) No 1798/2003 in the fight against carrousel fraud has shown that in some cases it is essential to establish a much faster mechanism for the exchange of information, covering much more, and better targeted, information in order to combat fraud effectively. In accordance with the Council Conclusions of 7 October 2008, a decentralised network without legal personality, to be called Eurofisc, should be established within the framework of this Regulation for all the Member States, to promote and facilitate multilateral and decentralised cooperation permitting targeted and swift action to combat specific types of fraud.

(19) The Member State of consumption has primary responsibility for assuring that non-established suppliers comply with their obligations. To this end, the application of the temporary special scheme for electronically supplied services that is provided for in Chapter 6 of Title XII of Directive 2006/112/EC requires the definition of rules concerning the provision of information and transfer of money between the Member State of identification and the Member State of consumption.

(20) Information obtained by a Member State from third countries may be very useful to other Member States. Likewise information obtained by a Member State from other Member States may be very useful to third countries. The conditions for the exchange of such information should therefore be specified.

(21) National rules on banking secrecy should not stand in the way of the application of this Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 904/2010. (See end of Document for details)*

(22) This Regulation should not affect other measures adopted at Union level which contribute to combating VAT fraud.

(23) In the interests of effectiveness and speed and on grounds of cost, it is essential that the information communicated under this Regulation should be provided by electronic means wherever possible.

(24) In view of the repetitive nature of certain requests and the linguistic diversity within the Union, it is important to enhance the use of standard forms in the exchange of information so that information requests can be more rapidly processed.

(25) The time limits laid down in this Regulation for the provision of information are to be understood as maximum periods not to be exceeded, the principle being that, in order for cooperation to be effective, information already available to the requested Member State should be provided without further delay.

(26) For the purposes of this Regulation, it is appropriate to consider limitations of certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(6)] in order to safeguard the interests referred to in Article 13(1)(e) of that Directive. Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of information covered by this Regulation for the effectiveness of the fight against fraud.

(27) As the measures necessary to implement this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(7)], they must be adopted in conformity with the regulatory procedure provided for in Article 5 of that Decision,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

1 This Regulation lays down the conditions under which the competent authorities in the Member States responsible for the application of the laws on VAT are to cooperate with each other and with the Commission to ensure compliance with those laws.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays down rules and procedures for Member States to collect and exchange such information by electronic means.

2 This Regulation lays down the conditions under which the authorities referred to in paragraph 1 are to assist in the protection of VAT revenue in all the Member States.

3 This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

4 This Regulation also lays down rules and procedures for the exchange by electronic means of VAT information on services supplied electronically in accordance with the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC and also for any subsequent exchange of information and, as far as services covered by that special scheme are concerned, for the transfer of money between Member States' competent authorities.

Article 2

1 For the purposes of this Regulation, the following definitions shall apply:

a 'central liaison office' means the office which has been designated pursuant to Article 4(1) with principal responsibility for contacts with other Member States in the field of administrative cooperation;

b 'liaison department' means any office other than the central liaison office which has been designated as such by the competent authority pursuant to Article 4(2) to exchange directly information on the basis of this Regulation;

c 'competent official' means any official who can directly exchange information on the basis of this Regulation for which he has been authorised pursuant to Article 4(3);

d 'requesting authority' means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;

e 'requested authority' means the central liaison office, a liaison department or any competent official of Member State who receives a request for assistance on behalf of the competent authority;

f 'intra-Community transactions' means the intra-Community supply of goods or services;

g 'intra-Community supply of goods' means any supply of goods which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;

h 'intra-Community supply of services' means any supply of services which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;

i 'intra-Community acquisition of goods' means the acquisition of the right pursuant to Article 20 of Directive 2006/112/EC to dispose as owner of moveable tangible property;

j 'VAT identification number' means the number provided for in Articles 214, 215 and 216 of Directive 2006/112/EC;

k 'administrative enquiry' means all the controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring proper application of VAT legislation;

l 'automatic exchange' means the systematic communication of predefined information to another Member State, without prior request;

m 'spontaneous exchange' means the non-systematic communication, at any moment and without prior request, of information to another Member State;

n 'person' means:

(i) a natural person;

(ii) a legal person;