Council Regulation (EC) No 143/2008 of 12 February 2008 amending Regulation (EC) No 1798/2003 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

COUNCIL REGULATION (EC) No 143/2008

of 12 February 2008

amending Regulation (EC) No 1798/2003 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) The amendments introduced with regard to the place of supply of services by Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services[(3)] mean that services to taxable persons are supplied principally where the recipient is established. Where the supplier and the recipient of the services are established in different Member States, the reverse charge mechanism will be applicable more frequently than hitherto.

(2) To ensure the proper application of value added tax (VAT) on services which are subject to the reverse charge mechanism, the data collected by the Member State of the supplier should be communicated to the Member State where the recipient is established. Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax[(4)] should provide for such communication.

(3) Directive 2008/8/EC also extends the scope of the special scheme for electronic services supplied by taxable persons not established within the Community.

(4) 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 in another Member State[(5)] simplifies the refund procedure for VAT in a Member State in which the taxable person concerned is not identified for VAT purposes.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 143/2008. (See end of Document for details)*

(5) The extension of the scope of the special scheme and the amendments to the refund procedure for taxable persons not established in the Member State of refund mean that the Member States concerned will need to exchange considerably more information. The required exchange of information should not make any excessive administrative demands on the Member State concerned. This exchange of information should thus take place electronically under existing systems for exchanging information.

(6) Regulation (EC) No 1798/2003 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January 2010, Regulation (EC) No 1798/2003 is hereby amended as follows:

1. in Article 1(1), the fourth subparagraph shall be replaced by the following:

   For the period provided for in Article 357 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[6], it also lays down rules and procedures for the exchange by electronic means of value added tax information on services supplied electronically in accordance with the special scheme provided for in Chapter 6 of Title XII of that Directive 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.;

2. in Article 2, points 8 to 11 shall be replaced by the following:

   8. "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;

   9. "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;

   10. "intra-Community acquisition of goods" means the acquisition of the right under Article 20 of Directive 2006/112/EC to dispose as owner of moveable tangible property;

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

3. in Article 22(1), the first subparagraph shall be replaced by the following:

1. Each Member State shall maintain an electronic database in which it stores and processes the information which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC.;

4. in the first paragraph of Article 23, point 2 shall be replaced by the following:

   2. the total value of all intra-Community supplies of goods and the total value of all intra-Community supplies of services to persons holding a VAT identification number by all operators identified for the purposes of VAT in the Member State providing the information.;

5. in Article 24, the first paragraph shall be replaced by the following:

On the basis of the data stored in accordance with Article 22 and solely in order to prevent a breach of VAT legislation, the competent authority of a Member State shall, wherever it considers it necessary for the control of intra-Community acquisitions of goods or intra-Community supplies of services taxable in its territory, obtain directly and without delay, or have direct access to by electronic means, any of the following information:

1. the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point 2 of the first paragraph of Article 23;

2. the total value of supplies of goods and services from each such person to each person holding a VAT identification number referred to in point 1 of the first paragraph of Article 23.;

6. Article 27(4) shall be replaced by the following:

4. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and, for the period provided for in Article 357 of Directive 2006/112/EC, non-established taxable persons supplying electronically supplied services, in particular those referred to in Annex II of that Directive, are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

During the period provided for in Article 357 of Directive 2006/112/EC, the Member States shall provide such confirmation by electronic means in accordance with the procedure referred to in Article 44(2) of this Regulation.;

7. the heading of Chapter VI shall be replaced by the following:
PROVISIONS CONCERNING THE SPECIAL SCHEME IN CHAPTER 6 OF TITLE XII OF DIRECTIVE 2006/112/EC;

8. Article 28 shall be replaced by the following:

Article 28

The following provisions shall apply concerning the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC. The definitions contained in Article 358 of that Directive shall also apply for the purpose of this Chapter.;

9. Article 29(1) shall be replaced by the following:

1. The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of Directive 2006/112/EC shall be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.;

10. in Article 30, the first paragraph shall be replaced by the following:

The return with the details set out in Article 365 of Directive 2006/112/EC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.;

11. Article 31 shall be replaced by the following:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 143/2008. (See end of Document for details)*

Article 31

The provisions in Article 22 of this Regulation shall apply also to information collected by the Member State of identification in accordance with Articles 360, 361, 364 and 365 of Directive 2006/112/EC.;

12. Article 34 shall be replaced by the following:

Article 34

Articles 28 to 33 of this Regulation shall apply for the period provided for in Article 357 of Directive 2006/112/EC.;

13. the following Chapter VIa shall be inserted:

CHAPTER VIa

PROVISIONS CONCERNING THE EXCHANGE AND CONSERVATION OF INFORMATION IN THE CONTEXT OF THE PROCEDURE PROVIDED FOR IN DIRECTIVE 2008/9/EC

Article 34a

1 Where the competent authority of the Member State of establishment receives an application for refund of value added tax under Article 5 of 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[7] and Article 18 of that Directive is not applicable, it shall, within 15 calendar days of its receipt and by electronic means, forward the application to the competent authorities of each Member State of refund concerned with confirmation that the applicant as defined in Article 2(5) of Directive 2008/9/EC is a taxable person for the purposes of value added tax and that the identification or registration number given by this person is valid for the refund period.

2 The competent authorities of each Member State of refund shall 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. The technical details, including a common electronic message by which this information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation.

3 The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States if they want to make use of the option to require the applicant to provide the description of business activity by harmonised codes as referred to in Article 11 of Directive 2008/9/EC.

The harmonised codes referred to in the first subparagraph shall be determined in accordance with the procedure provided for in Article 44(2) of this Regulation on the basis of the NACE classification established by Regulation (EEC) No 3037/90.;

14. in Article 39, the first paragraph shall be replaced by the following:

For the period provided for in Article 357 of Directive 2006/112/EC, the Commission and the Member States shall ensure that such existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in Articles 29 and 30 of this Regulation

are operational. The Commission will be responsible for whatever development of the common communication network/common system interface (CCN/CSI) is necessary to permit the exchange of this information between Member States. Member States will be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI..

Article 2

From 1 January 2015, Regulation (EC) No 1798/2003 is hereby amended as follows:

1. in Article 1(1), the fourth subparagraph shall be replaced by the following:

   This Regulation also lays down rules and procedures for the exchange by electronic means of value added tax information on services in accordance with the special schemes 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 those special schemes are concerned, for the transfer of money between Member States' competent authorities.;

2. in Article 2, the sole paragraph shall be numbered ‘1’ and the following paragraph shall be added:

2. The definitions contained in Articles 358, 358a and 369a of Directive 2006/112/EC shall also apply for the purposes of this Regulation.;

3. in Article 5, paragraph 3 shall be replaced by the following:

3. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. If the Member State takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

   Notwithstanding the first subparagraph and without prejudice to Article 40 of this Regulation, an enquiry into the amounts declared by a taxable person in connection with the supply of telecommunications services, broadcasting services and electronically supplied services which are taxable in the Member State in which the requesting authority is situated and for which the taxable person makes use or opts not to make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, may only be refused by the requested authority if information on the same taxable person obtained in an administrative enquiry held less than two years previously, has already been supplied to the requesting authority.

   However, with respect to the requests referred to in the second subparagraph made by the requesting authority and assessed by the requested authority in conformity with a Statement of Best Practices concerning the interaction of this paragraph and Article 40(1) to be adopted in accordance with the procedure referred to in Article 44(2), a Member State which refuses to hold an administrative enquiry on the basis of Article 40 shall provide to the requesting authority the dates and values of any relevant supplies made over the last two years by the taxable person in the Member State of the requesting authority.;

4. in Article 17, the following paragraph shall be added:

   For the purposes of the first paragraph, each Member State of establishment shall cooperate with each Member State of consumption so as to make it possible to ascertain whether the taxable persons established on its territory declare and pay correctly the VAT due with regard to telecommunications services, broadcasting