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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 792/2002

of 7 May 2002

amending temporarily Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce

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 [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas:

(1) Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services [4] provides for the framework for taxing electronic supplies in the Community by taxable persons who are neither established nor required to be identified for tax purposes within the Community.

(2) The Member State of consumption has primary responsibility for assuring the compliance with their obligations by non-established suppliers. To this end, the information necessary to operate the special scheme for electronically supplied services that is provided for in Article 26c of sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [5] must be transmitted to those Member States.

(3) It is necessary to provide that the value added tax due in respect of such supplies transferred to accounts designated by the Member States of consumption.

(4) The rules laid down in Directive 77/388/EEC require the non-established taxable person supplying services referred to in the last indent of Article 9(2)e of the Directive to charge VAT to his customer, established or resident in the Community, unless he is satisfied that his customer is a taxable person. The special scheme provided for in Article 26c of the Directive applies only for services provided to non-taxable persons established or resident in the Community. It is thus clear that the non-established taxable person needs certain information about his customer.

(5) To this end, use could in most cases be made of the facility that is available in Member States in the form of electronic databases which contain a register of persons to whom value added tax identification numbers have been issued in that Member State.

(6) It is accordingly necessary to extend the common system for the exchange of certain information on intra-Community transaction provided for in Article 6 of Regulation (EEC) No 218/92 [6].

(7) The provisions of the Regulation should operate for a temporary period of three years which may be extended for practical reasons and Regulation (EEC) No 218/92 should therefore be temporarily amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 218/92 is hereby temporarily amended:

1. the second paragraph of Article 1 shall be replaced by the following:

'To that end it lays down procedures for the exchange by electronic means of value added tax information on intra-Community transactions as well as on services supplied electronically in accordance with the special scheme provided for by Article 26c of Directive 77/388/EEC, 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.';

[1] OJ C 337 E, 28.11.2000, p. 63.
[2] OJ C 232, 17.8.2001, p. 202, and the Opinion of 25 April 2002 (not yet published in the Official Journal).
[3] OJ C 116, 20.4.2001, p. 59.
[4] See page 41 of this Official Journal.
[5] OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2002/38/EC.
[6] OJ L 24, 1.2.1992, p. 1.