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COUNCIL IMPLEMENTING REGULATION (EU) No 1042/2013

of 7 October 2013

amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services

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) Directive 2006/112/EC provides that as from 1 January 2015, all telecommunications, radio and television broadcasting and electronically supplied services supplied to a non-taxable person are to be taxed in the Member State in which the customer is established, has his permanent address or usually resides, regardless of where the taxable person supplying those services is established. Most other services supplied to a non-taxable person continue to be taxed in the Member State in which the supplier is established.

(2) In order to determine which services must be taxed in the Member State of the customer, it is essential to define telecommunications, radio and television broadcasting and electronically supplied services. In particular, the concept of radio and television broadcasting (hereinafter ‘broadcasting’) services should be clarified, drawing from definitions laid down in Directive 2010/13/EU of the European Parliament and of the Council ([2]).

(3) To clarify matters, transactions identified as electronically supplied services have been listed in Council Implementing Regulation (EU) No 282/2011 ([3]), without the list being exhaustive. The list should be updated, and similar lists should be drawn up for telecommunications and broadcasting services.

(4) It is necessary to specify who is the supplier for value added tax (VAT) purposes where electronically supplied services, or telephone services provided through the internet, are supplied to a customer through telecommunications networks or via an interface or a portal.

(5) To ensure the uniform application of the rules governing the place of supply of hiring of means of transport and the place of supply of telecommunications, broadcasting and electronically supplied services, it is necessary to specify where a non-taxable legal person should be considered to be established.

(6) With a view to determining who is liable for payment of the VAT on the supply of telecommunications, broadcasting or electronically supplied services, and taking into account that the place of taxation is the same regardless of whether the customer is a taxable or a non-taxable person, the supplier should be able to determine the status of a customer solely based on whether the customer communicates his individual VAT identification number. This status must, in accordance with the general rules, be amended if such a communication is subsequently made by the customer. If no such communication is received, the supplier should remain liable for payment of the VAT.

(7) Where a non-taxable person is established in more than one country or has his permanent address in one country but usually resides in another, priority is to be given to the place that best ensures taxation at the place of actual consumption. To avoid conflicts concerning jurisdiction between Member States, the place of actual consumption should be specified.

(8) Rules should be established in order to clarify the tax treatment of the supply of hiring of means of transport and telecommunications, broadcasting and electronically supplied services to a non-taxable person whose place of establishment, permanent address or usual residence is practically impossible to determine or which cannot be determined with certainty. It is appropriate for those rules to be based on presumptions.

(9) Where information is available to determine the actual location at which the customer is established, has his permanent address or usually resides, it is necessary to provide for a presumption to be rebuttable.

(10) In certain cases where the service is occasional, habitually involves small amounts and requires the physical presence of the customer, such as the supply of telecommunications, broadcasting or electronically supplied services at a wi-fi hot spot or an internet café, or habitually does not give rise to payment receipts or other evidence of the service provided, as is the case with telephone boxes, the provision and control of evidence with respect to the place of establishment of the customer or his permanent address or usual residence would impose a disproportionate burden, or could pose problems of data protection.

(11) As the tax treatment of the supply of hiring of means of transport and telecommunications, broadcasting and electronically supplied services to a non-taxable person depends on where the customer is established, has his permanent address or usually resides, it is necessary to clarify, in cases for which no specific presumptions are established or for the rebuttal of presumptions, what evidence the supplier should have to identify the location of the customer. To that end an indicative, non-exhaustive list of evidence should be drawn up.

(12) In order to ensure the uniform tax treatment of supplies of services connected with immovable property, the concept of immovable property needs to be defined. The proximity required for there to be a connection with an immovable property should be specified, and a non-exhaustive list of examples of transactions identified as services connected with immovable property should also be provided.

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(13)It is also necessary to clarify the tax treatment of the supply of services putting equipment at a customer’s disposal with a view to carrying out work on immovable property.

(14)For practical reasons, it should be clarified that telecommunications, broadcasting or electronically supplied services provided by a taxable person acting in his own name in connection with the provision of accommodation in the hotel sector or sectors with a similar function should be regarded, for the purpose of determining the place of supply, as being supplied at those locations.

(15)In accordance with Directive 2006/112/EC, admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events must in all circumstances be taxed at the place where the event actually takes place. It should be made clear that this also applies where tickets to such events are not sold directly by the organiser, but are distributed through intermediaries.

(16)Under Directive 2006/112/EC, VAT can become chargeable prior to, at the time of or soon after the supply of goods or services. In relation to telecommunications, broadcasting or electronically supplied services supplied during the period of transition to the new rules on the place of supply, conditions linked to the supply or differences in application between Member States could result in double taxation or non-taxation. In order to avoid that, and to ensure uniform application in Member States, it is necessary to lay down transitional provisions.

(17)For the purposes of this Regulation, it may be appropriate for Member States to adopt legislative measures limiting certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council ([4]) in order to safeguard an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters, where such measures are necessary and proportionate in view of the risk of tax fraud and tax evasion in Member States, and in view of the need to ensure the correct collection of VAT covered by this Regulation.

(18)The concept of immovable property should be introduced in order to ensure a uniform tax treatment by Member States of supplies of services connected with immovable property. The introduction of that concept could have a considerable impact on the legislation and administrative practices in Member States. Without prejudice to such legislation or practices already applied in Member States and in order to ensure a smooth transition, that concept should be introduced at a later date.

(19)Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 282/2011 is amended as follows:

(1) Chapter IV is amended as follows:

(a) the following Articles are inserted:

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‘*Article 6a*

1. Telecommunications services within the meaning of Article 24(2) of Directive 2006/112/EC shall cover, in particular, the following:

(a) fixed and mobile telephone services for the transmission and switching of voice, data and video, including telephone services with an imaging component (videophone services);

(b) telephone services provided through the internet, including voice over internet Protocol (VoIP);

(c) voice mail, call waiting, call forwarding, caller identification, three-way calling and other call management services;

(d) paging services;

(e) audiotext services;

(f) facsimile, telegraph and telex;

(g) access to the internet, including the World Wide Web;

(h) private network connections providing telecommunications links for the exclusive use of the client.

2. Telecommunications services within the meaning of Article 24(2) of Directive 2006/112/EC shall not cover the following:

(a) electronically supplied services;

(b) radio and television broadcasting (hereinafter “broadcasting”) services.

Article 6b

1. Broadcasting services shall include services consisting of audio and audiovisual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule.

2. Paragraph 1 shall cover, in particular, the following:

(a) radio or television programmes transmitted or retransmitted over a radio or television network;

(b) radio or television programmes distributed via the internet or similar electronic network (IP streaming), if they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.

3. Paragraph 1 shall not cover the following:

(a) telecommunications services;

(b) electronically supplied services;

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(c) the provision of information about particular programmes on demand;

(d) the transfer of broadcasting or transmission rights;

(e) the leasing of technical equipment or facilities for use to receive a broadcast;

(f) radio or television programmes distributed via the internet or similar electronic network (IP streaming), unless they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.';

(b) in Article 7, paragraph 3 is amended as follows:

(i) the introductory phrase is replaced by the following:

'3. Paragraph 1 shall not cover the following:';

(ii) point (a) is replaced by the following:

'(a)broadcasting services;';

(iii)points (q), (r) and (s) are deleted;

(iv)the following points are added:

'(t) tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online;

(u) accommodation, car-hire, restaurant services, passenger transport or similar services booked online.';

(c) the following Article is inserted:

'Article 9a

1. For the application of Article 28 of Directive 2006/112/EC, where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties.

In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions shall be met:

(a) the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof;

(b) the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof.

For the purposes of this paragraph, a taxable person who, with regard to a supply of electronically supplied services, authorises the charge to the customer or the delivery of the

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services, or sets the general terms and conditions of the supply, shall not be permitted to explicitly indicate another person as the supplier of those services.

2. Paragraph 1 shall also apply where telephone services provided through the internet, including voice over internet Protocol (VoIP), are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications and are supplied under the same conditions as set out in that paragraph.

3. This Article shall not apply to a taxable person who only provides for processing of payments in respect of electronically supplied services or of telephone services provided through the internet, including voice over internet Protocol (VoIP), and who does not take part in the supply of those electronically supplied services or telephone services.';

(2) Chapter V is amended as follows:

(a) in Section 1, the following Articles are inserted:

'Article 13a

The place where a non-taxable legal person is established, as referred to in the first subparagraph of Article 56(2) and Articles 58 and 59 of Directive 2006/112/EC, shall be:

(a) the place where the functions of its central administration are carried out; or

(b) the place of any other establishment characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

Article 13b

For the application of Directive 2006/112/EC, the following shall be regarded as "immovable property":

(a) any specific part of the earth, on or below its surface, over which title and possession can be created;

(b) any building or construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved;

(c) any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts;

(d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.';

(b) in Article 18(2), the following subparagraph is added:

'However, irrespective of information to the contrary, the supplier of telecommunications, broadcasting or electronically supplied services may regard a customer established within the

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Community as a non-taxable person as long as that customer has not communicated his individual VAT identification number to him.';

(c) Article 24 is replaced by the following:

'Article 24

Where services covered by the first subparagraph of Article 56(2) or Articles 58 and 59 of Directive 2006/112/EC are supplied to a non-taxable person who is established in more than one country or who has his permanent address in one country and his usual residence in another, priority shall be given:

(a) in the case of a non-taxable legal person, to the place referred to in point (a) of Article 13a of this Regulation, unless there is evidence that the service is used at the establishment referred to in point (b) of that article;

(b) in the case of a natural person, to the place where he usually resides, unless there is evidence that the service is used at his permanent address.';

(d) Section 4 is amended as follows:

(i) the following subsections are inserted:

' Subsection 3a

Presumptions for the location of the customer

Article 24a

1. For the application of Articles 44, 58 and 59a of Directive 2006/112/EC, where a supplier of telecommunications, broadcasting or electronically supplied services provides those services at a location such as a telephone box, a telephone kiosk, a wi-fi hot spot, an internet café, a restaurant or a hotel lobby where the physical presence of the recipient of the service at that location is needed for the service to be provided to him by that supplier, it shall be presumed that the customer is established, has his permanent address or usually resides at the place of that location and that the service is effectively used and enjoyed there.

2. If the location referred to in paragraph 1 of this Article is on board a ship, aircraft or train carrying out a passenger transport operation effected within the Community pursuant to Articles 37 and 57 of Directive 2006/112/EC, the country of the location shall be the country of departure of the passenger transport operation.

Article 24b

For the application of Article 58 of Directive 2006/112/EC, where telecommunications, broadcasting or electronically supplied services are supplied to a non-taxable person:

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(a) through his fixed land line, it shall be presumed that the customer is established, has his permanent address or usually resides at the place of installation of the fixed land line;

(b) through mobile networks, it shall be presumed that the place where the customer is established, has his permanent address or usually resides is the country identified by the mobile country code of the SIM card used when receiving those services;

(c) for which the use of a decoder or similar device or a viewing card is needed and a fixed land line is not used, it shall be presumed that the customer is established, has his permanent address or usually resides at the place where that decoder or similar device is located, or if that place is not known, at the place to which the viewing card is sent with a view to being used there;

(d) under circumstances other than those referred to in Article 24a and in points (a), (b) and (c) of this Article, it shall be presumed that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of two items of non-contradictory evidence as listed in Article 24f of this Regulation.

Article 24c

For the application of Article 56(2) of Directive 2006/112/EC, where the hiring, other than short-term hiring, of means of transport is supplied to a non-taxable person, it shall be presumed that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of two items of non-contradictory evidence as listed in Article 24e of this Regulation.

Subsection 3b

Rebuttal of presumptions

Article 24d

1. Where a supplier supplies a service listed in Article 58 of Directive 2006/112/EC, he may rebut a presumption referred to in Article 24a or in point (a), (b) or (c) of Article 24b of this Regulation on the basis of three items of non-contradictory evidence indicating that the customer is established, has his permanent address or usually resides elsewhere.

2. A tax authority may rebut presumptions that have been made under Article 24a, 24b or 24c where there are indications of misuse or abuse by the supplier.

Subsection 3c

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Evidence for the identification of the location of the customer and rebuttal of presumptions

Article 24e

For the purposes of applying the rules in Article 56(2) of Directive 2006/112/EC and fulfilling the requirements of Article 24c of this Regulation, the following shall, in particular, serve as evidence:

(a) the billing address of the customer;

(b) bank details such as the location of the bank account used for payment or the billing address of the customer held by that bank;

(c) registration details of the means of transport hired by the customer, if registration of that means of transport is required at the place where it is used, or other similar information;

(d) other commercially relevant information.

Article 24f

For the purpose of applying the rules in Article 58 of Directive 2006/112/EC and fulfilling the requirements of point (d) of Article 24b or Article 24d(1) of this Regulation, the following shall, in particular, serve as evidence:

(a) the billing address of the customer;

(b) the internet Protocol (IP) address of the device used by the customer or any method of geolocation;

(c) bank details such as the location of the bank account used for payment or the billing address of the customer held by that bank;

(d) the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer;

(e) the location of the customer's fixed land line through which the service is supplied to him;

(f) other commercially relevant information.';

(ii) the following Subsection is inserted:

' Subsection 6a

Supply of services connected with immovable property

Article 31a

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1. Services connected with immovable property, as referred to in Article 47 of Directive 2006/112/EC, shall include only those services that have a sufficiently direct connection with that property. Services shall be regarded as having a sufficiently direct connection with immovable property in the following cases:

(a) where they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied;

(b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

2. Paragraph 1 shall cover, in particular, the following:

(a) the drawing up of plans for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected;

(b) the provision of on site supervision or security services;

(c) the construction of a building on land, as well as construction and demolition work performed on a building or parts of a building;

(d) the construction of permanent structures on land, as well as construction and demolition work performed on permanent structures such as pipeline systems for gas, water, sewerage and the like;

(e) work on land, including agricultural services such as tillage, sowing, watering and fertilisation;

(f) surveying and assessment of the risk and integrity of immovable property;

(g) the valuation of immovable property, including where such service is needed for insurance purposes, to determine the value of a property as collateral for a loan or to assess risk and damages in disputes;

(h) the leasing or letting of immovable property other than that covered by point (c) of paragraph 3, including the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer;

(i) the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, including the right to stay in a specific place resulting from the conversion of timeshare usage rights and the like;

(j) the assignment or transfer of rights other than those covered by points (h) and (i) to use the whole or parts of an immovable property, including the licence to use part of a property, such as the granting of fishing and hunting rights or access to lounges in airports, or the use of an infrastructure for which tolls are charged, such as a bridge or tunnel;

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(k) the maintenance, renovation and repair of a building or parts of a building, including work such as cleaning, tiling, papering and parqueting;

(l) the maintenance, renovation and repair of permanent structures such as pipeline systems for gas, water, sewerage and the like;

(m)the installation or assembly of machines or equipment which, upon installation or assembly, qualify as immovable property;

(n) the maintenance and repair, inspection and supervision of machines or equipment if those machines or equipment qualify as immovable property;

(o) property management other than portfolio management of investments in real estate covered by point (g) of paragraph 3, consisting of the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;

(p) intermediation in the sale, leasing or letting of immovable property and in the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), other than intermediation covered by point (d) of paragraph 3;

(q) legal services relating to the transfer of a title to immovable property, to the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), such as notary work, or to the drawing up of a contract to sell or acquire immovable property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.

3. Paragraph 1 shall not cover the following:

(a) the drawing up of plans for a building or parts of a building if not designated for a particular plot of land;

(b) the storage of goods in an immovable property if no specific part of the immovable property is assigned for the exclusive use of the customer;

(c) the provision of advertising, even if it involves the use of immovable property;

(d) intermediation in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, if the intermediary is acting in the name and on behalf of another person;

(e) the provision of a stand location at a fair or exhibition site together with other related services to enable the exhibitor to display items, such as the design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance and advertising;

(f) the installation or assembly, the maintenance and repair, the inspection or the supervision of machines or equipment which is not, or does not become, part of the

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immovable property;

(g) portfolio management of investments in real estate;

(h) legal services other than those covered by point (q) of paragraph 2, connected to contracts, including advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to a transfer of a title on an immovable property.

Article 31b

Where equipment is put at the disposal of a customer with a view to carrying out work on immovable property, that transaction shall only be a supply of services connected with immovable property if the supplier assumes responsibility for the execution of the work.

A supplier who provides the customer with equipment together with sufficient staff for its operation with a view to carrying out work shall be presumed to have assumed responsibility for the execution of that work. The presumption that the supplier has the responsibility for the execution of the work may be rebutted by any relevant means in fact or law.

Article 31c

For the purpose of determining the place of supply of telecommunications, broadcasting or electronically supplied services provided by a taxable person acting in his own name together with accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, those services shall be regarded as being supplied at those locations.';

(iii) in Subsection 7, the following Article is inserted:

'*Article 33a*

The supply of tickets granting access to a cultural, artistic, sporting, scientific, educational, entertainment or similar event by an intermediary acting in his own name but on behalf of the organiser or by a taxable person, other than the organiser, acting on his own behalf, shall be covered by Article 53 and Article 54(1) of Directive 2006/112/EC.';

(3) in point (4) of Annex I, the following points are added:

'(f) receiving radio or television programmes distributed via a radio or television network, the internet or similar electronic network for listening to or viewing programmes at the moment chosen by the user and at the user's individual request on the basis of a catalogue of programmes selected by the media service provider such as TV or video on demand;

(g) receiving radio or television programmes distributed via the internet or similar electronic network (IP streaming) unless they are broadcast simultaneous to their being transmitted or

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retransmitted over a radio and television network;

(h) the supply of audio and audiovisual content via communications networks which is not provided by and under the editorial responsibility of a media service provider;

(i) the onward supply of the audio and audiovisual output of a media service provider via communications networks by someone other than the media service provider.’.

Article 2

For telecommunications, radio and television broadcasting or electronically supplied services supplied by a supplier established within the Community to a non-taxable person who is established, has his permanent address or usually resides there, the following shall apply:

(a) the place of supply in respect of each chargeable event that occurs before 1 January 2015 shall be the place where the supplier is established, as provided for in Article 45 of Directive 2006/112/EC, regardless of when the supply, or continuous supply, of those services is completed;

(b) the place of supply in respect of each chargeable event that occurs on or after 1 January 2015 shall be the place where the customer is established, has his permanent address or usually resides, regardless of when the supply, or continuous supply, of those services commenced;

(c) where the chargeable event occurred before 1 January 2015 in the Member State where the supplier is established, no tax shall become chargeable in the Member State of the customer on or after 1 January 2015 in relation to the same chargeable event.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2015.

However, Articles 13b, 31a and 31b of Implementing Regulation (EU) No 282/2011, as inserted by this Regulation, shall apply from 1 January 2017.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 7 October 2013.

For the Council

The President

J. BERNATONIS

([1]) OJ L 347, 11.12.2006, p. 1.

([2]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual

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media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

([3]) 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 (OJ L 77, 23.3.2011, p. 1).

([4]) 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 (OJ L 281, 23.11.1995, p. 31).