



EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Article 397 of Council Directive 2006/112/EC¹ (hereinafter “the VAT Directive”) provides that “the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive”.

On that basis, the Council adopted Council Regulation (EU) No 282/2011², which provides binding rules on the application of certain provisions of the VAT Directive and – inter alia – gave legal certainty to a number of non-binding guidelines agreed by the VAT Committee since 1977.

Large elements of Regulation No 282/2011 are composed of provisions which relate to the adoption of Directive 2008/8/EC³. Article 5 of that Directive contains legal changes concerning the special schemes for telecommunications, broadcasting or electronic services supplied to non-taxable persons by suppliers not established in the Member State of taxation. Regulation No 282/2011 currently does not provide for any implementing measure related to those provisions which will come into force as of 2015. Therefore it is necessary to adapt that Regulation in order to establish binding rules on the application of the respective provisions of the VAT Directive.

These measures should be adopted by Council as soon as possible and in any case by the middle of 2012, in order to enable the Commission and the Member States to agree on the functional and technical specifications of the IT systems that need to be built for the implementation of these special schemes.

The proposed measures only relate to those aspects (definitions, scope of the schemes, reporting obligations, identification, exclusion, VAT returns, currency, payments, records) for which a common understanding is needed before designing the IT systems. Other measures, notably relating to the determination of the location of the customer, will be proposed by the Commission at a later stage.

Only Section 2 of Chapter XI of Regulation No 282/2011 needs to be amended.

General context

On 1 January 2015, to accommodate for changes to the rules governing the place of supply, a number of substantial changes to the VAT Directive will come into effect relating to the special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons (the so-called "mini One Stop

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1)

² 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) (OJ L 77, 23.3.2011, p. 1)

³ Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20.2.2008, p. 11)

Shop"). Under the mini One Stop Shop, the supplier uses a web portal in the Member State in which he is identified to account for the VAT due in other Member States on supplies of such services to private consumers. A scheme is already in operation for non-EU businesses supplying electronic services.

As a result of the changes, this scheme for non-EU businesses, which currently only applies to the supply of electronic services, will be extended to telecommunications and broadcasting services. At the same time, a second special scheme which covers the same types of services will be introduced for EU businesses.

These legal changes will lead to a significant enlargement of the scope of the current mini One Stop Shop and therefore considerably more taxable persons will have the option to make use of one of the special schemes. This provides a challenge for tax administrations and businesses alike due to the need to set up administrative practices and IT systems which are duly compliant with the future legal requirements.

In order to ensure legal certainty, it is necessary to lay down clear and binding rules on the application of the provisions of the VAT Directive concerning the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons which will come into force as of 1 January 2015. The current provisions of Regulation No 282/2011 concerning the mini One Stop Shop will become outdated after 31 December 2014. Section 2 of Chapter XI of Regulation No 282/2011 should therefore be substituted by a new single set of implementing measures covering both special schemes for EU and non-EU businesses to be applied as from 1 January 2015.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

In order to identify the areas where implementing measures would be necessary to ensure a common application of the provisions of the VAT Directive, Member States were extensively consulted during a FISCALIS seminar and a Working Party n° 1 meeting. Exchanges of views with businesses also took place in the Business Expert Group on VAT.

Collection and use of external expertise

There was no need for external expertise.

Impact assessment

The measures concerned are of a purely technical nature and are merely setting out the application of provisions adopted by the Council. Hence there is no need for an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU. The objectives of the proposal cannot be sufficiently achieved by the Member States. Even though the Member States have the competence for transposition of EU law, it is essential that the provisions and incoming changes are transposed in the national legislations in a coordinated manner in order to avoid that divergent application rules adopted by the Member States could establish an obstacle to a well-functioning mini One Stop Shop scheme. For the reasons outlined above, only EU action can ensure equal treatment of business and citizens in the European Union. The proposal therefore complies with the subsidiarity principle.

Proportionality principle

The amendment of Council Regulation (EU) No 282/2011 is necessary to adapt it to the respective provisions of the VAT Directive as they will apply as from 1 January 2015. The new provisions relate to Directive 2008/8/EC amending Directive 2006/112/EC as regards the place of supply of services. These measures are necessary to implement the VAT Directive.

The proposal therefore complies with the proportionality principle.

Proposal for a

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amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons

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 tax⁴, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Directive 2006/112/EC, as amended by Directive 2008/8/EC⁵, provides that as from 1 January 2015, all telecommunications, broadcasting and electronic services are to be taxed in the Member State in which the customer is established or has his permanent address or usual residence (hereinafter "Member State of consumption") regardless of where the taxable person supplying these services is established.
- (2) In order to facilitate compliance with fiscal obligations where such services are supplied to non-taxable persons, a special scheme has been put in place for taxable persons established within the Community but not in the Member State where the services are supplied (hereinafter "Union scheme"). Similarly, the special scheme for taxable persons not established within the Community currently in place, should be extended to cover all of those services (hereinafter "non-Union scheme"). This should enable non-established taxable persons to designate a Member State of identification as a single point of electronic contact for value added tax (VAT) identification and declaration.
- (3) A taxable person with establishments in more than one Member State should be able under the Union scheme to designate any of the Member States concerned as the Member State of identification except where he has his place of business within the Community. In that case, it should be ensured that the Member State of identification is that in which the taxable person has established his business.
- (4) In order to avoid disproportionate burdens for taxable persons using the Union scheme, it should be clarified that where that taxable person has indicated a particular

⁴ OJ L 347, 11.12.2006, p. 1

⁵ OJ L 44, 20.2.2008, p. 11

Member State as his Member State of identification, he shall no longer be bound by that decision once he ceases to have a fixed establishment in that Member State.

- (5) Telecommunications, broadcasting and electronic services supplied in Member States where the taxable person has established his business or has a fixed establishment are not covered by any of the special schemes. It should be made clear that such supplies should be declared directly to the Member State concerned.
- (6) Since both of the special schemes are optional, a non-established taxable person may at any moment in time decide to cease use the scheme. It is necessary to establish as from when such a decision would take effect.
- (7) It should be made clear that Member States must permit any taxable person to use the Union scheme where the customer is established or has his permanent address or usually resides in any Member State other than those in which the taxable person has established his business or has a fixed establishment.
- (8) To keep the registration details in its data base up-to-date, the Member State of identification relies on the information received from the taxable person. In order to ensure that databases are updated without delay, it is necessary to lay down a time limit within which the taxable person should communicate any relevant information on commencement, ceasing or change of activities under the special scheme.
- (9) A VAT identification number needs to be allocated to a non-established taxable person before use can be made of any of the special schemes. To prevent retroactive use by taxable persons who are already identified for VAT purposes, it is necessary to clarify from which moment the special schemes should apply.
- (10) To avoid any conflict as to the jurisdiction between Member States, it should be specified which Member State may exclude a taxable person from using a special scheme, when that Member State is to take such a decision and from which moment this decision should take effect.
- (11) It should be clarified when a non-established taxable person using one of the special schemes could be regarded as having ceased his activities under that scheme. It should also be clarified what, on the part of the non-established taxable person, would constitute persistent failure.
- (12) To promote compliance and avoid unnecessary burden for tax authorities, a taxable person who is excluded from one of the special schemes due to persistent failure, should, for a certain period, be refused entry to any of these schemes.
- (13) Where a taxable person is excluded from one of the special schemes, it should be made clear that all tax obligations must be discharged with the tax authorities of the Member State of consumption concerned, including any corrections of VAT returns previously submitted under the special scheme or payments of VAT related to those returns.
- (14) Each return period should be treated separately so as to facilitate control by the Member States of consumption and amendments should only be made to the VAT return concerned. It should also be made clear that several successive amendments of the same VAT return are possible.

- (15) It is appropriate, for reasons of control, to require for a VAT return to be submitted by the non-established taxable person to the Member State of identification, also where no services have been supplied during the return period. As to content, it should be clarified that the exact amount of VAT must be stated without any rounding up or down.
- (16) For amendments to the VAT return, it is necessary to establish a time limit by which the return would need to be amended by the Member State of identification upon request of the non-established taxable person. The Member States of consumption should in any event be able to accept or request relevant information directly from the taxable person and process VAT assessments.
- (17) Where the Member State of identification has not adopted the euro as a single currency, the non-established taxable person should be bound by the decision of that Member State as to the currency in which all VAT returns under the special schemes should be made.
- (18) For a better allocation of payments, it should be ensured that amounts of VAT paid under the special schemes are specific to the VAT return submitted. Any subsequent amendments to amounts paid should be effected only by reference to that return and not allocated to another return, or adjusted on a subsequent return.
- (19) In the case of non-payment, underpayment or payment in excess made by the non-established taxable person and with regard to interest, penalties and other incidental charges, it is important to specify the obligations of the Member State of identification and the Member States of consumption respectively so as to facilitate the collection of VAT and ensure that the right amount is paid on the services supplied under the special schemes.
- (20) The records kept by the non-established taxable persons need to be sufficiently detailed. It should be laid down what is, as a minimum, required from these records in terms of details.
- (21) To facilitate the implementation of the special schemes and with a view to enable services supplied as of 1 January 2015 to be covered by those schemes, it should be possible for non-established taxable persons to submit their registration details to the Member State which is designated by them as Member State of identification already as from 1 October 2014.
- (22) Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EU) No 282/2011,

Section 2 of Chapter XI is replaced by the following:

'SECTION 2

SPECIAL SCHEMES FOR NON-ESTABLISHED TAXABLE PERSONS SUPPLYING TELECOMMUNICATIONS SERVICES, BROADCASTING SERVICES OR ELECTRONIC SERVICES TO NON-TAXABLE PERSONS

(ARTICLES 358 TO 369K OF DIRECTIVE 2006/112/EC)

SUBSECTION 1

DEFINITIONS

Article 57a

For the purposes of this Section, the following definitions shall apply:

- (1) “non-Union scheme” means the special scheme for telecommunications services, broadcasting services or electronic services supplied by taxable persons not established within the Community provided for in Section 2 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (2) “Union scheme” means the special scheme for telecommunications services, broadcasting services or electronic services supplied by taxable persons established within the Community but not in the Member State of consumption provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (3) "special schemes" means "non-Union scheme" and "Union scheme";
- (4) “taxable person” means a taxable person not established within the Community as defined in Article 358a(1) of Directive 2006/112/EC or a taxable person not established in the Member State of consumption as defined in Article 369a(1) of that Directive.

SUBSECTION 2

APPLICATION OF THE SPECIAL SCHEMES

Article 57b

A taxable person with more than one fixed establishment in the Community may indicate any of the Member States in which he is established as the Member State of identification pursuant to the second paragraph of Article 369a of Directive 2006/112/EC.

However, where the taxable person has established his business within the Community, the Member State in which his place of business is established shall be designated as the Member State of identification.

Article 57c

Where a taxable person using the Union scheme ceases to have a fixed establishment in the Member State indicated by that taxable person pursuant to the second paragraph of Article 369a of Directive 2006/112/EC as the Member State of identification, he shall no longer be bound by that decision.

SUBSECTION 3

SCOPE OF THE SPECIAL SCHEMES

Article 57d

The Union scheme shall not apply to telecommunications, broadcasting or electronic services supplied in a Member State where the taxable person has established his business or has a fixed establishment. Those supplies shall instead be declared to the competent tax authorities of that Member State in the VAT return as provided for under Article 250 of Directive 2006/112/EC.

Article 57e

Without prejudice to Article 57d, Member States shall permit any taxable person to use the Union scheme where the customer is established or has his permanent address or usually resides in any Member State.

SUBSECTION 4

REPORTING OBLIGATIONS

Article 57f

The taxable person shall communicate the information required under Articles 360, 361 and 369c of Directive 2006/112/EC, as well as any change of the information provided, to the Member State of identification within 30 days of that information being available to him.

SUBSECTION 5

IDENTIFICATION

Article 57g

When a taxable person states to the Member State of identification that he commences his activities covered by one of the special schemes, that scheme shall apply as from the first day of the subsequent calendar quarter.

However, where the activities are undertaken for the first time and the services are supplied prior to the first day of the subsequent calendar quarter, the scheme shall apply as from the date of that first supply, provided that supply is made during the calendar quarter of the communication.

Article 57h

Member States shall upon request permit any taxable person using one of the special schemes to cease using that scheme. The taxable person shall inform the Member State of identification at least 10 days before the end of the calendar quarter as from which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next calendar quarter.

Where a taxable person decides to cease using one of the special schemes, he shall be excluded from using that scheme in any Member State for a minimum of one calendar year from the date of cessation.

SUBSECTION 6

EXCLUSION

Article 58

Where a taxable person using one of the special schemes meets at least one of the criteria for exclusion laid down in Articles 363 or 369e of Directive 2006/112/EC, the Member State of identification shall exclude that taxable person from that scheme.

Only the Member State of identification shall be authorised to exclude a taxable person from using one of the special schemes.

The Member State of identification may base its decision on exclusion on any information available, including information provided by any other Member State.

The exclusion shall be effective as from the first day of the subsequent calendar quarter.

Article 58a

Where a taxable person using one of the special schemes has made no supplies, in any Member State of consumption, of services covered by that scheme for a period of eight consecutive calendar quarters, he shall be assumed to have ceased his taxable activities within the meaning of point (b) of Article 363 or point (b) of Article 369e of Directive 2006/112/EC.

Article 58b

Where a taxable person is excluded from one of the special schemes for persistent failure to comply with the rules relating to that scheme, that taxable person shall remain excluded from using either scheme in any Member State until the end of the second calendar year following the calendar year during which the taxable person was excluded.

A taxable person shall be regarded as having persistently failed to comply with the rules relating to one of the special schemes, within the meaning of point (d) of Article 363 or point (d) of Article 369e of Directive 2006/112/EC, in at least the following cases:

- (a) where he has not submitted VAT returns for a period of three consecutive calendar quarters;
- (b) where he has not paid any amount of VAT due for three consecutive calendar quarters.

Article 58c

If a taxable person is excluded from one of the special schemes, that taxable person shall discharge all VAT obligations relating to supplies of telecommunications, broadcasting or electronic services directly with the tax authorities of the Member State of consumption concerned, including any corrections to be made to VAT returns submitted prior to exclusion or any payments of VAT.

SUBSECTION 7

VAT RETURN

Article 59

Any return period within the meaning of Article 364 or Article 369f of Directive 2006/112/EC shall be a separate return period.

Where a taxable person in accordance with the second subparagraph of Article 57g of this Regulation has been registered under one of the special schemes during a return period, he shall submit a VAT return covering that whole return period.

Article 59a

Where no services are supplied under the special schemes during a return period, the taxable person shall submit a VAT return indicating that no supplies have been made during that period (a nil-VAT return).

Article 60

Amounts on VAT returns made under the special schemes shall not be rounded up or down to the nearest whole monetary unit. The exact amount of VAT shall be reported and remitted.

Article 61

Once a VAT return has been submitted as provided for under Article 364 or Article 369f of Directive 2006/112/EC, any subsequent changes to the figures contained therein may be made only by means of an amendment to that return and not by an adjustment to a subsequent return. Several successive amendments of the same return shall be permitted.

Such amendments to the return shall be permitted through the special schemes for a period of up to five years after the day by which the initial return was submitted. This shall be without prejudice to the right of any Member State of consumption to accept or require the submission of such an amendment from the taxable person.

SUBSECTION 8

CURRENCY

Article 61a

Where a Member State of identification which has not adopted the euro as a single currency determines that the VAT return is to be made out in national currency, this shall apply to all taxable persons.

SUBSECTION 9

PAYMENTS

Article 62

Amounts of VAT paid under Article 367 or Article 369i of Directive 2006/112/EC shall be specific to the VAT return submitted pursuant to Article 364 or Article 369f of that Directive. Any subsequent adjustment to the amounts paid may be effected only by reference to that return and may not be allocated to another return, or adjusted on a subsequent return. Each payment shall refer to the reference number of that specific return.

Article 63

A Member State of identification which receives a payment in excess of that resulting from the VAT return submitted under Article 364 or Article 369f of Directive 2006/112/EC shall reimburse the overpaid amount directly to the taxable person concerned.

Where a Member State of identification has received an amount for a VAT return subsequently found to be incorrect, and that Member State has already distributed that amount to the Member States of consumption, those Member States shall directly reimburse any overpayment to the taxable person. In such a case, those Member States shall inform the Member State of identification of the amount of those reimbursements.

Article 63a

The taxable person shall make any payment directly to the Member State of identification.

Where the payment made does not correspond to that resulting from the VAT return submitted under Article 364 or Article 369f of Directive 2006/112/EC, the Member State of identification shall, by electronic means, remind the taxable person of any VAT overdue within 10 days of the end of the period referred to in Article 367 or Article 369i of Directive 2006/112/EC.

Any subsequent reminders and steps taken to collect the VAT shall be the responsibility of the Member State of consumption concerned.

Article 63b

Where a VAT return is incomplete or incorrect, is submitted late or the payment of VAT is late, any interest, penalties or any other charges due shall be paid directly to the Member State of consumption.

SUBSECTION 10

RECORDS

Article 63c

1. The records kept by the taxable person shall contain the following information to be regarded as sufficiently detailed within the meaning of Articles 369 and 369k of Directive 2006/112/EC:

- (a) the Member State of consumption to which the service is supplied;
- (b) the type of service supplied;
- (c) the date of the supply of service;
- (d) the taxable amount;

- (e) any subsequent increase or reduction of the taxable amount;
- (f) the VAT rate applied;
- (g) the amount of VAT payable;
- (h) the date and amount of payments received;
- (i) any payments on account received before the supply of service;
- (j) where an invoice is issued, the information contained on the invoice;
- (k) the name of the customer, where known to the taxable person;
- (l) the place where the customer is established or has his permanent address or usually resides, where known to the taxable person.

2. The information referred to in paragraph 1 shall be recorded by the taxable person in such a way that it can be made available without delay and for each single service supplied.'

Article 2

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, Member States shall allow non-established taxable persons to submit the information required under Article 360 or Article 369c of Directive 2006/112/EC, as amended by Directive 2008/8/EC, for registration under the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons as from 1 October 2014.

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

Done at Brussels,

For the Council
The President