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REPORT FROM THE COMMISSION TO THE COUNCIL
on Article 6 of Council Directive 2008/8/EC

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1. BACKGROUND

Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC¹ as regards the place of supply of services² was adopted as part of the ‘VAT Package’ with a view to ensuring the proper functioning of the internal market. It recognised that the place of taxation for all supplies of services should, in principle, be the place where actual consumption takes place. However, it also recognised that it would not be possible at that moment to apply that principle in all cases, because of the administrative burden and practical issues it could create for supplies to final consumers (B2C transactions). Therefore, it was decided to limit taxation at the place of consumption to certain sectors.

It was decided at the same time to set up a single electronic portal to allow for the business-friendly implementation of the new rules. Council Regulation (EU) No 143/2008³ therefore introduced the necessary mechanisms for the introduction of this ‘one-stop shop’.

2. SCOPE OF THE REPORT

Article 6 of Directive 2008/8/EC provides that ‘the Commission shall, by 31 December 2014, submit a report on the feasibility of applying efficiently the rule laid down in Article 5 for the supply of telecommunications services, radio and television broadcasting services and electronically supplied services to non-taxable persons and on the question whether that rule still corresponds to the general policy at that time concerning the place of supply of services’.

Article 58 of the VAT Directive, as replaced by Article 5 of Directive 2008/8/EC, provides that, as of 1 January 2015, all telecommunications, broadcasting and electronic services provided to a non-taxable person will be taxable at the place where the customer is established, has his/her permanent address or usually resides. This reflects the principle of taxation at the place of consumption.

Further provisions under Article 5 of Directive 2008/8/EC require a special scheme to be set up to enable businesses engaging in activities in Member States where they are not established to have a single point of electronic contact for VAT identification, declaration and payment purposes. This scheme requires the use of an electronic interface, referred to as a ‘mini one-stop shop’ (MOSS).

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

² OJ L 44, 20.2.2008, p. 11.

³ Council Regulation (EU) 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 (OJ L 44, 20.2.2008, p. 1). Regulation (EC) No 1798/2003 has since been replaced by Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast) (OJ L 268, 12.10.2010. p. 1).

Since the amendment of the VAT Directive by Directive 2008/8/EC entails fundamental changes for economic operators in the telecommunications, broadcasting and electronic service sectors and is generally aimed at redesigning the functioning of the VAT system, a series of legislative initiatives and practical measures were required.

The relevant action has been taken by the Commission's legal and technical IT services. Member States and representatives of the business sectors concerned were closely involved to ensure that this process addressed the challenges faced by all stakeholders.

A crucial milestone for the effective implementation of the new rules as of 1 January 2015 is the smooth and timely setting-up of the MOSS which will allow businesses and Member States to interact in a simpler, faster and more efficient way.

All the necessary legislation in this respect was adopted by the Council by the end of 2013. In order to provide further guidance to stakeholders, guidelines and explanatory notes on the new rules were published in the first half of 2014. These were accompanied by a comprehensive communication plan to inform businesses in Europe and around the world about the functioning of the new system.

This report will therefore focus on the action taken to ensure the proper and efficient implementation of the new rules as of 1 January 2015.

3. ACTION TAKEN TO ENSURE EFFICIENT IMPLEMENTATION

The preparation for the entry into force of the new rules started six years ago, immediately after the adoption of Directive 2008/8/EC.

Since then, many steps have been taken to strengthen communication between national authorities, to reach a uniform understanding of the content of the new rules and to reach a common position on how they should be implemented and applied by Member States.

In order to secure coherent and uniform application of the rules, the Commission has worked intensively with Member States to exchange points of view and search together for common and feasible solutions to the technical questions linked to this important reform.

The action taken to ensure efficient implementation covers five main areas:

- Preparing and adopting the relevant legal framework;
- Providing for common understanding on the application of the new place-of-supply rules and on related obligations (MOSS);
- Ensuring the IT implementation of the MOSS;
- Clarifying the audit approach in the framework of the MOSS; and
- Informing and raising awareness among stakeholders.

3.1. Adopting the relevant legal framework

The efficient implementation of the new rules on the place of supply of telecommunications, broadcasting and electronic services provided to non-taxable persons required the development of a sound legal framework clarifying the concepts referred to in Article 5 of Directive 2008/8/EC and allowing for the development of an electronic interface simplifying the compliance obligations of the economic operators.

The following acts were proposed by the Commission and subsequently adopted by the competent institutions:

- Council Regulation (EU) No 967/2012 of 9 October 2012 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 persons⁴. This lists the main obligations of taxable persons under the special schemes and regulates issues such as registration, deregistration and exclusions;
- 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 services⁵. This deals with the place-of-supply rules and clarifies how they should be applied; and
- Commission Implementing Regulation (EU) No 815/2012 of 13 September 2012 laying down detailed rules for the application of Council Regulation (EU) No 904/2010, as regards special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons⁶. This standardises declarations and exchanges of data between Member States to ensure the full interoperability of the MOSS.

Great care was taken to avoid the problems of interoperability that have been faced in relation to the implementation of the procedure for the refunding of VAT incurred by non-established taxable persons, as provided for under the VAT Refund Directive⁷. The use of implementing acts has been instrumental in enabling the Commission to introduce standardised procedures.

3.2. Reaching common understanding on the application of the new rules

Possible difficulties arising from the application of the new rules on the place of supply of services were first examined in a seminar (financed under the Fiscalis 2013 Programme) in Malta in November 2008.

The results of the discussions showed that, with regard to telecommunications, broadcasting and electronic services, input from business stakeholders would be needed in order to

⁴ OJ L 290, 20.10.2012, p.1.

⁵ OJ L 284, 26.10.2013, p.1.

⁶ OJ L 294, 14.09.2012, p.3.

⁷ 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 (OJ L 44, 20.2.2008, p. 23).

correctly identify and address the practical challenges arising from the implementation of the new taxation principle.

Taking this into consideration, a second Fiscalis seminar was organised in Luxembourg in March 2012, where not only Member States but also representatives from the sectors concerned were invited to share their expertise. The outcome of this seminar was an important step in the process of preparing the Commission's proposal of December 2012,⁸ which the Council adopted, as Implementing Regulation (EU) No 1042/2013 (see point 3.1.).

During the discussions on the Implementing Regulation in the Council, it was widely recognised that detailed explanatory notes with more detailed information on the practical application of the new provisions would be useful for business and Member States. As a result, the Commission services prepared draft explanatory notes on the VAT changes on the place-of-supply rules for telecommunications, broadcasting and electronic services that enter into force in 2015. These focus in particular on the provisions in Implementing Regulation (EU) No 1042/2013 and are not legally binding.

In November 2013, the Commission convened a Fiscalis workshop for Member States and business representatives in the Netherlands to discuss the draft explanatory notes. Following substantive and fruitful discussion with business and Member State representatives at the workshop and in subsequent meetings in Brussels, the notes were finalised.

The document was made public⁹ well in advance of the date of entry into force of the new rules, in April 2014, so as to help tax authorities and businesses adapt their internal processes, commercial and business tools to the new system.

It is considered that sufficient measures have now been taken to provide stakeholders with a clear view on how the forthcoming changes are to be applied, to ensure legal certainty and to limit the administrative burden on tax administrations and economic operators in the period needed to adapt to the new rules.

This collaborative work on a common understanding on the new place-of-supply rules should prevent divergent interpretations of the applicable legal framework and limit the risks of double taxation.

3.3. Consequences of the new rules

Until 31 December 2014, services supplied by suppliers established within the EU to non-taxable EU persons are, as a rule, to be taxed at the place where the supplier is established.

From 1 January 2015, all telecommunications, broadcasting and electronic services will become taxable at the place where the customer belongs (unless the rule on effective use and enjoyment applies), even if the customer is a non-taxable person.

⁸ COM(2012) 763 final.

⁹ Telecommunications, broadcasting & electronic services — European Commission : http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#explanatory_notes

Therefore, for these services supplied to non-taxable persons, EU and non-EU suppliers will have had to register for VAT purposes and comply with the relevant obligations of the Member State where the customer is established, has his/her permanent address or usually resides.

However, in order to relieve economic operators of the obligation to register for VAT purposes in every Member State in which they supply such services to non-taxable persons, to facilitate compliance and to simplify business operations, the legislation provides that taxable persons can make use of a special scheme allowing them to be identified for VAT purposes in one Member State only instead of having to register in every Member State of consumption.

This special scheme relies on an electronic interface (the MOSS), the development of which represents a crucial milestone but also a significant challenge that has required the Commission, Member States and business representatives to work in close cooperation.

Hence, special attention has been given to the importance of starting to prepare for the implementation of the electronic interface in all Member States well in advance in order to ensure good operational results when the new rules enter into force. In addition, Member States have been made aware in various fora of the need to allocate sufficient resources to this project.

3.4. Facilitating business compliance and revenue collection through a MOSS

The MOSS must be fully operational for the entry into force of the new rules on the place of supply on 1 January 2015. However, traders will be allowed to register for the special scheme as of 1 October 2014.

As indicated in the preamble of Implementing Regulation (EU) No 815/2012, the Member States are primarily responsible for the technical implementation of the electronic interface to be used as a MOSS.

Given the compliance implications of the new rules, the timely implementation and efficient functioning of the system is of crucial importance for suppliers engaging in activities in Member States in which they are not established.

To achieve this objective, the Commission has taken consistent and timely action to help ensure that the electronic interface is developed in a uniform manner in all Member States. Two workshops were organised and financed under the Fiscalis 2013 Programme. The first, dedicated to implementing the MOSS, was held in Malmö in June 2011 and paved the way for the work to prepare implementing rules on the functioning of the scheme and the standardisation of return and data exchanges. The second, dedicated to preparing MOSS guidelines, was held in May 2013 in Cyprus.

The guide to the MOSS, aimed at ensuring a better understanding of the changes that will enter into force in January 2015, was published on the Commission's website¹⁰ at the end of

¹⁰ Telecommunications, broadcasting & electronic services — European Commission : http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#one_stop

2013. It provides practical guidance as to how the MOSS-related legislation and specifications are to be applied.

The guide was prepared by the Commission services in order to meet the legitimate expectations, need for clarity and legal certainty of stakeholders affected by the entry into force of the new rules. It was discussed by the Standing Committee on Administrative Cooperation (SCAC)¹¹ in October 2013 and is not legally binding.

3.5. IT implementation of the MOSS

The Commission is also coordinating the IT implementation of the MOSS in all Member States. The functional and technical specifications of the system (i.e. precise details of how the Member States should implement their IT systems) were adopted by the SCAC in autumn 2012 and, since then, the Member States have advanced well in the development of the necessary IT framework.

Under the overall MOSS project, the Commission services were responsible for producing the specifications, developing the system, conducting conformity tests, deploying the system in production and coordinating Member States' activities. The scope of intervention by the Commission was limited to the common domain, while business processes were defined separately at national level.

A lot of work has been done in this area, in particular through regular IT workshops with all Member States. Moreover, bilateral monitoring missions were organised by Commission IT specialists in all Member States in order to carry out an individual assessment of the difficulties encountered in some particular cases and search for efficient solutions.

It is of crucial importance that all Member States continue to devote the necessary resources to this work in order to be ready on time. During the months remaining before the entry into force of the new rules, the state of play in each individual Member State will continue to be closely monitored by the Commission IT specialists.

If the electronic system is not ready or correctly functioning in one Member State on 1 January 2015, the suppliers from that Member State will need to continue to register and declare VAT, under the general rules, in all Member States where they supply telecommunications, broadcasting or electronic services to non-taxable persons.

A question that emerges from this experience, for the future, is whether it still makes sense, at a time of fiscal consolidation, for such IT systems to be developed at national level, by each administration, or whether it would be preferable to have an EU system or at least Member States pooling their resources to develop certain modules in common.

3.6. Audit of the MOSS

EU legislation on the MOSS provides for controls and audits to be carried out by the Member State of consumption, although several tools are available to improve the coordination of audits between Member States.

¹¹ This Committee is set up under Article 58 of Regulation (EU) No 904/2010.

Such audits may involve up to 27 different foreign administrations (in the case of EU companies, or 28 in the case of non-EU companies) auditing the same company without any coordination, leading to information requests in multiple languages. Not only could this place disproportionate administrative burdens on the e-business industry, but it could also jeopardise the efficiency of the audits themselves and the level of voluntary compliance (especially on the part of non-EU companies). Furthermore, the lack of a coordinated approach will tie up auditing resources within tax administrations, which could have an adverse impact on ‘auditing yield’ within Member States.

A Fiscalis Project Group produced a set of recommendations on the audit of the MOSS to address these issues. These were discussed at an ‘Audit and control of the VAT mini one-stop shop (MOSS)’ workshop in Sweden in September 2013. The recommendations promote the principle whereby the Member State of identification coordinates audits, without prejudice to the competence of the Member States of consumption to operate tax assessments in line with the existing legislation.

The Project Group’s report recommended that the Member State of identification, i.e. the Member State in which the business is established or which it has chosen as a main contact authority, will take on audit and control functions on behalf of the Member States of consumption.

However, although a very large majority of Member States strongly supported this work at a High-Level Working Party in the Council, as well as in the competent committee, not all Member States have agreed to implement the recommendations.

The Commission services will publish on their website the recommendations that are of interest for businesses¹² and consider that all Member States should apply them in order to ensure maximum efficiency and minimise the burden on businesses.

3.7. Communication and awareness-raising

An important component of the preparatory work for the entry into force of the new place-of-supply rules is the need to provide businesses and national tax administrations with sufficient information on the scope and impact of the forthcoming changes.

The Commission has therefore decided to set up an EU web portal dedicated to the implementation of the new rules. This could form the ‘embryo’ of a broader web portal for EU VAT issues.

Since the reform will have implications not only for European but also for world-wide operators, the guide to the MOSS and the explanatory notes on the new place-of-supply rules will be available on the web portal in Japanese, Russian and Chinese, as well as all the official EU languages.

Further information on specific Member State rules that are relevant for businesses using the MOSS will be uploaded on this EU web portal before the end of 2014, together with links to

¹² Telecommunications, broadcasting & electronic services — European Commission : http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm

the national web portals. This data will reflect existing specific requirements in the Member States, notably with regard to invoicing obligations, use and enjoyment rules, use of certain exemptions, etc. It is important to note that certain aspects of national legislation will continue to apply in the context of the MOSS.

The objective of the web portal is to facilitate the activity of businesses operating in different Member States by providing them with a summary database, allowing them easily to obtain information on applicable compliance obligations in the EU and thereby to reduce compliance costs.

Also, a specific communication plan has been put in place more broadly to reach stakeholders established in third countries who may be affected by the new place-of-supply rules. Conferences are being organised in order to raise awareness and understanding of the new rules. In particular, a presentation was given to participants at the 2nd meeting of the OECD Global Forum on VAT in Tokyo, on 17-18 April 2014.¹³ Events taking place in the course of 2014 include conferences in Luxembourg on 15 May, in the United Kingdom on 2 June, in Poland on 9 September and in the United States later in September. Other events might be organised at a later stage.

4. FEASIBILITY ASSESSMENT

4.1. Consistency of the new rules with the general policy on the place of supply of services

Six years after the adoption of Directive 2008/8/EC, the new rules on the place of supply of telecommunications, broadcasting and electronic services are still fully in line with the general policy pursued with regard to the future of VAT.

On 6 December 2011, the Commission adopted a Communication on the future of VAT¹⁴ in which it presented the fundamental characteristics of the reshaped VAT system that should replace the current transitional arrangements, and identified priority actions for the way forward.

The Communication acknowledged that the objective of establishing a definitive VAT system based on the principle of taxation in the country of origin is unachievable and should thus be abandoned in favour of a system based on an alternative destination-based concept.

According to this new approach, the future VAT system should be based on the principle that the place of supply is situated in the Member State where consumption takes place, as required by the new rules on the place of supply of telecommunications, broadcasting and electronic services coming into force on 1 January 2015.

The fact that the Council endorsed this Communication (in conclusions adopted on 15 May 2012) further shows that the rule laid down in Article 5 of Directive 2008/8/EC not

¹³ <http://www.oecd.org/tax/consumption/>.

¹⁴ See Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on *The future of VAT — Towards a simpler, more robust and efficient VAT system tailored to the single market* — COM(2011) 851 final.

only complies with general policy in the area of indirect taxation, but also expresses its main future orientation.

This is also illustrated by the importance that the Commission has assigned to the timely implementation of the MOSS. This is a priority that has also received the full support of the Council.

In addition, it should be stressed that this rule is fully consistent with the policy lines currently under discussion at international level.

Under the OECD principles on the taxation of e-commerce, as agreed in 1998 in Ottawa,¹⁵ consumption taxes (such as VAT) should result in taxation at the place where consumption takes place. Those principles underlie the VAT/GST guidelines for B2C services currently being developed by the OECD.

Moreover, the application of the destination principle provides a basis for a sustainable solution to the challenges raised by the development of the digital economy, as it ensures a level playing field for operators providing goods and services from a remote location. Therefore, it is also consistent with the line taken by the Commission's High-Level Expert Group on Taxation of the Digital Economy and with the OECD work on base erosion and profit shifting (BEPS).

4.2. Efficient implementation of the new rules by 1 January 2015

The introduction of the new rules on the place of supply of telecommunications, broadcasting and electronic services represents a major change in the current rules of the EU VAT system. Its preparation has raised a number of challenges, both legal and technical.

However, thanks to the numerous measures taken years ahead of the deadline and to the fruitful cooperation with Member States and private-sector stakeholders, a sound framework has been put into place for consistent, efficient and timely implementation.

The Commission has taken the necessary action to ensure that there is a sound legal framework in place, together with practical and detailed guidance for businesses and Member States. It has also supported and monitored Member States' efforts to prepare for the technical implementation of the electronic interface so as to allow proper functioning of the MOSS.

Additional initiatives have been carried out in order to raise awareness, inform the stakeholders affected by the new rules and issue guidelines to allow their smooth implementation.

The Commission therefore concludes that efficient application of the new rule on the place of telecommunications, broadcasting and electronic services to non-taxable persons as of 1 January 2015 is feasible.

Until that date and after the entry into force of the new arrangements, the Commission will continue to monitor Member States' progress in implementing the MOSS, which should

¹⁵ <http://www.oecd.org/ctp/consumption/Taxation%20and%20eCommerce%202001.pdf>.

constitute a major step towards the simpler and more effective functioning of the internal market.

5. CONCLUSIONS

As regards further steps to be taken before the entry into force of the new rules on the place of supply of telecommunications, broadcasting and electronic services provided to non-taxable persons, the Commission calls on the Member States to accept full accountability for the technical preparations and be ready for the implementation of the MOSS.

Since all necessary action incumbent on the Commission has been taken in due time, Member States should bring the project to a successful conclusion and ensure that the new rules will apply efficiently as of 1 January 2015.

In order to ensure a smooth transition to the new rules, the Commission considers that a pragmatic approach should prevail with regard to the transitional measures that Member States will implement. These should ensure appropriate taxation while avoiding any possible risks of double taxation. In this respect, the guideline agreed almost unanimously by the VAT Committee¹⁶ should be the 'line to take' for all Member States.

Moreover, Article 221 of the VAT Directive provides that Member States may impose on taxable suppliers an obligation to issue an invoice¹⁷ for supplies made to non-taxable persons (B2C transactions). However, such obligation can be burdensome for operators trading in different Member States. Therefore, in order to further simplify the compliance of economic operators, the Commission considers that Member States should not require businesses to issue an invoice in B2C transactions covered by the MOSS.

Finally, the Commission notes that many businesses are very concerned about the way in which possible differences between Member States on the taxation of these services may be resolved in the future: they fear that different VAT administrations will present them with tax demands for the same service, with no procedure or mechanism to resolve disputes between Member States. The Commission shares the concern as to the absence of such a procedure or mechanism. The current legislative framework provides no formal means of addressing such situations and the Commission has been given no power to solve double taxation issues. Therefore, this competence lies fully in the hands of the Member States.

The Commission considers it necessary that a mechanism to resolve double taxation situations be put in place at European level. Given the reluctance of Member States in the past to support such initiatives, it urges the Member States to establish an easily accessible contact point and to communicate details to the Commission services so that a comprehensive list can be published on its website.¹⁸ This would be a first port of call in the search for solutions to cases of double taxation due to divergent assessments by national tax administrations.

¹⁶ See 100th meeting of the VAT Committee, Working Paper No 797 FINAL:
http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf.

¹⁷ For the content of an invoice within the meaning of the VAT legislation, see Article 226 of the VAT Directive.

¹⁸ http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm

6. RECOMMENDATIONS ON THE WAY FORWARD

The Commission calls on Member States to:

- take all relevant actions to set up the necessary IT infrastructure in due time;
- fully implement the audit guidelines;
- refrain from the option to require an invoice on B2C supplies covered by the new place-of-supply rules; and
- designate an easily accessible contact point for double taxation problems.