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Proposal for a

COUNCIL REGULATION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Article 397 of Council Directive 2006/112/EC on the common system of value added tax¹ ('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 Implementing Regulation (EU) No 282/2011² ('the VAT Implementing Regulation'), setting out rules on how to apply certain provisions of the VAT Directive and also enshrining in law a number of guidelines agreed by the VAT Committee since 1977.

Large parts of the VAT Implementing Regulation relate to changes to the rules on the place of supply of services introduced in 2008 (by the 'VAT Package'³). Some of those changes need further clarification, in particular those concerning telecommunications, broadcasting or electronic services supplied to non-taxable persons, which from 2015 become taxable in the Member State in which the customer is established, has his permanent address or usually resides. Suppliers of such services will need to identify and account for VAT in that Member State.

Measures have already been taken to implement the special schemes for those suppliers who are not established in the Member State of taxation⁴. Further measures are needed to ensure that the rules governing the place of supply of these services are applied uniformly. It is essential to amend the VAT Implementing Regulation to lay down rules on how to apply the relevant provisions of the VAT Directive.

These measures should be adopted by the Council as soon as possible and certainly by the end of 2013, in order to give businesses and the Member States sufficient time to prepare for the changes.

This proposal and the definitions it contains do not preclude the outcome of ongoing discussions on applying reduced VAT rates to online products and services.

¹ 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).

⁴ 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 telecommunication services, broadcasting services or electronic services to non-taxable persons (OJ L 290, 20.10.2012, p. 1) 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 the special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons (OJ L 249, 14.9.2012, p. 3).

General context

Telecommunications, broadcasting and electronic services are, in general, taxed at the place where the customer is established or resides⁵. Where the supplier is established within the EU and the customer is a non-taxable person, the supply is, however, currently taxed at the place where the supplier is established.

From 1 January 2015, all telecommunications, broadcasting and electronic services will be 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. For non-taxable persons, EU and non-EU suppliers will need to identify where the customer is established, has his permanent address or usually resides. Without a VAT identification number (which is usually reserved for taxable persons) for guidance, the supplier will have to rely to some extent on information from the customer.

To ensure legal certainty, and avoid double taxation or non-taxation, suppliers need clear and binding rules on how to do this.

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

Consultation of interested parties

To identify the areas where implementing measures are necessary to ensure uniform application of the provisions of the VAT Directive, Member States and businesses were consulted extensively during a Fiscalis seminar. Views were also exchanged at a meeting of an expert group consisting of representatives of the Member States, called Working Party No 1⁶, and with businesses at an ad hoc expert meeting.

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 already 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.

⁵ Also referred to as the place where the customer belongs.

⁶ The agenda, the working document and the report from that meeting are available at: http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/discussions_member_states/index_en.htm.

Even though the Member States are responsible for the transposition of EU law into national legislation, it is essential that the rules governing the place of supply of telecommunications, broadcasting and electronic services are applied in a uniform manner in order to prevent divergent application rules leading to double taxation or non-taxation.

For the reasons outlined above, only EU action can ensure equal treatment for business and citizens in the European Union. The proposal therefore complies with the subsidiarity principle.

Proportionality principle

The present amendments are necessary to adapt Council Implementing Regulation (EU) No 282/2011 to the relevant provisions of the VAT Directive which 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, in particular Article 5 thereof.

The proposal therefore complies with the proportionality principle.

4. ADDITIONAL INFORMATION

Detailed explanation of the proposal

The proposed implementing measures relate to the following types of services:

- telecommunications, broadcasting and electronic services
- services connected with immovable property
- distribution of tickets granting entry to cultural, artistic, sporting, scientific, educational, entertainment and similar events.

The proposals for each are as follows.

Telecommunications, broadcasting and electronic services

From 1 January 2015, EU (and non-EU) businesses will need to determine where their customer (non-taxable person) belongs in order to ensure correct taxation of these services. In order to ensure that the transition is smooth and coordinated at EU level, the Commission is proposing measures for the implementation of the new rules. This follows in-depth and close consultations with businesses and Member States. These measures will not change the rules for telecommunications, broadcasting and electronic services laid down by the VAT Directive but will clarify how those rules should be applied in practice.

Articles 6a and 6b, together with the changes proposed to Article 7 and Annex II, seek to clarify the nature of telecommunications, broadcasting and electronic services. Each of these services should be defined so as to set the boundaries of the new rules. A definition of broadcasting services is therefore included together with examples to illustrate which services are covered and which are not. To provide legal certainty, preference is given to qualifying the services in positive terms. The existing list of examples of electronic services has been

adapted and similar lists drawn up for telecommunications and broadcasting services. The lists are neither definitive nor exhaustive.

Article 9a clarifies the treatment of broadcasting and electronic services when supplied through the telecommunications network or via an interface or a portal such as a marketplace for applications belonging to an intermediary (or a third party intervening in the supply). The presumption is that in supplying those services the intermediary acts on behalf of the supplier but in its own name. Unless stated otherwise, the intermediary will be deemed to have received and supplied those services. Where supply is made to a non-taxable person, the intermediary then has to account for VAT in the Member State of its customer.

Article 13a specifies that, similar to a taxable person, a non-taxable legal person is established at the place where his business is established or where he has a fixed establishment.

Article 18 deals with the status of the customer. It allows a supplier to treat a customer who does not communicate his VAT identification number as a non-taxable person but only if the supplier does not have information to suggest otherwise. Where the place of taxation depends on whether the customer is a taxable or a non-taxable person, the risk of relying solely on the VAT identification number is that the supply could be displaced if a taxable customer chooses not to communicate the number. No such risk exists with telecommunications, broadcasting and electronic services, which in any circumstance will be taxable at the place of the customer. The new paragraph 2 clarifies that for such services, the supplier can regard any customer who does not provide a VAT identification number as a non-taxable person. This will allow the supplier to determine immediately and with certainty whether payment of VAT falls to the supplier (as it does for supply to a non-taxable person, or to a taxable person in the same Member State) or whether the customer needs to account for the tax (because the supply is to a taxable person in another Member State). However, this initial assessment will have to be reviewed and corrected should the customer subsequently communicate his VAT identification number.

Article 24 deals with situations where the customer is established or resides in more than one country. The aim is to avoid conflicts concerning jurisdiction between Member States. The new paragraph 3 clarifies what should be taken into account in order to determine the place that best ensures taxation at the place of actual consumption.

Subsection 3a provides for non-rebuttable presumptions where it is impossible or almost impossible for the supplier to establish the capacity of a customer or to know where the customer is actually established, has his permanent address or usually resides.

Article 24a deals with cases where a supplier of telecommunications, broadcasting or electronic services provides those services to a customer at certain locations. In cases such as a telephone booth or a visit to an internet cafe, the supplier will not know who the customer is or may find it virtually impossible to check where that customer actually belongs. As the physical presence of the person receiving the service is needed for the service to be rendered to him, the presumption is that the customer belongs in that country.

Article 24b deals with cases where use is made of pre-paid credits stored on a SIM card to receive the services. As, in general, there is no collection of personal details upon the sale of such cards, the supplier who is not necessarily supplying the customer with the card, will not know who that customer is. The country of issue of the SIM card is key to establish where the

customer is. As use will often be in that country, the presumption is that the customer also belongs there for this purpose.

Subsection 3b provides for rebuttable presumptions where it is difficult, but not impossible, for the supplier to know where the customer is actually established, has his permanent address or usually resides. Where the supplier has information to indicate that the customer belongs elsewhere, the presumptions shall not apply.

Article 24c deals with cases where services are supplied to the customer via a fixed land line connected with a residential building. As that is also where the service will be used, the presumption is that the customer belongs there.

Article 24d covers cases where the customer makes use of a post-paid SIM card to receive the services. As with pre-paid credits, the presumption is that the customer belongs in the country of issue of the SIM card. Given that with services received through the use of a post-paid SIM card, the supplier will know the customer, there needs to be scope for this presumption to be rebutted.

Article 24e suggests that a customer who needs a device or a viewing card in order to receive the services can be presumed to belong where the device is installed or where the viewing card is sent for use. The presumption does not apply in cases where the device is sold without installation or where the viewing card is sold but not sent to the customer.

Article 24f covers all other cases where the presumption is that the customer belongs at the place as established by the supplier through sufficient evidence. This presumption applies to the extent that the supplier does not have contradictory evidence.

Subsection 3c focuses on evidence for use in identifying customer location.

Article 24g sets out a list of items of information which can be used as evidence by the supplier in identifying where a non-taxable customer belongs. As there is no VAT number for guidance, the supplier needs to know what other information can be relied on. The list, whilst not exhaustive, suggests which are the most relevant items of information for use as evidence. To be proportionate, the evidence used must be sufficient to determine with relative certainty where the customer belongs but the burden of proof must not be excessive. That is best achieved by setting a common level of evidence. Relying on a single piece of evidence is not appropriate as that leaves too much scope for differences in application. Two convergent separate pieces of evidence are therefore required.

Services connected with immovable property

Article 47 of the VAT Directive provides for the place of supply of services connected with immovable property to be the place where the property is located. Measures are included to clarify the scope of that provision based on guidelines agreed by the VAT Committee.

Article 13b provides a definition of what constitutes immovable property. The concept of immovable property is a common notion independent of national law. A definition of this concept is needed to facilitate the correct application of the place-of-supply rules. The definition is largely based on the case law of the Court of Justice of the European Union.

Article 31a specifies that for services to be connected with immovable property, the connection needs to be sufficiently direct (paragraph 1). That covers services derived from an

immovable property if the property makes up a constituent element of the service and is central and essential for the services supplied such as the granting of fishing permits; or provided to, or directed towards, an immovable property having as their object the legal or physical alteration of that property such as the services of architects or estate agents. Examples are included to illustrate which services are connected with immovable property (paragraph 2), and which are not (paragraph 3).

Article 31b provides that the hiring of equipment to a customer, with or without accompanying staff, with a view to carrying out work on an immovable property shall only be regarded as a service connected with immovable property if the supplier assumes responsibility for the execution of the work. Where the equipment is put at the disposal of the customer together with sufficient staff for its operation, the presumption is that the supplier has assumed such responsibility. In this case, the service must be taxed in the country where that immovable property is located.

Article 31c clarifies that telecommunications, broadcasting or electronic services provided by hotels or the like to their customers in connection with accommodation will be treated for VAT purposes in the same way as the supply of the accommodation itself. Depending on the way those services are charged, they either form part of a single supply of accommodation (in the case of ‘all inclusive’ prices) or are regarded as being ancillary to the supply of accommodation.

Distribution of tickets granting entry to cultural, artistic, sporting, scientific, educational, entertainment or similar events

Entry to cultural, artistic, sporting, scientific, educational, entertainment or similar events continues to be taxable at the place where the event actually takes place. Where entry to such events is granted to a taxable person, the supply is covered by Article 53 of the VAT Directive. Article 54 of the VAT Directive comprises the supply of entry to such events to a non-taxable person.

Article 33a confirms that tax treatment is not influenced by the way in which the distribution of tickets for such events is organised. In all circumstances, the supply of tickets must be taxed at the place where the event takes place.

Transitional measures

Under Article 63 of the VAT Directive, the chargeable event occurs and the VAT becomes chargeable when goods or services are supplied. If payment is made on account under Article 65 of the VAT Directive or if Member States have availed themselves of the option in Article 66 of the VAT Directive, VAT can, however, become chargeable prior to or soon after supply.

For telecommunications, broadcasting or electronic services supplied around 1 January 2015, i.e. the time when the new rules on the place of supply become applicable, conditions linked to the supply or differences in application between Member States could result in double taxation or non-taxation. To prevent this from happening, Article 2 of the proposal makes it clear that, no matter when the VAT becomes chargeable, the decisive moment for determining the place of supply is when the services are supplied or, for ongoing supplies giving rise to successive statements of account or successive payments, when each supply is completed. That is when the chargeable event occurs in any of the Member States. Those measures are necessary to ensure a smooth transition to the rules put in place as of 1 January 2015.

Proposal for a

COUNCIL REGULATION

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 tax⁷, 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/EC⁸, provides that as from 1 January 2015, all telecommunications, broadcasting and electronic services supplied to a non-taxable person are to be taxed in the Member State in which the customer is established or has his permanent address or usually resides regardless of where the taxable person supplying these 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, broadcasting and electronic services. In particular, the concept of broadcasting services should be clarified drawing from definitions laid down in 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 media services (Audiovisual Media Services Directive)⁹.
- (3) To clarify matters, transactions identified as electronic services have been listed in Implementing Regulation (EU) No 282/2011, without the list being definitive or exhaustive. The list should be updated and similar lists should be drawn up for telecommunications and broadcasting services.
- (4) Where broadcasting and electronic services are not supplied directly to a customer but through telecommunications networks or via an interface or a portal belonging to another taxable person, it is necessary to specify who makes the supply to the customer.

⁷ OJ L 347, 11.12.2006, p. 1.

⁸ OJ L 44, 20.2.2008, p. 11.

⁹ OJ L 95, 15.4.2010, p. 1.

- (5) To ensure uniform application of the rules governing the place of supply of telecommunications, broadcasting and electronic 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 value added tax (VAT) on the supply of telecommunications, broadcasting or electronic 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.
- (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 to clarify the tax treatment of telecommunications, broadcasting and electronic services supplied to a non-taxable person whose place of establishment or residence is practically impossible to determine or cannot be determined with certainty.
- (9) As the tax treatment of telecommunications, broadcasting and electronic services supplied to a non-taxable person depends on where the customer is established, has his permanent address or usually resides, it is necessary to clarify what the supplier should be required to obtain as evidence in identifying the location of the customer.
- (10) In order to ensure uniform 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 examples of transactions identified as services connected with immovable property should also be listed, without the list being definitive or exhaustive.
- (11) It is also necessary to clarify the tax treatment of services putting equipment at a customer's disposal with a view to carrying out work on immovable property.
- (12) For practical reasons, it should be clarified that telecommunications, broadcasting or electronic services provided by a taxable person acting in his own name in connection with the provision of accommodation in the hotel sector or in sectors with a similar function should be treated, for VAT purposes, in the same way as the provision of the accommodation itself. Both transactions should be treated as a single supply in the case of an all-inclusive price. Telecommunications, broadcasting or electronic services that are charged separately to the customer should be treated as an ancillary supply to the accommodation.
- (13) 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 distributed through intermediaries.

- (14) According to Directive 2006/112/EC, VAT can become chargeable prior to or soon after the supply of goods or services. In relation to telecommunications, broadcasting or electronic 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 happening, it is necessary to provide for transitional provisions.
- (15) 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 of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹⁰ in order to safeguard the interests referred to in Article 13(1)(e) of that Directive where such measures are necessary and proportionate in view of the risk of tax fraud and tax evasion in Member States and the need to ensure the correct collection of VAT covered by this Regulation.
- (16) 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) The following Articles 6a and 6b are inserted:

'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, otherwise known as 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;

¹⁰ OJ L 281, 23.11.1995, p. 31.

- (g) telephone helpdesk services by which assistance is provided to users in case of problems with their radio or television network, Internet or similar electronic network;
- (h) access to the Internet, including the World Wide Web;
- (i) private network connections providing telecommunications links for the exclusive use of the client;
- (j) audio and audio-visual content via communications networks which is not provided by and under the editorial responsibility of a media service provider;
- (k) the onward supply of the audio and audio-visual output of a media service provider via communications networks by someone other than the media service provider.

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) broadcasting services;
- (c) telephone helpdesk services other than those covered by point (g) of paragraph 1.

Article 6b

1. Radio and television broadcasting services (hereinafter 'broadcasting services') shall include services consisting in audio and audio-visual content such as programmes which are provided via communications networks by and under the editorial responsibility of a media service provider for simultaneous listening or viewing to the general public 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 broadcast live or 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;
- (c) ancillary services such as the provision of information about particular programmes on demand;

- (d) transfer of broadcasting or transmission rights;
 - (e) leasing of technical equipment or facilities for use to provide a broadcast.'
- (2) In Article 7, paragraph 3 is amended as follows:
- (a) the introductory phrase is replaced by the following:
 - 'Paragraph 1 shall not cover the following:'
 - (b) point (a) is replaced by the following:
 - '(a) broadcasting services;'
 - (c) point (n) is replaced by the following:
 - '(n) telephone helpdesk services other than those covered by point (g) of Article 6a(1);'
 - (d) points (q), (r) and (s) are deleted;
 - (e) the following points (t) and (u) are added:
 - '(t) online provision of tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events;
 - (u) online booking of hotel accommodation and the like.'
- (3) In Chapter IV 'Taxable transactions', the following Article 9a is added:

'Article 9a

Where the broadcasting or electronic services of a service provider are supplied through the telecommunications network, an interface or a portal such as a marketplace for applications belonging to an intermediary or a third party intervening in the supply, the intermediary or the third party shall, for the application of Article 28 of Directive 2006/112/EC, be presumed to be acting in their own name but on behalf of the service provider unless, in relation to the final consumer, the service provider is explicitly indicated as the supplier.

- (4) In Section 1 'Concepts' of Chapter V 'Place of taxable transactions', the following Articles 13a and 13b are added:

'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 the place where that non-taxable legal person has established his business as defined in Article 10 or has a fixed establishment as defined in Article 11(1) of this Regulation.

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 making 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.’

(5) In Article 18(2), the following second subparagraph is added:

‘However, irrespective of information to the contrary, the supplier of telecommunications, broadcasting or electronic services may regard a customer established within the Community as a non-taxable person as long as that customer has not communicated his individual VAT identification number to the supplier.’

(6) In Article 24, the following paragraph 3 is added:

‘3. To determine the place which best ensures taxation at the place of actual consumption within the meaning of paragraphs 1 and 2, account shall, in particular, be taken of the following:

- (a) for hiring of a means of transport, other than short-term hiring, the place where the means of transport is put at the disposal of the customer or a third party acting on his behalf unless there is evidence that the means of transport is going to be used elsewhere;
- (b) for services other than the hiring of means of transport, the place of business in the case of a non-taxable legal person or the permanent address in the case of a natural person unless there is evidence that the service is actually used at the place where that person usually resides.’

(7) In Section 4 ‘Place of supply of services’ of Chapter V ‘Place of taxable transactions’, the following Subsections 3a, 3b and 3c are inserted:

‘SUBSECTION 3A

IRREBUTTABLE PRESUMPTIONS FOR CUSTOMER LOCATION

Article 24a

1. Where a supplier of telecommunications, broadcasting or electronic 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 is needed for the service to be rendered to him, the presumption shall be that, for the application of Articles 44, 58 and 59a of Directive 2006/112/EC, the customer is established, has his permanent address or usually resides at the place of that location and the service is effectively used and enjoyed there. This presumption may not be rebutted by any means in fact or law.
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 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

Where pre-paid credits stored on a SIM card are used by a customer for telecommunications, broadcasting or electronic services, the presumption shall be that, for the application of Articles 44, 58 and 59a of Directive 2006/112/EC, the customer is established, has his permanent address or usually resides in the country identified by the mobile country code of that SIM card and the service is effectively used and enjoyed there. This presumption may not be rebutted by any means in fact or law.

SUBSECTION 3B

REBUTTABLE PRESUMPTIONS FOR CUSTOMER LOCATION

Article 24c

For telecommunications, broadcasting or electronic services supplied to a non-taxable person via a residential fixed land line, the presumption shall be that, for the application of Article 58 of Directive 2006/112/EC, the customer is established, has his permanent address or usually resides at the place of installation of the fixed land line. This presumption shall apply unless the supplier has information indicating that the customer is established, has his permanent address or usually resides elsewhere.

Article 24d

For telecommunications, broadcasting or electronic services supplied to a non-taxable person through mobile networks against subsequent collection of payment, the presumption shall be that, for the application of Article 58 of Directive 2006/112/EC, the customer is established, has his permanent address or usually resides in the country identified by the mobile country code of the SIM card used when receiving those services. This presumption shall apply unless the supplier has information indicating that the customer is established, has his permanent address or usually resides elsewhere.

Article 24e

For telecommunications, broadcasting or electronic services, supplied to a non-taxable person, consisting in the transmission of signals for which the use of a device or a viewing card is needed, the presumption shall be that, for the application of Article 58 of Directive 2006/112/EC, the customer is established, has his permanent address or usually resides at the place of installation of the device or if that place is not known the place to which the viewing card is sent with a view to being used there. This presumption shall apply unless the supplier has information indicating that the customer is established, has his permanent address or usually resides elsewhere.

Article 24f

Where services are supplied to a non-taxable person under circumstances other than those referred to in Articles 24a, 24b, 24c, 24d and 24e of this Regulation, the presumption shall be that, for the application of the first subparagraph of Article 56(2) and Article 58 of Directive 2006/112/EC, the customer is established, has his permanent address or usually resides at the place identified as such pursuant to Article 24g of this Regulation.

SUBSECTION 3C

EVIDENCE FOR THE IDENTIFICATION OF CUSTOMER LOCATION

Article 24g

1. For the purposes of applying the rules governing the place of supply laid down in the first subparagraph of Article 56(2) and Article 58 of Directive 2006/112/EC, the following shall, in particular, serve as evidence:

- (a) customer details such as 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 place where the bank account used for payment is and 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 residential fixed land line through which the service is supplied to the customer;
- (f) in relation to a customer who is selling goods via the Internet or similar electronic network, the place where the transport or dispatch of the goods sold by that customer initially begins;
- (g) in relation to a customer who is buying goods via the Internet or similar electronic network, the place where the transport or dispatch of the goods bought by that customer finally ends;
- (h) 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, and other similar information;
- (i) other commercially relevant information obtained by the supplier.

2. In identifying the place where the customer is established, has his permanent address or usually resides, two separate pieces of evidence shall be required provided that the evidence is not contradictory.’

(8) In Section 4 ‘Place of supply of services’ of Chapter V ‘Place of taxable transactions’, the following Subsection 6a is inserted:

‘SUBSECTION 6A

SUPPLY OF SERVICES CONNECTED WITH IMMOVABLE PROPERTY

Article 31a

1. Services connected with immovable property as referred to in Article 47 of Directive 2006/112/EC shall only include 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 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 and transmission 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;
- (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 (h) of paragraph 3, consisting in the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;

- (p) intermediation in the sale or leasing or letting of immovable property and in certain interests in immovable property or rights in rem treated as tangible property, other than intermediation covered by point (d) of paragraph 3;
- (q) legal services relating to the conveyance or the transfer of a title to immovable property and to certain interests in immovable property or rights in rem treated as tangible property, such as notary work, or the drawing up of a contract to sell or acquire such 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) telecommunications, broadcasting and electronic services unless covered by Article 31c;
- (f) 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 design of the stand, transport and storage of the items, provision of machines, cable laying, insurance and advertising;
- (g) 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 immovable property;
- (h) portfolio management of investments in real estate;
- (i) 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. This presumption may be rebutted by any means in fact or law in order to establish who is assuming responsibility for the execution of the work.

Article 31c

The supply of telecommunications, broadcasting or electronic 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, shall be regarded either as being part of a single transaction consisting in the provision of accommodation, or as ancillary to the provision of accommodation, depending on whether it is charged together with the accommodation or separately.'

(9) In Subsection 7 'Supply of cultural, artistic, sporting, scientific, educational, entertainment, and similar services' of Section 4 'Place of supply of services (Articles 43 to 59 of Directive 2006/112/EC)' of Chapter 5 'Place of taxable transactions', the following Article 33a is added:

'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.'

(10) In point (4) 'Point (4) of Annex II to Directive 2006/112/EC:' of Annex I, the following points (f) and (g) 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 via the Internet or similar electronic network (IP streaming) unless the programmes are broadcast simultaneously over traditional radio and television networks.'

Article 2

For telecommunications, radio and television broadcasting or electronic 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) if the services are supplied or the supply of services is completed, prior to 1 January 2015, the place of supply shall be the place where the supplier is established as provided for in Article 45 of Directive 2006/112/EC regardless of when the VAT becomes chargeable;
- (b) if the services are supplied or the supply of services is completed on 1 January 2015 or later, the place of supply shall be governed by the place where the customer is established, has his permanent address or usually resides, even if the VAT became chargeable prior to that date.

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.

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

Done at Brussels,

For the Council
The President