



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 1 October 2012
(OR. en)**

12596/12

**Interinstitutional File:
2012/0001 (NLE)**

**FISC 109
OC 422**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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
COMMON GUIDELINES
Consultation deadline for Croatia: 5.10.2012

COUNCIL REGULATION (EU) No .../2012

of

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 tax¹, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p. 1.

Whereas:

- (1) Directive 2006/112/EC 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 the "Member State of consumption") regardless of where the taxable person supplying those 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 the "Union scheme"). The other special scheme, for taxable persons not established within the Community (hereinafter the "non-Union scheme") currently in place, has been extended to cover all of those services. This will 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 VAT declarations.
- (3) A taxable person with establishments in more than one Member State should, under the Union scheme, be able to designate any of the Member States concerned as the Member State of identification, unless he has his place of business within the Community. In that case the Member State of identification is where the taxable person has his place of business.

- (4) In order to avoid disproportionate burdens for taxable persons using the Union scheme, it should be clarified how a change of the Member State of identification can be effected where the taxable person changes his fixed establishment or business establishment in such a way that a change in the Member State of identification is necessary in order for him to continue using the scheme.
- (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 either 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 is able to decide at any time to cease using them. It is necessary to clarify when such decisions take effect.
- (7) However, to avoid unnecessary burdens for tax authorities, a taxable person who decides to cease using one of the special schemes should, for a certain period, be refused re-entry into that scheme.

- (8) To keep the registration details in its database 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 using the special schemes should communicate any relevant information on ceasing or changing activities and on changes to any relevant information already supplied.
- (9) A VAT identification number needs to be allocated to a non-established taxable person who wants to make use of a special scheme. To prevent unintended 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 doubt as to which Member State has jurisdiction, the Member State which may exclude a taxable person from using a special scheme should be specified. The circumstances in which that Member State is to take its decision on exclusion should also be specified, as should the time from which that decision takes effect.
- (11) The concept of a non-established taxable person's cessation of activities eligible for one of the special schemes should be clarified, as should the concept of persistent failure on the part of a non-established taxable person.
- (12) To promote compliance and avoid unnecessary burdens 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 the special schemes.

- (13) It should be made clear that where a taxable person ceases to use one of the special schemes, is excluded from one of the special schemes, or changes the Member State of identification, all tax obligations regarding return periods prior to that cessation, exclusion or change are to be discharged with the Member State which was the Member State of identification prior to the cessation, exclusion or change.
- (14) Each return period should be treated separately so as to facilitate control by the Member States of consumption and amendments should be made only to the VAT return concerned.
- (15) It is appropriate, for reasons of control, to require non-established taxable persons to submit VAT returns to Member States of identification, even where no services have been supplied during the return period. It should also be clarified that the exact amount of VAT must be stated without any rounding up or down.
- (16) It is necessary, in respect of amendments to VAT returns, to establish a time limit within which returns can be submitted electronically to the Member State of identification. 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 according to their national rules.

- (17) Where the Member State of identification does not have the euro as its currency, non-established taxable persons 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) Without affecting the national rules of Member States of consumption on offsetting excess payments and for the sole purpose of ensuring efficient administration of the special schemes by the Member State of identification and avoiding an excessive administrative burden on both that Member State and the Member States of consumption, it should be ensured that taxable persons cannot allocate amounts of VAT paid to more than one return, whether from the outset or by subsequent adjustment.
- (19) In the case of non-payment, underpayment or payment in excess made by non-established taxable persons and with regard to interest, penalties and other incidental charges, it is important to specify the respective obligations of the Member State of identification and the Member States of consumption so as to facilitate the collection of VAT and to ensure that the right amount is paid in respect of the services supplied under the special schemes.

- (20) The records kept by non-established taxable persons need to be sufficiently detailed to enable the tax authorities of Member States of consumption to verify that the VAT return is correct. What information is, as a minimum, required to be kept in such records should therefore be specified.
- (21) To facilitate the implementation of the special schemes and with a view to enabling 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 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 established in the Member State of consumption provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (3) "special scheme" means the "non-Union scheme" and/or the "Union scheme" as the context requires;
- (4) "taxable person" means a taxable person not established within the Community as defined in point (1) of Article 358a of Directive 2006/112/EC, or a taxable person not established in the Member State of consumption, as defined in point (1) of the first paragraph of Article 369a of that Directive.

SUBSECTION 2

APPLICATION OF THE UNION SCHEME

Article 57b

Where a taxable person using the Union scheme has established his business within the Community, the Member State in which his place of business is established shall be the Member State of identification.

Where a taxable person using the Union scheme has established his business outside the Community, but has more than one fixed establishment in the Community, he may choose any Member State in which he has a fixed establishment as the Member State of identification, in accordance with the second paragraph of Article 369a of Directive 2006/112/EC.

SUBSECTION 3
SCOPE OF THE UNION SCHEME

Article 57c

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. The supplies of those services shall 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.

SUBSECTION 4
IDENTIFICATION

Article 57d

When a taxable person informs the Member State of identification that he intends to make use of one of the special schemes, that special scheme shall apply as from the first day of the following calendar quarter.

However, where the first supply of services to be covered by that special scheme takes place before the date referred to in the first paragraph, the special scheme shall apply as from the date of that first supply, provided the taxable person informs the Member State of identification of the commencement of his activities to be covered by the scheme no later than the tenth day of the month following that first supply.

Article 57e

The Member State of identification shall identify the taxable person using the Union scheme by means of his VAT identification number as referred to in Articles 214 and 215 of Directive 2006/112/EC.

Article 57f

1. Where a taxable person using the Union scheme ceases to meet the conditions of the definition laid down in point (2) of the first paragraph of Article 369a of Directive 2006/112/EC, the Member State in which he has been identified shall cease to be the Member State of identification. Where that taxable person still fulfils the conditions for using that special scheme, he shall, to continue using that scheme, indicate as the new Member State of identification the Member State in which he has established his business or, if he has not established his business in the Community, a Member State where he has a fixed establishment.
2. Where the Member State of identification changes in accordance with paragraph 1, that change shall apply as from the date on which the taxable person ceases to have a business establishment or a fixed establishment in the Member State previously indicated as the Member State of identification.

Article 57g

A taxable person using a special scheme may cease using that special scheme regardless of whether he continues to supply services which can be eligible for that special scheme. The taxable person shall inform the Member State of identification at least 15 days before the end of the calendar quarter prior to that in which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next calendar quarter.

VAT obligations relating to supplies of telecommunications, broadcasting or electronic services arising after the date on which the cessation became effective shall be discharged directly with the tax authorities of the Member State of consumption concerned.

Where a taxable person ceases using a special scheme in accordance with the first paragraph, he shall be excluded from using that scheme in any Member State for two calendar quarters from the date of cessation.

SUBSECTION 5
REPORTING OBLIGATIONS

Article 57h

1. A taxable person shall, no later than the tenth day of the next month, inform the Member State of identification by electronic means of:
 - the cessation of his activities covered by a special scheme;
 - any changes to his activities covered by a special scheme whereby he no longer meets the conditions necessary for using that special scheme; and
 - any changes to the information previously provided to the Member State of identification.

2. Where the Member State of identification changes in accordance with Article 57f, the taxable person shall inform both relevant Member States of the change no later than the tenth day of the month following the change of establishment. He shall communicate to the new Member State of identification the registration details required when a taxable person makes use of a special scheme for the first time.

SUBSECTION 6

EXCLUSION

Article 58

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

Only the Member State of identification can exclude a taxable person from using one of the special schemes.

The Member State of identification shall 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 calendar quarter following the day on which the decision on exclusion is sent by electronic means to the taxable person.

However where the exclusion is due to a change of place of business or fixed establishment, the exclusion shall be effective as from the date of that change.

Article 58a

A taxable person using a special scheme who has, for a period of eight consecutive calendar quarters, made no supplies of services covered by that scheme in any Member State of consumption, 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 respectively. This cessation shall not preclude him from using a special scheme if he recommences his activities covered by either scheme.

Article 58b

1. 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 for eight calendar quarters following the calendar quarter during which the taxable person was excluded.
2. 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 reminders pursuant to Article 60a have been issued to him by the Member State of identification, for three immediately preceding calendar quarters and the VAT return has not been submitted for each and every one of these calendar quarters within ten days after the reminder has been sent;

- (b) where reminders pursuant to Article 63a have been issued to him by the Member State of identification, for three immediately preceding calendar quarters and the full amount of VAT declared has not been paid by him for each and every one of these calendar quarters within ten days after the reminder has been sent, except where the remaining unpaid amount is less than EUR 100 for each calendar quarter;
- (c) where following a request from the Member State of identification or the Member State of consumption and one month after a subsequent reminder by the Member State of identification, he has failed to make electronically available the records referred to in Articles 369 and 369k of Directive 2006/112/EC.

Article 58c

A taxable person who has been excluded from one of the special schemes shall discharge all VAT obligations relating to supplies of telecommunications, broadcasting or electronic services arising after the date on which the exclusion became effective directly with the tax authorities of the Member State of consumption concerned.

SUBSECTION 7

VAT RETURN

Article 59

1. Any return period within the meaning of Article 364 or Article 369f of Directive 2006/112/EC shall be a separate return period.
2. Where, in accordance with the second paragraph of Article 57d, a special scheme applies from the date of the first supply, the taxable person shall submit a separate VAT return for the calendar quarter during which the first supply took place.
3. Where a taxable person has been registered under each of the special schemes during a return period, he shall submit VAT returns and make the corresponding payments to the Member State of identification for each scheme in respect of the supplies made and the periods covered by that scheme.

4. Where the Member State of identification changes in accordance with Article 57f after the first day of the calendar quarter in question, the taxable person shall submit VAT returns and make corresponding payments to both the former and the new Member State of identification covering the supplies made during the respective periods in which the Member States have been Member State of identification.

Article 59a

Where a taxable person using a special scheme has supplied no services in any Member State of consumption under that special scheme during a return period, he 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 60a

The Member State of identification shall remind, by electronic means, taxable persons who have failed to submit a VAT return under Article 364 or Article 369f of Directive 2006/112/EC, of their obligation to submit such a return. The Member State of identification shall issue the reminder on the tenth day following that on which the return should have been submitted, and shall inform the other Member States by electronic means that a reminder has been issued.

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

Notwithstanding any reminders issued, and any steps taken, by a Member State of consumption, the taxable person shall submit the VAT return to the Member State of identification.

Article 61

1. Changes to the figures contained in a VAT return shall, after its submission, be made only by means of amendments to that return and not by adjustments to a subsequent return.
2. The amendments referred to in paragraph 1 shall be submitted electronically to the Member State of identification within three years of the date on which the initial return was required to be submitted.

However, the rules of the Member State of consumption on assessments and amendments shall remain unaffected.

Article 61a

If a taxable person:

- (a) ceases to use one of the special schemes;
- (b) is excluded from one of the special schemes; or
- (c) changes the Member State of identification in accordance with Article 57f,

he shall submit his final VAT return and the corresponding payment, and any corrections to or late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of the cessation, exclusion or change.

SUBSECTION 8 CURRENCY

Article 61b

Where a Member State of identification whose currency is not the euro determines that VAT returns are to be made out in its national currency, that determination shall apply to the VAT returns of all taxable persons using the special schemes.

SUBSECTION 9

PAYMENTS

Article 62

Without prejudice to the third paragraph of Article 63a, and to Article 63b, a taxable person shall make any payment to the Member State of identification.

Payments of VAT made by the taxable person 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 shall be effected by the taxable person only by reference to that return and may neither be allocated to another return, nor 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 in respect of 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 of consumption shall each reimburse their respective part of any overpaid amount directly to the taxable person.

However, where overpayments relate to periods up to and including the last return period in 2018, the Member State of identification shall reimburse the relevant portion of the corresponding part of the amount retained in accordance with Article 46 (3) of Regulation (EU) No 904/2010 and the Member State of consumption shall reimburse the overpayment less the amount that shall be reimbursed by the Member State of identification.

The Member States of consumption shall, by electronic means, inform the Member State of identification of the amount of those reimbursements.

Article 63a

Where a taxable person has submitted a VAT return under Article 364 or Article 369f of Directive 2006/112/EC, but no payment has been made or the payment is less than that resulting from the return, the Member State of identification shall, by electronic means on the tenth day following the latest day on which the payment should have been made in accordance with Article 367 or Article 369i of Directive 2006/112/EC, remind the taxable person of any VAT payment outstanding.

The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent.

Any subsequent reminders and steps taken to collect the VAT shall be the responsibility of the Member State of consumption concerned. When such subsequent reminders have been issued by a Member State of consumption, the corresponding VAT shall be paid to that Member State.

The Member State of consumption shall, by electronic means, inform the Member State of identification that a reminder has been issued.

Article 63b

Where no VAT return has been submitted, or where the VAT return has been submitted late or is incomplete or incorrect, or where the payment of VAT is late, any interest, penalties or any other charges shall be calculated and assessed by the Member State of consumption. The taxable person shall pay such interests, penalties or any other charges directly to the Member State of consumption.

SUBSECTION 10

RECORDS

Article 63c

1. In order to be regarded as sufficiently detailed within the meaning of Articles 369 and 369k of Directive 2006/112/EC, the records kept by the taxable person shall contain the following information:
 - (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 indicating the currency used;

- (e) any subsequent increase or reduction of the taxable amount;
- (f) the VAT rate applied;
- (g) the amount of VAT payable indicating the currency used;
- (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 information used to determine the place where the customer is established or has his permanent address or usually resides.

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 by electronic means 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 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 ...,

For the Council

The President
