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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 792/2002

of 7 May 2002

amending temporarily Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services ⁽⁴⁾ provides for the framework for taxing electronic supplies in the Community by taxable persons who are neither established nor required to be identified for tax purposes within the Community.
- (2) The Member State of consumption has primary responsibility for assuring the compliance with their obligations by non-established suppliers. To this end, the information necessary to operate the special scheme for electronically supplied services that is provided for in Article 26c of sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽⁵⁾ must be transmitted to those Member States.
- (3) It is necessary to provide that the value added tax due in respect of such supplies transferred to accounts designated by the Member States of consumption.
- (4) The rules laid down in Directive 77/388/EEC require the non-established taxable person supplying services referred to in the last indent of Article 9(2)e of the Directive to charge VAT to his customer, established or

resident in the Community, unless he is satisfied that his customer is a taxable person. The special scheme provided for in Article 26c of the Directive applies only for services provided to non-taxable persons established or resident in the Community. It is thus clear that the non-established taxable person needs certain information about his customer.

- (5) To this end, use could in most cases be made of the facility that is available in Member States in the form of electronic databases which contain a register of persons to whom value added tax identification numbers have been issued in that Member State.
- (6) It is accordingly necessary to extend the common system for the exchange of certain information on intra-Community transaction provided for in Article 6 of Regulation (EEC) No 218/92 ⁽⁶⁾.
- (7) The provisions of the Regulation should operate for a temporary period of three years which may be extended for practical reasons and Regulation (EEC) No 218/92 should therefore be temporarily amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 218/92 is hereby temporarily amended:

1. the second paragraph of Article 1 shall be replaced by the following:

To that end it lays down procedures for the exchange by electronic means of value added tax information on intra-Community transactions as well as on services supplied electronically in accordance with the special scheme provided for by Article 26c of Directive 77/388/EEC, and also for any subsequent exchange of information and, as far as services covered by that special scheme are concerned, for the transfer of money between Member States' competent authorities.;

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 63.

⁽²⁾ OJ C 232, 17.8.2001, p. 202, and the Opinion of 25 April 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 116, 20.4.2001, p. 59.

⁽⁴⁾ See page 41 of this Official Journal.

⁽⁵⁾ OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2002/38/EC.

⁽⁶⁾ OJ L 24, 1.2.1992, p. 1.

2. in Article 2(1), the ninth indent shall be replaced by the following:

‘— “intra-Community supply of services” shall mean any supply of services covered by Article 28b (C), (D), (E) or (F) of Directive 77/388/EEC;’

3. in Article 6, paragraph 4 shall be replaced by the following:

‘4. The competent authority of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and persons supplying services referred to in the last indent of Article 9(2)e of Directive 77/388/EEC are allowed to obtain confirmation of the validity of the value added tax identification number of any specified person. In accordance with the procedure referred to in Article 10, Member States shall, in particular, provide such confirmation by electronic means.’;

4. the following Title shall be added:

TITLE III A

Provisions concerning the special scheme in Article 26c of Directive 77/388/EEC

Article 9a

The following provisions shall apply concerning the special scheme provided for in Article 26c in Directive 77/388/EEC. The definitions contained in point A of that Article shall also apply for the purpose of this Title.

Article 9b

1. The information from the non-established taxable person to the Member State of identification when his activities commences set out in the second subparagraph of Article 26c(B)(2) of Directive 77/388/EEC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 10.

2. The Member State of identification shall transmit this information by electronic means to the competent authorities of the other Member States within 10 days from the end of the month during which the information was received from the non-established taxable person. In the same manner, the competent authorities of the other Member States shall be informed of the allocated identification number. The technical details, including a common electronic message, by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 10.

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a non-established taxable person is excluded from the identification register.

Article 9c

1. The return with the details set out in the second subparagraph of Article 26c(B)(5) of Directive 77/388/EEC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be

determined in accordance with the procedure provided for in Article 10.

2. The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State concerned at the latest 10 days after the end of the month that the return was received. Member States which have required the tax return to be made in a national currency other than euro shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The technical details by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 10.

3. The Member State of identification shall transmit by electronic means to the Member State of consumption the information needed to link each payment with a relevant quarterly tax return.

Article 9d

The provisions in Article 4(1) shall apply also to information collected by the Member State of identification in accordance with Article 26c(B)(2) and (5) of Directive 77/388/EEC.

Article 9e

The Member State of identification shall ensure that the amount the non-established taxable person has paid is transferred to the bank account denominated in euro, which has been designated by the Member State of consumption to which the payment is due. Member States which required the payments in a national currency other than euro shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The transfer shall take place at the latest 10 days after the end of the month that the payment was received.

If the non-established taxable person does not pay the total tax due, the Member State of identification shall ensure that the payment is transferred to the Member States of consumption in proportion to the tax due in each Member State. The Member State of identification shall inform by electronic means the competent authorities of the Member States of consumption thereof.

Article 9f

1. Member States shall notify by electronic means the competent authorities of the other Member States of the relevant bank account numbers for receiving payments according to Article 9e.

2. Member States shall without delay notify by electronic means the competent authorities of the other Member States and the Commission of changes in the standard tax rate.’;

5. in Article 13 the present text shall be renumbered as paragraph 2 and a new paragraph 1 shall be inserted as follows:

'1. The Commission and the Member States shall ensure that such existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in Articles 9b and 9c are operational by the date specified in Article 3(1) of Directive 2002/38/EC. The Commission will be responsible for whatever development of the common communication network/common system interface (CCN/CSI) is necessary to permit the exchange of this information between Member States. Member States will be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI.'

Article 2

Article 1 shall apply for a period provided for in Article 4 of Directive 2002/38/EC.

No exchange of information under this Regulation shall take place before 1 July 2003.

Article 3

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 7 May 2002.

For the Council

The President

R. DE RATO Y FIGAREDO
