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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1777/2005**of 17 October 2005****laying down implementing measures for Directive 77/388/EEC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the 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 ⁽¹⁾, hereinafter referred to as 'Directive 77/388/EEC', and in particular Article 29a thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Directive 77/388/EEC contains rules on value added tax which, in some cases, are subject to interpretation by the Member States. The adoption of common provisions implementing Directive 77/388/EEC should ensure that application of the value added tax system complies more fully with the objective of the internal market, in cases where divergences in application have arisen or may arise which are incompatible with the proper functioning of the said market. These implementing measures are legally binding only from the date of the entry into force of this Regulation and are without prejudice to the validity of the legislation and interpretation previously adopted by the Member States.

(2) It is necessary for the achievement of the basic objective of ensuring a more uniform application of the current value added tax system to lay down rules implementing Directive 77/388/EEC, in particular in respect of taxable persons, the supply of goods and services, and the place of their supply. In accordance with the principle of proportionality as set out in the third subparagraph of Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve the objective pursued. Since it is binding and directly applicable in all Member States, uniformity of application will be best ensured by a Regulation.

(3) These implementing provisions contain specific rules in response to selective questions of application and are designed to bring uniform treatment throughout the Community to those specific circumstances only. They are therefore not conclusive for other cases and, in view of their formulation, are to be applied restrictively.

(4) The further integration of the internal market has led to an increased need for cooperation by economic operators established in different Member States across internal borders and the development of European economic interest groupings (EEIGs), constituted in accordance with Regulation (EEC) No 2137/85 ⁽²⁾, it should therefore be provided that such EEIGs are also taxable persons where they supply goods or services for consideration.

(5) The sale of an option as a financial instrument should be treated as a supply of services separate from the underlying transactions to which the option relates.

(6) It is necessary, on the one hand, to establish that a transaction which consists solely of assembling the various parts of a machine provided by a customer must be considered as a supply of services, and, on the other hand, to establish the place of such supply.

(7) Where various services supplied in the framework of organising a funeral form a part of a single service, the rule on the place of supply should also be determined.

(8) Certain specific services such as the assignment of television broadcasting rights in respect of football matches, the translation of texts, services for claiming value added tax refunds, certain services as an agent, the hiring of means of transport and certain electronic services involve cross-border scenarios or even the participation of economic operators established in third countries. The place of supply of these services needs to be clearly determined in order to create greater legal certainty. It should be noted that the services identified as electronic services or otherwise do not constitute a definitive, exhaustive list.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

⁽²⁾ OJ L 199, 31.7.1985, p. 1.

- (9) In certain specific circumstances a credit or debit card handling fee which is paid in connection with a transaction should not reduce the taxable amount for the latter.
- (10) Vocational training or retraining should include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes, regardless of the duration of a course.
- (11) 'Platinum nobles' should be treated as being excluded from the exemptions for currency, bank notes and coins.
- (12) Goods transported outside the Community by the purchaser thereof and used for the equipping, fuelling or provisioning of means of transport used for non-business purposes by persons other than natural persons, such as bodies governed by public law and associations, should be excluded from the exemption for export transactions.
- (13) To guarantee uniform administrative practices for the calculation of the minimum value for exemption on exportation of goods carried in the personal luggage of travellers, the provisions on such calculations should be harmonised.
- (14) Electronic import documents should also be admitted to exercise the right to deduct, where they fulfil the same requirements as paper-based documents.
- (15) Weights for investment gold which are definitely accepted by the bullion market should be named and a common date for establishing the value of gold coins be determined to ensure equal treatment of economic operators.
- (16) The special scheme for taxable persons not established in the Community, supplying electronic services to non-taxable persons established or resident within the Community is subject to certain conditions. Where those conditions are no longer fulfilled, the consequences thereof should, in particular, be made clear.
- (17) In the case of intra-Community acquisition of goods, the right of the Member State of acquisition to tax the acquisition should remain unaffected by the value added tax treatment of the transaction in other Member States.
- (18) Rules should be established to ensure the uniform treatment of supplies of goods once a supplier has exceeded the distance selling threshold for supplies to another Member State,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER

Article 1

This Regulation lays down measures for the implementation of Articles 4, 6, 9, 11, 13, 15, 18, 26b, 26c, 28a and 28b of Directive 77/388/EEC, and of Annex L thereto.

CHAPTER II

TAXABLE PERSONS AND TAXABLE TRANSACTIONS

SECTION 1

(Article 4 of Directive 77/388/EEC)

Article 2

A European Economic Interest Grouping (EEIG) constituted in accordance with Regulation (EEC) No 2137/85 which supplies goods or services for consideration to its members or to third parties shall be a taxable person within the meaning of Article 4(1) of Directive 77/388/EEC.

SECTION 2

(Article 6 of Directive 77/388/EEC)

Article 3

1. The sale of an option, where such a sale is a transaction within the scope of point (5) of Article 13(B)(d) of Directive 77/388/EEC, shall be a supply of services within the meaning of Article 6(1) of that Directive. That supply of services shall be distinct from the underlying operations to which the services relate.

2. Where a taxable person only assembles the different parts of a machine all of which were provided to him by his customer, that transaction shall be a supply of services within the meaning of Article 6(1) of Directive 77/388/EEC.

CHAPTER III

PLACE OF TAXABLE TRANSACTIONS

SECTION 1

(Article 9(1) of Directive 77/388/EEC)

Article 4

Insofar as they constitute a single service, services supplied in the framework of organising a funeral shall fall within the scope of Article 9(1) of Directive 77/388/EEC.

SECTION 2

(Article 9(2) of Directive 77/388/EEC)

Article 5

Except where the goods being assembled become part of immovable property, the place of the supply of services specified in Article 3(2) of this Regulation shall be established in accordance with Article 9(2)(c) or Article 28b(F) of Directive 77/388/EEC.

Article 6

The service of translation of texts shall be covered by Article 9(2)(e) of Directive 77/388/EEC.

Article 7

Where a body established in a third country assigns television broadcasting rights in respect of football matches to taxable persons established in the Community, that transaction shall be covered by the first indent of Article 9(2)(e) of Directive 77/388/EEC.

Article 8

The supply of services which consist in applying for or receiving refunds under Directive 79/1072/EEC ⁽¹⁾ shall be covered by the third indent of Article 9(2)(e) of Directive 77/388/EEC.

Article 9

The supply of services of agents as referred to in the seventh indent of Article 9(2)(e) of Directive 77/388/EEC shall cover the services of agents acting in the name and for the account of the recipient of the service procured and services performed by the

⁽¹⁾ Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ L 331, 27.12.1979, p. 11). Directive as last amended by the 2003 Act of Accession.

agents acting in the name and for the account of the provider of the service procured.

Article 10

Trailers and semi-trailers, as well as railway wagons, shall be forms of transport for the purposes of the eighth indent of Article 9(2)(e) of Directive 77/388/EEC.

Article 11

1. 'Electronically supplied services' as referred to in the 12th indent of Article 9(2)(e) of Directive 77/388/EEC and in Annex L to Directive 77/388/EEC shall include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and in the absence of information technology is impossible to ensure.

2. The following services, in particular, shall, where delivered over the Internet or an electronic network, be covered by paragraph 1:

- (a) the supply of digitised products generally, including software and changes to or upgrades of software;
- (b) services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;
- (c) services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient;
- (d) the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer;
- (e) Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e. packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports; playgrounds; website hosting; access to online debates etc.);
- (f) the services listed in Annex I.

Article 12

The following, in particular, shall not be covered by the 12th indent of Article 9(2)(e) of Directive 77/388/EEC:

1. radio and television broadcasting services as referred to in the 11th indent of Article 9(2)(e) of Directive 77/388/EEC;
2. telecommunications services, within the meaning of the 10th indent of Article 9(2)(e) of Directive 77/388/EEC;
3. supplies of the following goods and services:
 - (a) goods, where the order and processing is done electronically;
 - (b) CD-ROMs, floppy disks and similar tangible media;
 - (c) printed matter, such as books, newsletters, newspapers or journals;
 - (d) CDs, audio cassettes;
 - (e) video cassettes, DVDs;
 - (f) games on a CD-ROM;
 - (g) services of professionals such as lawyers and financial consultants, who advise clients by e-mail;
 - (h) teaching services, where the course content is delivered by a teacher over the Internet or an electronic network, (namely via a remote link);
 - (i) offline physical repair services of computer equipment;
 - (j) offline data warehousing services;
 - (k) advertising services, in particular as in newspapers, on posters and on television;
 - (l) telephone helpdesk services;
 - (m) teaching services purely involving correspondence courses, such as postal courses;
 - (n) conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made;

- (o) telephone services with a video component, otherwise known as videophone services;
- (p) access to the Internet and World Wide Web;
- (q) telephone services provided through the Internet.

CHAPTER IV

TAXABLE AMOUNT

(Article 11 of Directive 77/388/EEC)

Article 13

Where a supplier of goods or services, as a condition of accepting payment by credit or debit card, requires the customer to pay an amount to himself or another undertaking, and where the total price payable by that customer is unaffected irrespective of how payment is accepted, that amount shall constitute an integral part of the taxable amount for the supply of the goods or services, under Article 11 of Directive 77/388/EEC.

CHAPTER V

EXEMPTIONS

SECTION 1

(Article 13 of Directive 77/388/EEC)

Article 14

Vocational training or retraining services provided under the conditions set out in Article 13(A)(1)(i) of Directive 77/388/EEC shall include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes. The duration of a vocational training or retraining course shall be irrelevant for this purpose.

Article 15

The exemption referred to in Article 13(B)(d)(4) of Directive 77/388/EEC shall not apply to platinum nobles.

SECTION 2

(Article 15 of directive 77/388/EEC)

Article 16

'Means of transport for private use' as referred to in the first subparagraph of Article 15(2) of Directive 77/388/EEC shall include means of transport used for non-business purposes by persons other than natural persons, such as bodies governed by public law within the meaning of Article 4(5) of that Directive and associations.

Article 17

In order to determine whether the threshold set by a Member State in accordance with the third indent of the second subparagraph of Article 15(2) of Directive 77/388/EEC has been exceeded, the calculation shall be based on the invoice value. The aggregate value of several goods may be used only if all those goods are included on the same invoice issued by the same taxable person supplying goods to the same customer.

CHAPTER VI

DEDUCTIONS

(Article 18 of Directive 77/388/EEC)

Article 18

Where the importing Member State has introduced an electronic system for completing customs formalities, the expression 'import document' as referred to in Article 18(1)(b) of Directive 77/388/EEC shall cover electronic versions of such documents, provided that they allow for the exercise of the right of deduction to be checked.

CHAPTER VII

SPECIAL SCHEMES

(Articles 26b and 26c of Directive 77/388/EEC)

Article 19

1. 'Weights accepted by the bullion markets' as referred to in Article 26b(A)(i), first paragraph, of Directive 77/388/EEC shall at least cover the units and the weights traded as set out in Annex II to this Regulation.

2. For the purposes of establishing the list referred to in the third subparagraph of Article 26b(A) of Directive 77/388/EEC, 'price' and 'open market value' as referred to in the fourth indent of point (ii) of the first subparagraph shall be the price and open market value on 1 April of each year. If 1 April does not fall on a day on which those values are fixed, the values of the next day on which they are fixed shall be used.

Article 20

1. Where, in the course of a calendar quarter, a non-established taxable person using the special scheme provided for in Article 26c(B) of Directive 77/388/EEC meets at least one of the criteria for exclusion laid down in Article 26c(B)(4), the Member State of identification shall exclude that non-established taxable person from the special scheme. In such cases the non-established taxable person may subsequently be excluded from the special scheme at any time during that quarter.

In respect of electronic services supplied prior to exclusion but during the calendar quarter in which exclusion occurs, the non-

established taxable person shall submit a return for the entire quarter in accordance with Article 26c(B)(5) of Directive 77/388/EEC. The requirement to submit this return shall have no effect on the requirement, if any, to register under the normal rules in a Member State.

2. A Member State of identification which receives a payment in excess of that resulting from the return submitted under Article 26c(B)(5) of Directive 77/388/EEC shall reimburse the overpaid amount directly to the taxable person concerned.

Where the Member State of identification has received an amount pursuant to a return subsequently found to be incorrect, and that Member State has already distributed that amount among the Member States of consumption, those Member States shall directly reimburse the overpayment to the non-established taxable person and inform the Member State of identification of the adjustment to be made.

3. Any return period (quarter) within the meaning of Article 26c(B)(5) of Directive 77/388/EEC shall be a separate return period.

Once a return under Article 26c(B)(5) of Directive 77/388/EEC has been rendered, any subsequent changes to the figures contained therein may be made only by means of an amendment to that return and not by an adjustment to a subsequent return.

Amounts of value added tax paid under Article 26c(B)(7) of Directive 77/388/EEC shall be specific to that return. Any subsequent amendments to the amounts paid may be effected only by reference to that return and may not be allocated to another return, or adjusted on a subsequent return.

4. Amounts on value added tax returns made under the special scheme provided for in Article 26c(B) of Directive 77/388/EEC shall not be rounded up or down to the nearest whole monetary unit. The exact amount of value added tax shall be reported and remitted.

CHAPTER VIII

TRANSITIONAL MEASURES

(Articles 28a and 28b of Directive 77/388/EEC)

Article 21

Where an intra-Community acquisition of goods within the meaning of Article 28a of Directive 77/388/EEC has taken place, the Member State in which the dispatch or transport ends shall exercise its power of taxation irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began.

Any request by a supplier of goods for a correction in the tax invoiced by him and reported by him to the Member State where the dispatch or transport of the goods began shall be treated by that State in accordance with its own domestic rules.

Article 22

Where in the course of a calendar year the threshold applied by a Member State in accordance with Article 28b(B)(2) of Directive 77/388/EEC is exceeded, Article 28b(B) of that Directive shall not modify the place of supplies of goods other than products subject to excise duty carried out in the course of the same calendar year which are made before the threshold applied by the Member State for the calendar year then current is exceeded provided that the supplier:

- (a) has not exercised the option under Article 28b(B)(3) of that Directive and
- (b) did not exceed the threshold in the course of the preceding calendar year.

However, Article 28b(B) of Directive 77/388/EEC shall modify the place of the following supplies to the Member State in which the dispatch or transport ends:

- (a) the supply by which the threshold applied by the Member State for the calendar year then current was exceeded in the course of the same calendar year;
- (b) any subsequent supplies within that Member State in that calendar year;
- (c) supplies within that Member State in the calendar year following the calendar year in which the event referred to in point (a) occurred.

CHAPTER IX

FINAL PROVISIONS

Article 23

This Regulation shall enter into force on 1 July 2006.

Article 13 shall be applicable from 1 January 2006.

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

Done at Luxembourg, 17 October 2005.

For the Council
The President
M. BECKETT

ANNEX I

Article 11 of this Regulation

1. Item 1 of Annex L to Directive 77/388/EEC
 - (a) Website hosting and webpage hosting
 - (b) Automated, online and distance maintenance of programmes
 - (c) Remote systems administration
 - (d) Online data warehousing where specific data is stored and retrieved electronically
 - (e) Online supply of on-demand disc space.
2. Item 2 of Annex L to Directive 77/388/EEC
 - (a) Accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates
 - (b) Software to block banner adverts showing, otherwise known as Bannerblockers
 - (c) Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
 - (d) Online automated installation of filters on websites
 - (e) Online automated installation of firewalls.
3. Item 3 of Annex L to Directive 77/388/EEC
 - (a) Accessing or downloading desktop themes
 - (b) Accessing or downloading photographic or pictorial images or screensavers
 - (c) The digitised content of books and other electronic publications
 - (d) Subscription to online newspapers and journals
 - (e) Weblogs and website statistics
 - (f) Online news, traffic information and weather reports
 - (g) Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time)
 - (h) The provision of advertising space including banner ads on a website/web page
 - (i) Use of search engines and Internet directories.
4. Item 4 of Annex L to Directive 77/388/EEC
 - (a) Accessing or downloading of music on to computers and mobile phones
 - (b) Accessing or downloading of jingles, excerpts, ringtones, or other sounds
 - (c) Accessing or downloading of films

- (d) Downloading of music on to computers and mobile phones
 - (e) Accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another.
5. Item 5 of Annex L to Directive 77/388/EEC
- (a) Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student
 - (b) Workbooks completed by pupils online and marked automatically, without human intervention.
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ANNEX II

Article 19 of this Regulation

Unit	Weights traded
Kg	12,5/1
Gram	500/250/100/50/20/10/5/2,5/2
Ounce (1 oz = 31,1035 g)	100/10/5/1 ¹ / ₂ / ¹ / ₄
Tael (1 tael = 1,193 oz.) ⁽¹⁾	10/5/1
Tola (10 tolas = 3,75 oz.) ⁽²⁾	10

⁽¹⁾ Tael = a traditional Chinese unit of weight. The nominal fineness of a Hong Kong tael bar is 990 but in Taiwan 5 and 10 tael bars can be 999,9 fineness.

⁽²⁾ Tola = a traditional Indian unit of weight for gold. The most popular sized bar is 10 tola, 999 fineness.