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December 2009

VAT: New Rules

Introduction

The European Union Directive 2008/8/EC (the “Directive”) applicable as from 1 January 2010 has brought about various amendments to Directive 2006/112/EC (the “Sixth Directive”). The Directive has not yet been transposed into its domestic VAT legislation.

These amendments basically shift the collection of VAT to the Member States where the recipient of the goods or services is resident by the use of the reverse charge method by the recipient. Furthermore, the suppliers of goods and or services are obliged to submit monthly and electronically a statement (VIES) of such supplies to the local VAT Authorities for submission to the EU who in turn will pass on the member states where the recipients are resident.

In consequence, the supplier must charge VAT unless the recipient provides a VAT registration number.

It is important to note that services listed in 9 below, when received from non-EU residents must be accounted for VAT by the reverse charge method if the value exceeds the national thresholds (for Cyprus €15.600,00) i.e. the recipient will be obliged to register for and pay VAT in his own country.

We set out below EXTRACTS of the major provisions of the Directive:

- (1) For supplies of services to taxable persons, i.e. persons that have a VAT number in their country of residence, the general rule with respect to

the place of supply of services should be based on the place where the recipient is established rather than where the supplier is established.

- (2) Where services are supplied to non-taxable persons, i.e. persons other than those that have a VAT number, the general rule should continue to be the place where the supplier has established his business.
- (3) Where a taxable person receives services from a person not established in the same Member State, the reverse charge mechanism should be obligatory in certain cases, meaning that the taxable person should self-assess the appropriate amount of VAT on the acquired service.
- (4) In order to further the correct application of this Directive every taxable person identified for VAT purposes should submit a recapitulative statement (VIES) of the taxable persons and the non-taxable legal persons identified for VAT purposes to whom he has supplied taxable services which fall under the reverse charge mechanism.

Definitions

For the purpose of applying the rules concerning the place of supply of services.

- a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2(1) of the Sixth Directive shall be regarded as a taxable person in respect

of all services rendered to him; and

- a non-taxable legal person who is identified for VAT purposes shall be regarded as a taxable person.

General Rules

The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in the place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of those services shall be the place where the taxable person who receives such services has his permanent address or usually resides.

The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

Particular provisions

(1) Supply of services by intermediaries

The place of supply of services rendered to a non-taxable person by an intermediary acting in the name and on behalf of another person shall be the place where the underlying transaction is supplied in accordance with this Directive.

(2) Supply of services connected with immovable property

The place of supply of services connected with immovable property, including the services of experts and estate agents, 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, the granting of rights to use immovable property and services for the preparation and coordina-

tion of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.

(3) Supply of transport

The place of supply of passenger transport shall be the place where the transport takes place, proportionate to distances covered.

The place of supply of the transport of goods, other than the intra-Community transport of goods, to non-taxable person shall be the place where the transport takes place proportionate to the distances covered.

The place of supply of the intra-Community transport of goods to non-taxable persons shall be the place of departure.

“Intra-Community transport of goods” shall mean any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

“Place of departure” shall mean the place where transport of the goods actually begins, irrespective of distances covered in order to reach the place where the goods are located and “place of arrival” shall mean the place where transport of the goods actually ends.

Member States need not apply VAT to that part of the intra-Community transport of goods to non-taxable persons taking place over waters which do not form part of the territory of the Community.

(4) Supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services, ancillary transport services and valuations of and work on movable property

The place of supply of services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organizers of such activities, shall be the place where those activities are physically carried out.

The place of supply of the following services to non-taxable persons shall be the place where the services are physically carried out:

- ancillary transport activities such as loading, unloading, handling and similar activities; and
- valuations of and work on movable tangible property.

The place of supply of services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, and of ancillary services related to the admission, supplied to a taxable person, shall be the place where those events actually take place.

The place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organizers of such activities, supplied to a non-taxable person shall be the place where those activities actually take place.

(5) Supply of restaurant and catering services

The place of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be the place where the services are physically carried out.

(6) Hiring of means of transport

The place of short-term hiring of a means of transport shall be the place where the means of transport is actually put at the disposal of the customer.

For the purposes of above paragraph, “short-term” shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days.

The place of hiring, other than short-term hiring, of a means of transport to a non-taxable person shall be the place where the customer is established, has his permanent address or usually resides.

However the place of hiring a pleasure boat to a non-taxable person, other than short-term hiring, shall be the place where the pleasure boat is actually put at the disposal of the customer,

where this service is actually provided by the supplier from his place of business or a fixed establishment situated in the place.

From 1 January 2013 the place of long term hiring of means of transport to a non-taxable person shall be the place of residence of recipient of services.

However the place of hiring of pleasure boats will be where the supplier is established or where the recipient is established if the boat is made available to him by the supplier in a country other than the country of supplier.

(7) Supply of restaurant and catering services for consumption on board ships, aircraft or trains

The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be at the point of departure of the passenger transport operation.

For the purposes of above paragraph, “section of a passenger transport operation effected within the Community” shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

“Point of arrival of a passenger transport operation” shall mean the last scheduled point of disembarkation within the Community of passenger who embarked in the Community, where applicable before a stopover outside the Community.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.

(8) Supply of electronic services to non-taxable persons

In The place of supply of electronically supplied services, when supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of

such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

The place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:

- telecommunication services;
- radio and television broadcasting services; and
- electronically supplied services.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service is an electronically supplied service.

From 1 January 2015 these services will be taxable in the country of residence of recipients.

(9) Supply of services to non-taxable persons outside the Community

The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside the Community, shall be the place where that person is established, has his permanent address or usually resides:

- transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- advertising services;
- the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this Article;

- banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- the supply of staff;
- the hiring out of movable tangible property, with the exception of all means of transport;
- the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- telecommunication services;
- radio and television broadcasting services; and
- electronically supplied services.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

(10) Prevention of double taxation or non-taxation

(a) In order to prevent double taxation, non-taxation or distortion of competition, Member States may, with regard to services the place of supply of which is governed by the above general rules or particular provisions.

- consider the place of supply of any or all of those services, if situated within their territory, as being situation outside the Community if the effective use and enjoyment of the services takes place outside the Community;
- consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.

However, this provision shall not apply to the electronically supplied services where those services are rendered to non-taxable persons not established within the Community.

(b) Member States shall apply (a) above to telecommunications services and radio television broadcasting services, supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually

reside in a Member States, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.

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