Value added tax VAT: arrangements for the refund to taxable persons established in another Member State (Directive 2006/112/EC)

2005/0807(CNS) - 12/02/2008 - Final act

PURPOSE: to lay down the rules for the reimbursement of VAT of those who are not registered for VAT within the Member State in question but who are registered elsewhere in the Union, as provided for in Directive 77/388/EC.

LEGISLATIVE ACT : Council Directive 2008/9/EC laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State

CONTENT: the Council adopted a package of measures on value-added tax (VAT), which includes a change in the rules on the place of supply of services in order to ensure that most types of services are taxed in the Member State of consumption.

At the same time, the package introduces the possibility for taxpayers who perform certain services to fulfil their EU-wide VAT reporting obligations in one single member state (using a "mini one stop shop") and thus reduce their compliance costs.

The package also provides for improved mechanisms for cooperation between Member States in order to prevent tax avoidance under the new system. The VAT package contains this Directive on procedures for VAT refunds to non-established businesses, as well as other pieces of legislation (see CNS/2004/0261 and CNS/2004/0262 and CNS/2003/0329), the purpose of which is the simplification of obligations relating to value-added tax (VAT) for cross-border operators providing goods and services in other EU Member States.

This Directive lays down the detailed rules for the refund of VAT, provided for in Article 170 of Directive 2006/112/EC, to taxable persons not established in the Member State of refund, who meet the conditions laid down in the Directive. It provides that requests for refunds will continue to be dealt with by the Member State where the VAT was paid, the amount refundable will be determined under the deduction rules of the Member State where the expenses are incurred, and the repayments made directly by that Member State to the requesting taxable person. The refund application must be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period.

The main features of the new rules are as follows:

1. for business-to-business services, taxation will be at the place where the customer is situated, and no longer at the place where the service provider is established, as is currently the case;
2. for business-to-consumer services:
    - for most services, the place of taxation will continue to be that where the supplier is established, as at present;
    - however, in certain circumstances, taxation of business-to-consumer services will be at the place of consumption in order to prevent distortions of competition between Member States operating different VAT rates. This category includes: restaurant services; the hiring of means of transport; cultural, sporting, scientific and educational services; and telecommunications, broadcasting and electronic services;
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a "one-stop shop" system will be introduced for telecoms, broadcasting and electronic services in order to simplify arrangements made necessary by the new rules. The "one-stop shop" will enable service providers to fulfil in their home Member State a single set of obligations for VAT registrations, declarations and payments, covering services provided in Member States where they are not established. VAT revenue will then be transferred from the country where the supplier is located to that where the customer is situated, whose VAT rates and controls will be applicable;

- for business-to-consumer supplies of telecoms, broadcasting and electronic services, application of the new rules and the one-stop shop scheme will be deferred to 1 January 2015. The Member State of establishment will, until 1 January 2019, retain a proportion of VAT receipts collected through the one stop shop scheme. This proportion will amount to 30% from 1 January 2015 until 31 December 2016, 15% from 1 January 2017 until 31 December 2018 and 0% from 1 January 2019 onwards.

APPLICATION: this Directive will apply to refund applications submitted after 31 December 2009. Directive 79/1072/EEC will be repealed with effect from 1 January 2010. However, its provisions shall continue to apply to refund applications submitted before 1 January 2010.

TRANSPOSITION: 01/01/2010.

ENTRY INTO FORCE: 20/02/2008.