

Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast)

CHAPTER I

GENERAL PROVISIONS

Article 1

1 This Regulation lays down the conditions under which the competent authorities in the Member States responsible for the application of the laws on VAT are to cooperate with each other and with the Commission to ensure compliance with those laws.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays down rules and procedures for Member States to collect and exchange such information by electronic means.

2 This Regulation lays down the conditions under which the authorities referred to in paragraph 1 are to assist in the protection of VAT revenue in all the Member States.

3 This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

4 This Regulation also lays down rules and procedures for the exchange by electronic means of VAT information on services supplied electronically in accordance with the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC 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.

Article 2

1 For the purposes of this Regulation, the following definitions shall apply:

- a 'central liaison office' means the office which has been designated pursuant to Article 4(1) with principal responsibility for contacts with other Member States in the field of administrative cooperation;
- b 'liaison department' means any office other than the central liaison office which has been designated as such by the competent authority pursuant to Article 4(2) to exchange directly information on the basis of this Regulation;
- c 'competent official' means any official who can directly exchange information on the basis of this Regulation for which he has been authorised pursuant to Article 4(3);
- d 'requesting authority' means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;
- e 'requested authority' means the central liaison office, a liaison department or any competent official of Member State who receives a request for assistance on behalf of the competent authority;
- f 'intra-Community transactions' means the intra-Community supply of goods or services;

- g 'intra-Community supply of goods' means any supply of goods which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;
- h 'intra-Community supply of services' means any supply of services which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;
- i 'intra-Community acquisition of goods' means the acquisition of the right pursuant to Article 20 of Directive 2006/112/EC to dispose as owner of moveable tangible property;
- j 'VAT identification number' means the number provided for in Articles 214, 215 and 216 of Directive 2006/112/EC;
- k 'administrative enquiry' means all the controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring proper application of VAT legislation;
- l 'automatic exchange' means the systematic communication of predefined information to another Member State, without prior request;
- m 'spontaneous exchange' means the non-systematic communication, at any moment and without prior request, of information to another Member State;
- n 'person' means:
 - (i) a natural person;
 - (ii) a legal person;
 - (iii) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person; or
 - (iv) any other legal arrangement of whatever nature and form, which has legal personality or not, and conducts transactions which are subject to VAT;
- o 'automated access' means the possibility of access without delay to an electronic system in order to consult certain information contained therein;
- p 'by electronic means' means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;
- q 'CCN/CSI network' means the common platform based on the common communication network (hereinafter the 'CCN') and common system interface (hereinafter the 'CSI'), developed by the Union to ensure all transmissions by electronic means between competent authorities in the area of customs and taxation;
- r 'simultaneous control' means coordinated checks on the tax situation of a taxable person or related taxable persons, organised by two or more participating Member States with common or complementary interests.

2 From 1 January 2015, the definitions contained in Articles 358, 358a and 369a of Directive 2006/112/EC shall also apply for the purposes of this Regulation.

Article 3

The competent authorities are the authorities in whose name this Regulation is to be applied, whether directly or by delegation.

Each Member State shall inform the Commission by 1 December 2010 of its competent authority for the purposes of this Regulation and shall subsequently inform the Commission without delay about any change thereof.

The Commission shall make available to the Member States a list of all competent authorities and publish this information in the *Official Journal of the European Union*.

Article 4

1 Each Member State shall designate a single central liaison office to which principal responsibility shall be delegated for contacts with other Member States in the field of administrative cooperation. It shall inform the Commission and the other Member States thereof. The central liaison office may also be designated as responsible for contacts with the Commission.

2 The competent authority of each Member State may designate liaison departments. The central liaison office shall be responsible for keeping the list of those departments up-to-date and making it available to the central liaison offices of the other Member States concerned.

3 The competent authority of each Member State may in addition designate, under the conditions laid down by it, competent officials who can directly exchange information on the basis of this Regulation. When it does so, it may limit the scope of such designation. The central liaison office shall be responsible for keeping the list of those officials up-to-date and making it available to the central liaison offices of the other Member States concerned.

4 The officials exchanging information pursuant to Articles 28, 29 and 30 shall in any case be deemed to be competent officials for this purpose, in accordance with conditions laid down by the competent authorities.

Article 5

Where a liaison department or a competent official sends or receives a request or a reply to a request for assistance, it shall inform the central liaison office of its Member State under the conditions laid down by the latter.

Article 6

Where a liaison department or a competent official receives a request for assistance requiring action outside its territorial or operational area, it shall forward such request without delay to the central liaison office of its Member State and inform the requesting authority thereof. In such a case, the period laid down in Article 10 shall start the day after the request for assistance has been forwarded to the central liaison office.

CHAPTER II

EXCHANGE OF INFORMATION ON REQUEST

SECTION 1

Request for information and for administrative enquiries

Article 7

1 At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.

2 For the purpose of forwarding the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.

3 Until 31 December 2014, the request referred to in paragraph 1 may contain a reasoned request for an administrative enquiry. If the requested authority takes the view that the administrative enquiry is not necessary, it shall immediately inform the requesting authority of the reasons thereof.

4 As from 1 January 2015, the request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

Notwithstanding the first subparagraph, an enquiry into the amounts declared by a taxable person in connection with the supplies of goods or services listed in Annex I, which are made by a taxable person established in the Member State of the requested authority and are taxable in the Member State of the requesting authority, may be refused solely:

- a on the grounds provided for in Article 54(1), assessed by the requested authority in conformity with a statement of best practices concerning the interaction of this paragraph and Article 54(1), to be adopted in accordance with the procedure provided for in Article 58(2);
- b on the grounds provided for in paragraphs 2, 3 and 4 of Article 54; or
- c on the grounds that the requested authority had already supplied the requesting authority with information on the same taxable person as a result of an administrative enquiry held less than two years previously.

Where the requested authority refuses an administrative enquiry referred to in the second subparagraph on the grounds set out in points (a) or (b), it shall nevertheless provide to the requesting authority the dates and values of any relevant supplies made by the taxable person in the Member State of the requesting authority over the previous two years.

5 In order to obtain the information sought or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 8

Requests for information and for administrative enquiries pursuant to Article 7 shall be sent using a standard form adopted in accordance with the procedure provided for in Article 58(2), except in the cases referred to in Article 50 or in exceptional cases where the request includes the reasons for which the requesting authority considers the standard form not to be appropriate.

Article 9

1 At the request of the requesting authority, the requested authority shall communicate to it any pertinent information it obtains or has in its possession as well as the results of administrative enquiries, in the form of reports, statements and any other documents, or certified true copies or extracts thereof.

2 Original documents shall be provided only where this is not contrary to the provisions in force in the Member State in which the requested authority is established.

SECTION 2

Time limit for providing information

Article 10

The requested authority shall provide the information referred to in Articles 7 and 9 as quickly as possible and no later than three months following the date of receipt of the request.

However, where the requested authority is already in possession of that information, the time limit shall be reduced to a maximum period of one month.

Article 11

In certain special categories of cases, time limits which are different from those provided for in Article 10 may be agreed between the requested and the requesting authorities.

Article 12

Where the requested authority is unable to respond to the request by the deadline, it shall inform the requesting authority in writing forthwith of the reasons for its failure to do so, and when it considers it would be likely to be able to respond.

CHAPTER III

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST

Article 13

1 The competent authority of each Member State shall, without prior request, forward the information referred to in Article 1 to the competent authority of any other Member State concerned, in the following cases:

- a where taxation is deemed to take place in the Member State of destination and the information provided by the Member State of origin is necessary for the effectiveness of the control system of the Member State of destination;
- b where a Member State has grounds to believe that a breach of VAT legislation has been committed or is likely to have been committed in the other Member State;
- c where there is a risk of tax loss in the other Member State.

2 The exchange of information without prior request shall either be automatic, in accordance with Article 14, or spontaneous, in accordance with Article 15.

3 The information shall be forwarded by means of standard forms adopted in accordance with the procedure provided for in Article 58(2).

Article 14

1 The following shall be determined in accordance with the procedure provided for in Article 58(2):

- a the exact categories of information subject to automatic exchange;
- b the frequency of the automatic exchange for each category of information; and
- c the practical arrangements for the automatic exchange of information.

A Member State may abstain from taking part in the automatic exchange of information with respect to one or more categories where the collection of information for such exchange would require the imposition of new obligations on persons liable for VAT or would impose a disproportionate administrative burden on the Member State.

The results of the automatic exchange of information for each category shall be reviewed once a year by the Committee referred to in Article 58(1), so as to ensure that this type of exchange takes place only where it is the most efficient means for the exchange of information.

2 As from 1 January 2015, the competent authority of each Member State shall, in particular, exchange information automatically in order to enable Member States of consumption to ascertain whether taxable persons not established in their territory declare and correctly pay the VAT due with regard to telecommunication services, broadcasting services and electronically supplied services, regardless of whether those taxable persons make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC. The Member State of establishment shall inform the Member State of consumption of any discrepancies of which it becomes aware.

Article 15

The competent authorities of the Member States shall, by spontaneous exchange, forward to the competent authorities of the other Member States any information referred to in Article 13(1) which has not been forwarded under the automatic exchange referred to in Article 14 of which they are aware and which they consider may be useful to those competent authorities.

CHAPTER IV

FEEDBACK

Article 16

Where a competent authority provides information pursuant to Article 7 or 15, it may request the competent authority which receives the information to give feedback thereon. If such request is made, the competent authority which receives the information shall, without prejudice to the rules on tax secrecy and data protection applicable in its Member State, send feedback as soon as possible, provided that this does not impose a disproportionate administrative burden on it. Practical arrangements shall be determined in accordance with the procedure provided for in Article 58(2).

CHAPTER V

STORAGE AND EXCHANGE OF SPECIFIC INFORMATION

Article 17

- 1 Each Member State shall store in an electronic system the following information:
 - a information which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC;
 - b data on the identity, activity, legal form and address of persons to whom it has issued a VAT identification number, collected pursuant to Article 213 of Directive 2006/112/EC, as well as the date on which that number was issued;

- c data on VAT identification numbers it has issued which have become invalid, and the dates on which those numbers became invalid; and
- d information which it collects pursuant to Articles 360, 361, 364 and 365 of Directive 2006/112/EC as well as, from 1 January 2015, information which it collects pursuant to Articles 369c, 369f and 369g of that Directive.

2 The technical details concerning the automated enquiry of the information referred to in points (b), (c) and (d) of paragraph 1 shall be adopted in accordance with the procedure provided for in Article 58(2).

Article 18

To enable the information referred to in Article 17 to be used in the procedures provided for in this Regulation, that information shall be available for at least five years from the end of the first calendar year in which access to the information is to be granted.

Article 19

Member States shall ensure that the information available in the electronic system referred to in Article 17 is kept up-to-date, and is complete and accurate.

Criteria shall be defined, in accordance with the procedure provided for in Article 58(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

Article 20

1 The information referred to in Article 17 shall be entered into the electronic system without delay.

2 By way of derogation from paragraph 1, the information referred to in Article 17(1) (a) shall be entered into the electronic system no later than one month after the end of the period to which that information relates.

3 By way of derogation from paragraphs 1 and 2, where information is to be corrected in, or added to, the electronic system pursuant to Article 19, the information must be entered no later than one month after the period in which it was collected.

Article 21

1 Every Member State shall grant the competent authority of any other Member State automated access to the information stored pursuant to Article 17.

2 With respect to the information referred to in Article 17(1)(a), at least the following details shall be accessible:

- a VAT identification numbers issued by the Member State receiving the information;
- b the total value of all intra-Community supplies of goods and the total value of all intra-Community supplies of services to persons holding a VAT identification number referred to in point (a) by all operators identified for the purposes of VAT in the Member State providing the information;
- c the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point (b);
- d the total value of the supplies of goods and services referred to in point (b) from each person referred to in point (c) to each person holding a VAT identification number referred to in point (a);

- e the total value of the supplies of goods and services referred to in point (b) from each person referred to in point (c) to each person holding a VAT identification number issued by another Member State under the following conditions:
 - (i) access is in connection with an investigation into suspected fraud;
 - (ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information; and
 - (iii) access is only granted during general working hours.

The values referred to in points (b), (d) and (e) shall be expressed in the currency of the Member State providing the information and shall relate to the periods for submission of the recapitulative statements specific to each taxable person which are established in accordance with Article 263 of Directive 2006/112/EC.

Article 22

1 In order to provide a reasonable level of assurance to tax administrations with regard to the quality and reliability of the information available through the electronic system referred to in Article 17, Member States shall adopt the measures necessary to ensure that the data provided by taxable persons and non-taxable legal persons for their identification for VAT purposes in accordance with Article 214 of Directive 2006/112/EC, are, in their assessment, complete and accurate.

Member States shall implement procedures for checking these data as determined by the results of their risk assessment. The checks shall be carried out, in principle, prior to identification for VAT purposes or, where only preliminary checks are conducted before such identification, no later than six months from such identification.

2 The Member States shall inform the Committee referred to in Article 58(1) of the measures implemented at national level to ensure the quality and reliability of the information in accordance with paragraph 1.

Article 23

Member States shall ensure that the VAT identification number, referred to in Article 214 of Directive 2006/112/EC, is shown as invalid in the electronic system referred to in Article 17 of this Regulation at least in the following situations:

- (a) where persons identified for VAT purposes have stated that their economic activity, as defined in Article 9 of Directive 2006/112/EC, has ceased or where the competent tax administration considers that they have ceased such activity. A tax administration may presume in particular that a person has ceased economic activity when, despite being required to do so, that person has failed to submit VAT returns and recapitulative statements for a year after expiry of the deadline for submission of the first return or statement missed. The person shall have the right to prove the existence of an economic activity by other means;
- (b) where persons have declared false data in order to obtain VAT identification or have failed to communicate changes to their data and, had the tax administration known, the latter would have refused identification for VAT purposes or withdrawn the VAT identification number.

Article 24

Where, for the purposes of Articles 17 to 21, the competent authorities of the Member States exchange information by electronic means, they shall take all measures necessary to ensure compliance with Article 55.

Member States shall be responsible for all necessary developments to their systems to permit the exchange of that information using the CCN/CSI network.

CHAPTER VI

REQUEST FOR ADMINISTRATIVE NOTIFICATION

Article 25

The requested authority shall, at the request of the requesting authority and in accordance with the rules governing the notification of similar instruments in the Member State in which the requested authority is established, notify the addressee of all instruments and decisions which emanate from the competent authorities and concern the application of VAT legislation in the territory of the Member State in which the requesting authority is established.

Article 26

Requests for notification, mentioning the subject of the instrument or decision to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.

Article 27

The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of notification of the decision or instrument to the addressee.

CHAPTER VII

PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES

Article 28

1 By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present in the offices of the administrative authorities of the requested Member State, or any other place where those authorities carry out their duties. Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

2 By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present during the administrative enquiries carried out in the territory of the requested Member State. Such administrative enquiries shall be carried out exclusively by the officials of the requested

authority. The officials of the requesting authority shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through the intermediation of the officials of the requested authority and for the sole purpose of carrying out the administrative enquiry.

3 The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

CHAPTER VIII

SIMULTANEOUS CONTROLS

Article 29

Member States may agree to conduct simultaneous controls whenever they consider such controls to be more effective than controls carried out by only one Member State.

Article 30

1 A Member State shall identify independently the taxable persons which it intends to propose for a simultaneous control. The competent authority of that Member State shall notify the competent authority of the other Member States concerned of the cases proposed for a simultaneous control. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.

2 The competent authority of the Member State that receives the proposal for a simultaneous control shall confirm its agreement or communicate its reasoned refusal to its counterpart authority, in principle within two weeks of receipt of the proposal, but within a month at the latest.

3 Each competent authority of the Member States concerned shall appoint a representative to be responsible for supervising and coordinating the control operation.

CHAPTER IX

PROVIDING INFORMATION TO TAXABLE PERSONS

Article 31

1 The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and non-established taxable persons supplying telecommunication services, broadcasting services and electronically supplied services, in particular those referred to in Annex II to Directive 2006/112/EC, are allowed to obtain, for the purposes of such transactions, confirmation by electronic means of the validity of the VAT identification number of any specified person as well as the associated name and address. This information shall correspond to the data referred to in Article 17.

2 Each Member State shall provide confirmation by electronic means of the name and address of the person to whom the VAT identification number has been issued in accordance with its national data protection rules.

3 During the period provided for in Article 357 of Directive 2006/112/EC, paragraph 1 of this Article shall not apply to non-established taxable persons supplying telecommunication services and radio and television broadcasting services.

Article 32

1 The Commission shall, on the basis of the information provided by the Member States, publish on its website the details of the provisions approved by each Member State which transpose Chapter 3 of Title XI of Directive 2006/112/EC.

2 The details and format of the information to be submitted shall be decided in accordance with the procedure provided for in Article 58(2).

CHAPTER X

EUROFISC

Article 33

1 In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, this Chapter establishes a network for the swift exchange of targeted information between Member States hereinafter called 'Eurofisc'.

2 Within the framework of Eurofisc, Member States shall:

- a establish a multilateral early warning mechanism for combating VAT fraud;
- b coordinate the swift multilateral exchange of targeted information in the subject areas in which Eurofisc will operate (hereinafter 'Eurofisc working fields');
- c coordinate the work of the Eurofisc liaison officials of the participating Member States in acting on warnings received.

Article 34

1 Member States shall participate in the Eurofisc working fields of their choice and may also decide to terminate their participation therein.

2 Member States having chosen to take part in a Eurofisc working field shall actively participate in the multilateral exchange of targeted information between all participating Member States.

3 Information exchanged shall be confidential, as provided for in Article 55.

Article 35

The Commission shall provide Eurofisc with technical and logistical support. The Commission shall not have access to the information referred to in Article 1, which may be exchanged over Eurofisc.

Article 36

1 The competent authorities of each Member State shall designate at least one Eurofisc liaison official. Eurofisc liaison officials shall be competent officials within the meaning of Article 2(1)(c) and shall carry out the activities referred to in Article 33(2). They shall remain answerable only to their national administrations.

2 The liaison officials of the Member States participating in a particular Eurofisc working field (hereinafter 'participating Eurofisc liaison officials') shall designate a coordinator

(hereinafter ‘Eurofisc working field coordinator’), among the participating Eurofisc liaison officials, for a limited period of time. Eurofisc working field coordinators shall:

- a collate the information received from the participating Eurofisc liaison officials and make all information available to the other participating Eurofisc liaison officials. The information shall be exchanged by electronic means;
- b ensure that the information received from the participating Eurofisc liaison officials is processed, as agreed by the participants in the working field, and make the result available to the participating Eurofisc liaison officials;
- c provide feedback to the participating Eurofisc liaison officials.

Article 37

Eurofisc working field coordinators shall submit an annual report of the activities of all working fields to the Committee referred to in Article 58(1).

CHAPTER XI

**PROVISIONS CONCERNING THE SPECIAL SCHEMES IN
CHAPTER 6 OF TITLE XII OF DIRECTIVE 2006/112/EC**

SECTION 1

Provisions applicable until 31 December 2014

Article 38

The following provisions shall apply concerning the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC. The definitions contained in Article 358 of that Directive shall also apply for the purpose of this Chapter.

Article 39

1 The information provided by the taxable person not established in the Community to the Member State of identification, when his activities commence pursuant to Article 361 of Directive 2006/112/EC, shall be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

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 58(2).

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 40

1 The return with the details set out in Article 365 of Directive 2006/112/EC is to be submitted by electronic means. The technical details, including a common electronic message,

shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

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 during which 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 58(2).

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 41

1 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 during which the payment was received.

2 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 42

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 41.

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.

SECTION 2

Provisions applicable from 1 January 2015

Article 43

The following provisions shall apply concerning the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC.

Article 44

1 The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of

Directive 2006/112/EC shall be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

2 The Member State of identification shall transmit the information referred to in paragraph 1 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 taxable person not established within the Community. Similar details for the identification of the taxable person applying the special scheme pursuant to Article 369b of Directive 2006/112/EC shall be transmitted within 10 days from the end of the month during which the taxable person stated that his taxable activities under that scheme commenced. 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 58(2) of this Regulation.

3 The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a taxable person not established in the Community or a taxable person not established in the Member State of consumption is excluded from the special scheme.

Article 45

1 The return with the details set out in Articles 365 and 369g of Directive 2006/112/EC is to be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

2 The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State of consumption concerned at the latest 10 days after the end of the month during which the return was received. The information provided for in the second paragraph of Article 369g of Directive 2006/112/EC shall also be transmitted to the competent authority of the Member State of establishment concerned. 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 58(2) of this Regulation.

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 46

1 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 during which the payment was received.

2 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.

3 Concerning the payments to be transferred to the Member State of consumption in accordance with the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, the Member State of identification shall, of the amounts referred to in paragraphs 1 and 2 of this Article, be entitled to retain:

- a from 1 January 2015 until 31 December 2016 — 30 %;
- b from 1 January 2017 until 31 December 2018 — 15 %;
- c from 1 January 2019 — 0 %.

Article 47

Member States shall notify by electronic means the competent authorities of the other Member States of the relevant bank account numbers for receiving payments in accordance with Article 46.

Member States shall without delay notify by electronic means the competent authorities of the other Member States and the Commission of changes in the tax rate applicable for supplies of telecommunication services, broadcasting services and electronically supplied services.

CHAPTER XII

EXCHANGE AND CONSERVATION OF INFORMATION IN THE CONTEXT OF THE PROCEDURE FOR THE REFUND OF VAT TO TAXABLE PERSONS NOT ESTABLISHED IN THE MEMBER STATE OF REFUND BUT ESTABLISHED IN ANOTHER MEMBER STATE

Article 48

1 Where the competent authority of the Member State of establishment receives an application for refund of VAT pursuant to Article 5 of Directive 2008/9/EC, and Article 18 of that Directive is not applicable, it shall, within 15 calendar days of its receipt and by electronic means, forward the application to the competent authorities of each Member State of refund concerned with confirmation that the applicant as defined in Article 2(5) of Directive 2008/9/EC is a taxable person for the purposes of VAT and that the identification or registration number given by this person is valid for the refund period.

2 The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States of any information required by them pursuant to Article 9(2) of Directive 2008/9/EC. 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 58(2) of this Regulation.

3 The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States if they want to make use of the option to require the applicant to provide the description of business activity by harmonised codes as referred to in Article 11 of Directive 2008/9/EC.

The harmonised codes referred to in the first subparagraph shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation on the basis of the NACE classification established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2⁽¹⁾.

CHAPTER XIII

RELATIONS WITH THE COMMISSION

Article 49

1 The Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. The Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements.

2 The Member States shall communicate to the Commission any available information relevant to their application of this Regulation.

3 A list of statistical data needed for evaluation of this Regulation shall be determined in accordance with the procedure provided for in Article 58(2). The Member States shall communicate these data to the Commission in so far as they are available and the communication is not likely to involve administrative burdens which would be unjustified.

4 With a view to evaluating the effectiveness of this system of administrative cooperation in combating tax evasion and tax avoidance, Member States may communicate to the Commission any other information referred to in Article 1.

5 The Commission shall forward the information referred to in paragraphs 2, 3 and 4 to the other Member States concerned.

6 Where necessary, in addition to what is required by other provisions in this Regulation, the Commission shall send to the competent authorities of each Member State any information that might enable them to combat fraud in the field of VAT as soon as it obtains such information.

7 The Commission may, at the request of a Member State, provide its expert opinions, technical or logistical assistance, or any other support with a view to attaining the objectives of this Regulation.

CHAPTER XIV

RELATIONS WITH THIRD COUNTRIES

Article 50

1 When the competent authority of a Member State receives information from a third country, that authority may pass the information on to the competent authorities of Member States which might be interested in it and, in any event, to all those which request it, in so far as permitted by assistance arrangements with that particular third country.

2 Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in

accordance with this Regulation to a third country, provided that the following conditions are met:

- a the competent authority of the Member State from which the information originates has consented to that communication; and
- b the third country concerned has given an undertaking to provide the cooperation required to gather evidence of the irregular nature of transactions which appear to contravene VAT legislation.

CHAPTER XV

CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION

Article 51

1 Information communicated pursuant to this Regulation shall, as far as possible, be provided by electronic means under arrangements to be adopted in accordance with the procedure provided for in Article 58(2).

2 Where the request has not been lodged completely through the electronic system referred to in paragraph 1, the requested authority shall confirm receipt of the request by electronic means without delay and, in any event, no later than five working days after receipt.

Where an authority has received a request or information of which it is not the intended recipient, it shall send a message by electronic means to the sender without delay and, in any event, no later than five working days after receipt.

Article 52

Requests for assistance, including requests for notification, and attached documents may be made in any language agreed between the requested and requesting authority. The said requests shall be accompanied by a translation into the official language or one of the official languages of the Member State in which the requested authority is established only in special cases when the requested authority gives a reason for asking for such a translation.

Article 53

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 this Regulation are operational. A service level agreement ensuring the technical quality and quantity of the services to be delivered by the Commission and the Member States for the functioning of those communication and information exchange systems shall be decided in accordance with the procedure provided for in Article 58(2). The Commission shall be responsible for whatever development of the CCN/CSI network is necessary to permit the exchange of this information between Member States. Member States shall be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI network.

Member States shall waive all claims for the reimbursement of expenses incurred in applying this Regulation except, where appropriate, in respect of fees paid to experts.

Article 54

1 The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 1 provided that:

- a the number and the nature of the requests for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority;
- b that requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

2 This Regulation shall impose no obligation to have enquiries carried out or to provide information on a particular case if the laws or administrative practices of the Member State which would have to supply the information do not authorise the Member State to carry out those enquiries or collect or use that information for that Member State's own purposes.

3 The competent authority of a requested Member State may refuse to provide information where the requesting Member State is unable, for legal reasons, to provide similar information. The Commission shall be informed of the grounds of the refusal by the requested Member State.

4 The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

5 Paragraphs 2, 3 and 4 should on no account be interpreted as authorising the requested authority of a Member State to refuse to supply information on a taxable person identified for VAT purposes in the Member State of the requesting authority on the sole grounds that this information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a legal person.

6 The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance.

7 A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure provided for in Article 58(2).

Article 55

1 Information communicated or collected in any form pursuant to this Regulation, including any information to which an official has had access in the circumstances set out in Chapters VII, VIII and X, and in the cases referred to in paragraph 2 of this Article, shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under both the national law of the Member State which received it and the corresponding provisions applicable to Union authorities. Such information shall be used only in the circumstances provided for in this Regulation.

Such information may be used for the purpose of establishing the assessment base or the collection or administrative control of tax for the purpose of establishing the assessment base.

The information may also be used for the assessment of other levies, duties, and taxes covered by Article 2 of Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures⁽²⁾.

In addition, it may be used in connection with judicial proceedings that may involve penalties, initiated as a result of infringements of tax law without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in such proceedings.

2 Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the CCN/CSI network.

3 By way of derogation from paragraph 1, the competent authority of the Member State providing the information shall permit its use for other purposes in the Member State of the requesting authority, if, under the legislation of the Member State of the requested authority, the information can be used for similar purposes.

4 Where the requesting authority considers that information it has received from the requested authority is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter authority. It shall inform the requested authority thereof in advance. The requested authority may require that the transmission of the information to a third party be subject to its prior agreement.

5 All storage or exchange of information referred to in this Regulation is subject to the provisions implementing Directive 95/46/EC. However, Member States shall, for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1) and Articles 12 and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

Article 56

Reports, statements and any other documents, or certified true copies or extracts thereof, obtained by the staff of the requested authority and communicated to the requesting authority under the assistance provided for by this Regulation may be invoked as evidence by the competent bodies of the Member State of the requesting authority on the same basis as similar documents provided by another authority of that country.

Article 57

1 For the purpose of applying this Regulation, Member States shall take all necessary measures to:

- a ensure effective internal coordination between the competent authorities;
- b establish direct cooperation between the authorities authorised for the purposes of such coordination;
- c ensure the smooth operation of the information exchange arrangements provided for in this Regulation.

2 The Commission shall communicate to each Member State, as quickly as possible, any information which it receives and which it is able to provide.

CHAPTER XVI

FINAL PROVISIONS

Article 58

1 The Commission shall be assisted by the Standing Committee on Administrative Cooperation.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 59

1 By 1 November 2013 and thereafter every five years, the Commission shall report to the European Parliament and the Council on the application of this Regulation.

2 Member States shall communicate to the Commission the text of any provisions of national law which they adopt in the field covered by this Regulation.

Article 60

1 This Regulation shall be without prejudice to the fulfilment of any wider obligations in relation to mutual assistance ensuing from other legal acts, including bilateral or multilateral agreements.

2 Where the Member States conclude bilateral arrangements on matters covered by this Regulation, in particular pursuant to Article 11, other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the other Member States.

Article 61

Regulation (EC) No 1798/2003 shall be repealed with effect from 1 January 2012. However, the effects of Article 2(1) of that Regulation shall be maintained until the date of publication by the Commission of the list of competent authorities referred to in Article 3 of this Regulation.

Chapter V, with the exception of Article 27(4), of that Regulation shall remain applicable until 31 December 2012.

References made to the repealed Regulation shall be construed as references to this Regulation.

Article 62

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2012.

However, Articles 33 to 37 shall apply from 1 November 2010;

Chapter V, with the exception of Articles 22 and 23, shall apply from 1 January 2013;

— Articles 38 to 42 shall apply from 1 January 2012 until 31 December 2014; and

— Articles 43 to 47 shall apply from 1 January 2015.

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

Done at Luxembourg, 7 October 2010.

For the Council

The President

S. VANACKERE

Status: This is the original version (as it was originally adopted).

- (1) OJ L 393, 30.12.2006, p. 1.
- (2) OJ L 150, 10.6.2008, p. 28.