

Council Implementing Regulation (EU) No 282/2011 of 15  
March 2011 laying down implementing measures for Directive  
2006/112/EC on the common system of value added tax (recast)

CHAPTER I

**SUBJECT MATTER**

*Article 1*

This Regulation lays down measures for the implementation of certain provisions of Titles I to V, and VII to XII of Directive 2006/112/EC.

CHAPTER II

**SCOPE**

**(TITLE I OF DIRECTIVE 2006/112/EC)**

*Article 2*

The following shall not result in intra-Community acquisitions within the meaning of point (b) of Article 2(1) of Directive 2006/112/EC:

- (a) the transfer of a new means of transport by a non-taxable person upon change of residence provided that the exemption provided for in point (a) of Article 138(2) of Directive 2006/112/EC could not apply at the time of supply;
- (b) the return of a new means of transport by a non-taxable person to the Member State from which it was initially supplied to him under the exemption provided for in point (a) of Article 138(2) of Directive 2006/112/EC.

*Article 3*

Without prejudice to point (b) of the first paragraph of Article 59a of Directive 2006/112/EC, the supply of the following services is not subject to VAT if the supplier demonstrates that the place of supply determined in accordance with Subsections 3 and 4 of Section 4 of Chapter V of this Regulation is outside the Community:

- (a) from 1 January 2013, the service referred to in the first subparagraph of Article 56(2) of Directive 2006/112/EC;
- (b) from 1 January 2015, the services listed in Article 58 of Directive 2006/112/EC;
- (c) the services listed in Article 59 of Directive 2006/112/EC.

*Article 4*

A taxable person who is entitled to non-taxation of his intra-Community acquisitions of goods, in accordance with Article 3 of Directive 2006/112/EC, shall remain so where, pursuant to Article 214(1)(d) or (e) of that Directive, a VAT identification number has been attributed to that taxable person for the services received for which he is liable to pay VAT or for the services supplied by him within the territory of another Member State for which VAT is payable solely by the recipient.

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However, if that taxable person communicates this VAT identification number to a supplier in respect of an intra-Community acquisition of goods, he shall be deemed to have exercised the option provided for in Article 3(3) of that Directive.

## CHAPTER III

### TAXABLE PERSONS

#### (TITLE III OF DIRECTIVE 2006/112/EC)

##### *Article 5*

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 9(1) of Directive 2006/112/EC.

## CHAPTER IV

### TAXABLE TRANSACTIONS

#### (ARTICLES 24 TO 29 OF DIRECTIVE 2006/112/EC)

##### *Article 6*

1 Restaurant and catering services mean services consisting of the supply of prepared or unprepared food or beverages or both, for human consumption, accompanied by sufficient support services allowing for the immediate consumption thereof. The provision of food or beverages or both is only one component of the whole in which services shall predominate. Restaurant services are the supply of such services on the premises of the supplier, and catering services are the supply of such services off the premises of the supplier.

2 The supply of prepared or unprepared food or beverages or both, whether or not including transport but without any other support services, shall not be considered restaurant or catering services within the meaning of paragraph 1.

##### *Article 7*

1 ‘Electronically supplied services’ as referred to in Directive 2006/112/EC 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 impossible to ensure in the absence of information technology.

2 Paragraph 1 shall cover, in particular, the following:

- 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

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- 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.
- 3 Paragraph 1 shall not, in particular, cover the following:
- a radio and television broadcasting services;
  - b telecommunications services;
  - c goods, where the order and processing is done electronically;
  - d CD-ROMs, floppy disks and similar tangible media;
  - e printed matter, such as books, newsletters, newspapers or journals;
  - f CDs and audio cassettes;
  - g video cassettes and DVDs;
  - h games on a CD-ROM;
  - i services of professionals such as lawyers and financial consultants, who advise clients by e-mail;
  - j teaching services, where the course content is delivered by a teacher over the Internet or an electronic network (namely via a remote link);
  - k offline physical repair services of computer equipment;
  - l offline data warehousing services;
  - m advertising services, in particular as in newspapers, on posters and on television;
  - n telephone helpdesk services;
  - o teaching services purely involving correspondence courses, such as postal courses;
  - p conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made;
  - q telephone services with a video component, otherwise known as videophone services;
  - r access to the Internet and World Wide Web;
  - s telephone services provided through the Internet.

#### *Article 8*

If a taxable person only assembles the various 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 24(1) of Directive 2006/112/EC.

#### *Article 9*

The sale of an option, where such a sale is a transaction falling within the scope of point (f) of Article 135(1) of Directive 2006/112/EC, shall be a supply of services within the meaning of Article 24(1) of that Directive. That supply of services shall be distinct from the underlying transactions to which the services relate.

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## CHAPTER V

### PLACE OF TAXABLE TRANSACTIONS

#### SECTION 1

##### **Concepts**

##### *Article 10*

1 For the application of Articles 44 and 45 of Directive 2006/112/EC, the place where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out.

2 In order to determine the place referred to in paragraph 1, account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.

Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence.

3 The mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.

##### *Article 11*

1 For the application of Article 44 of Directive 2006/112/EC, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

2 For the application of the following Articles, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to provide the services which it supplies:

- a Article 45 of Directive 2006/112/EC;
- b from 1 January 2013, the second subparagraph of Article 56(2) of Directive 2006/112/EC;
- c until 31 December 2014, Article 58 of Directive 2006/112/EC;
- d Article 192a of Directive 2006/112/EC.

3 The fact of having a VAT identification number shall not in itself be sufficient to consider that a taxable person has a fixed establishment.

##### *Article 12*

For the application of Directive 2006/112/EC, the 'permanent address' of a natural person, whether or not a taxable person, shall be the address entered in the population or similar register, or the address indicated by that person to the relevant tax authorities, unless there is evidence that this address does not reflect reality.

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### *Article 13*

The place where a natural person ‘usually resides’, whether or not a taxable person, as referred to in Directive 2006/112/EC shall be the place where that natural person usually lives as a result of personal and occupational ties.

Where the occupational ties are in a country different from that of the personal ties, or where no occupational ties exist, the place of usual residence shall be determined by personal ties which show close links between the natural person and a place where he is living.

## *SECTION 2*

### *Place of supply of goods*

#### *(Articles 31 to 39 of Directive 2006/112/EC)*

### *Article 14*

Where in the course of a calendar year the threshold applied by a Member State in accordance with Article 34 of Directive 2006/112/EC is exceeded, Article 33 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 all of the following conditions are met:

- (a) the supplier has not exercised the option provided for under Article 34(4) of that Directive;
- (b) the value of his supplies of goods did not exceed the threshold in the course of the preceding calendar year.

However, Article 33 of Directive 2006/112/EC shall modify the place of the following supplies to the Member State in which the dispatch or transport ends:

- (a) the supply of goods 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 of goods within that Member State in that calendar year;
- (c) supplies of goods within that Member State in the calendar year following the calendar year in which the event referred to in point (a) occurred.

### *Article 15*

The section of a passenger transport operation effected within the Community referred to in Article 37 of Directive 2006/112/EC, shall be determined by the journey of the means of transport and not by the journey completed by each of the passengers.

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### SECTION 3

#### **Place of intra-Community acquisitions of goods**

**(Articles 40, 41 and 42 of Directive 2006/112/EC)**

##### *Article 16*

Where an intra-Community acquisition of goods within the meaning of Article 20 of Directive 2006/112/EC 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 VAT 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 Member State in accordance with its own domestic rules.

### SECTION 4

#### **Place of supply of services**

**(Articles 43 to 59 of Directive 2006/112/EC)**

##### *Subsection 1*

#### **Status of the customer**

##### *Article 17*

1 If the place of supply of services depends on whether the customer is a taxable or non-taxable person, the status of the customer shall be determined on the basis of Articles 9 to 13 and Article 43 of Directive 2006/112/EC.

2 A non-taxable legal person who is identified or required to be identified for VAT purposes under point (b) of Article 214(1) of Directive 2006/112/EC because his intra-Community acquisitions of goods are subject to VAT or because he has exercised the option of making those operations subject to VAT shall be a taxable person within the meaning of Article 43 of that Directive.

##### *Article 18*

1 Unless he has information to the contrary, the supplier may regard a customer established within the Community as a taxable person:

- a where the customer has communicated his individual VAT identification number to him, and the supplier obtains confirmation of the validity of that identification number and of the associated name and address in accordance with Article 31 of Council Regulation (EC) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax<sup>(1)</sup>;
- b where the customer has not yet received an individual VAT identification number, but informs the supplier that he has applied for it and the supplier obtains any other proof which demonstrates that the customer is a taxable person or a non-taxable legal person required to be identified for VAT purposes and carries out a reasonable level of

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verification of the accuracy of the information provided by the customer, by normal commercial security measures such as those relating to identity or payment checks.

2 Unless he has information to the contrary, the supplier may regard a customer established within the Community as a non-taxable person when he can demonstrate that the customer has not communicated his individual VAT identification number to him.

3 Unless he has information to the contrary, the supplier may regard a customer established outside the Community as a taxable person:

- a if he obtains from the customer a certificate issued by the customer's competent tax authorities as confirmation that the customer is engaged in economic activities in order to enable him to obtain a refund of VAT under Council Directive 86/560/EEC of 17 November 1986 on the harmonization 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 Community territory<sup>(2)</sup>;
- b where the customer does not possess that certificate, if the supplier has the VAT number, or a similar number attributed to the customer by the country of establishment and used to identify businesses or any other proof which demonstrates that the customer is a taxable person and if the supplier carries out a reasonable level of verification of the accuracy of the information provided by the customer, by normal commercial security measures such as those relating to identity or payment checks.

#### *Subsection 2*

### ***Capacity of the customer***

#### *Article 19*

For the purpose of applying the rules concerning the place of supply of services laid down in Articles 44 and 45 of Directive 2006/112/EC, a taxable person, or a non-taxable legal person deemed to be a taxable person, who receives services exclusively for private use, including use by his staff, shall be regarded as a non-taxable person.

Unless he has information to the contrary, such as information on the nature of the services provided, the supplier may consider that the services are for the customer's business use if, for that transaction, the customer has communicated his individual VAT identification number.

Where one and the same service is intended for both private use, including use by the customer's staff, and business use, the supply of that service shall be covered exclusively by Article 44 of Directive 2006/112/EC, provided there is no abusive practice.

#### *Subsection 3*

### ***Location of the customer***

#### *Article 20*

Where a supply of services carried out for a taxable person, or a non-taxable legal person deemed to be a taxable person, falls within the scope of Article 44 of Directive 2006/112/EC, and where that taxable person is established in a single country, or, in the absence of a place of establishment of a business or a fixed establishment, has his permanent

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address and usually resides in a single country, that supply of services shall be taxable in that country.

The supplier shall establish that place based on information from the customer, and verify that information by normal commercial security measures such as those relating to identity or payment checks.

The information may include the VAT identification number attributed by the Member State where the customer is established.

#### *Article 21*

Where a supply of services to a taxable person, or a non-taxable legal person deemed to be a taxable person, falls within the scope of Article 44 of Directive 2006/112/EC, and the taxable person is established in more than one country, that supply shall be taxable in the country where that taxable person has established his business.

However, where the service is provided to a fixed establishment of the taxable person located in a place other than that where the customer has established his business, that supply shall be taxable at the place of the fixed establishment receiving that service and using it for its own needs.

Where the taxable person does not have a place of establishment of a business or a fixed establishment, the supply shall be taxable at his permanent address or usual residence.

#### *Article 22*

1 In order to identify the customer's fixed establishment to which the service is provided, the supplier shall examine the nature and use of the service provided.

Where the nature and use of the service provided do not enable him to identify the fixed establishment to which the service is provided, the supplier, in identifying that fixed establishment, shall pay particular attention to whether the contract, the order form and the VAT identification number attributed by the Member State of the customer and communicated to him by the customer identify the fixed establishment as the customer of the service and whether the fixed establishment is the entity paying for the service.

Where the customer's fixed establishment to which the service is provided cannot be determined in accordance with the first and second subparagraphs of this paragraph or where services covered by Article 44 of Directive 2006/112/EC are supplied to a taxable person under a contract covering one or more services used in an unidentifiable and non-quantifiable manner, the supplier may legitimately consider that the services have been supplied at the place where the customer has established his business.

2 The application of this Article shall be without prejudice to the customer's obligations.

#### *Article 23*

1 From 1 January 2013, where, in accordance with the first subparagraph of Article 56(2) of Directive 2006/112/EC, a supply of services is taxable at the place where the customer is established, or, in the absence of an establishment, where he has his permanent address or usually resides, the supplier shall establish that place based on factual information provided by the customer, and verify that information by normal commercial security measures such as those relating to identity or payment checks.

2 Where, in accordance with Articles 58 and 59 of Directive 2006/112/EC, a supply of services is taxable at the place where the customer is established, or, in the absence of an



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establishment, where he has his permanent address or usually resides, the supplier shall establish that place based on factual information provided by the customer, and verify that information by normal commercial security measures such as those relating to identity or payment checks.

#### *Article 24*

1 From 1 January 2013, where services covered by the first subparagraph of Article 56(2) of Directive 2006/112/EC, are supplied to a non-taxable person who is established in more than one country or has his permanent address in one country and his usual residence in another, priority shall be given to the place that best ensures taxation at the place of actual consumption when determining the place of supply of those services.

2 Where services covered by Articles 58 and 59 of Directive 2006/112/EC are supplied to a non-taxable person who is established in more than one country or has his permanent address in one country and his usual residence in another, priority shall be given to the place that best ensures taxation at the place of actual consumption when determining the place of supply of those services.

#### *Subsection 4*

### ***Common provision regarding determination of the status, the capacity and the location of the customer***

#### *Article 25*

For the application of the rules governing the place of supply of services, only the circumstances existing at the time of the chargeable event shall be taken into account. Any subsequent changes to the use of the service received shall not affect the determination of the place of supply, provided there is no abusive practice.

#### *Subsection 5*

### ***Supply of services governed by the general rules***

#### *Article 26*

A transaction whereby a body assigns television broadcasting rights in respect of football matches to taxable persons, shall be covered by Article 44 of Directive 2006/112/EC.

#### *Article 27*

The supply of services which consist in applying for or receiving refunds of VAT under Council Directive 2008/9/EC of 12 February 2008 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<sup>(3)</sup> shall be covered by Article 44 of Directive 2006/112/EC.

#### *Article 28*

In so far as they constitute a single service, the supply of services made in the framework of organising a funeral shall fall within the scope of Articles 44 and 45 of Directive 2006/112/EC.

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### *Article 29*

Without prejudice to Article 41 of this Regulation, the supply of services of translation of texts shall fall within the scope of Articles 44 and 45 of Directive 2006/112/EC.

### *Subsection 6*

#### ***Supply of services by intermediaries***

### *Article 30*

The supply of services of intermediaries as referred to in Article 46 of Directive 2006/112/EC shall cover the services of intermediaries acting in the name and on behalf of the recipient of the service procured and the services performed by intermediaries acting in the name and on behalf of the provider of the services procured.

### *Article 31*

Services supplied by intermediaries acting in the name and on behalf of another person consisting of the intermediation in the provision of accommodation in the hotel sector or in sectors having a similar function shall fall within the scope of:

- (a) Article 44 of Directive 2006/112/EC if supplied to a taxable person acting as such, or a non-taxable legal person deemed to be a taxable person;
- (b) Article 46 of that Directive, if supplied to a non-taxable person.

### *Subsection 7*

#### ***Supply of cultural, artistic, sporting, scientific, educational, entertainment, and similar services***

### *Article 32*

1 Services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events as referred to in Article 53 of Directive 2006/112/EC shall include the supply of services of which the essential characteristics are the granting of the right of admission to an event in exchange for a ticket or payment, including payment in the form of a subscription, a season ticket or a periodic fee.

2 Paragraph 1 shall apply in particular to:

- a the right of admission to shows, theatrical performances, circus performances, fairs, amusement parks, concerts, exhibitions, and other similar cultural events;
- b the right of admission to sporting events such as matches or competitions;
- c the right of admission to educational and scientific events such as conferences and seminars.

3 Paragraph 1 shall not cover the use of facilities such as gymnastics halls and suchlike, in exchange for the payment of a fee.

### *Article 33*

The ancillary services referred to in Article 53 of Directive 2006/112/EC shall include services which are directly related to admission to cultural, artistic, sporting, scientific,

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educational, entertainment or similar events and which are supplied separately for a consideration to a person attending an event.

Such ancillary services shall include in particular the use of cloakrooms or sanitary facilities but shall not include mere intermediary services relating to the sale of tickets.

#### *Subsection 8*

### ***Supply of ancillary transport services and valuations of and work on movable property***

#### *Article 34*

Except where the goods being assembled become part of immovable property, the place of the supply of services to a non-taxable person consisting only of the assembly by a taxable person of the various parts of a machine, all of which were provided to him by his customer, shall be established in accordance with Article 54 of Directive 2006/112/EC.

#### *Subsection 9*

### ***Supply of restaurant and catering services on board means of transport***

#### *Article 35*

The section of a passenger transport operation effected within the Community as referred to in Article 57 of Directive 2006/112/EC shall be determined by the journey of the means of transport and not by the journey completed by each of the passengers.

#### *Article 36*

Where restaurant services and catering services are supplied during the section of a passenger transport operation effected within the Community, that supply shall be covered by Article 57 of Directive 2006/112/EC.

Where restaurant services and catering services are supplied outside such a section but on the territory of a Member State or a third country or third territory, that supply shall be covered by Article 55 of that Directive.

#### *Article 37*

The place of supply of a restaurant service or catering service carried out within the Community partly during a section of a passenger transport operation effected within the Community, and partly outside such a section but on the territory of a Member State, shall be determined in its entirety according to the rules for determining the place of supply applicable at the beginning of the supply of the restaurant or catering service.

#### *Subsection 10*

### ***Hiring of means of transport***

#### *Article 38*

1 'Means of transport' as referred to in Article 56 and point (g) of the first paragraph of Article 59 of Directive 2006/112/EC shall include vehicles, whether motorised or not, and other equipment and devices designed to transport persons or objects from one place to another,

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which might be pulled, drawn or pushed by vehicles and which are normally designed to be used and actually capable of being used for transport.

2 The means of transport referred to in paragraph 1 shall include, in particular, the following vehicles:

- a land vehicles, such as cars, motor cycles, bicycles, tricycles and caravans;
- b trailers and semi-trailers;
- c railway wagons;
- d vessels;
- e aircraft;
- f vehicles specifically designed for the transport of sick or injured persons;
- g agricultural tractors and other agricultural vehicles;
- h mechanically or electronically propelled invalid carriages.

3 Vehicles which are permanently immobilised and containers shall not be considered to be means of transport as referred to in paragraph 1.

#### *Article 39*

1 For the application of Article 56 of Directive 2006/112/EC, the duration of the continuous possession or use of a means of transport which is the subject of hiring shall be determined on the basis of the contract between the parties involved.

The contract shall serve as a presumption which may be rebutted by any means in fact or law in order to establish the actual duration of the continuous possession or use.

The fact that the contractual period of short-term hiring within the meaning of Article 56 of Directive 2006/112/EC is exceeded on grounds of force majeure shall have no bearing on the determination of the duration of the continuous possession or use of the means of transport.

2 Where hiring of one and the same means of transport is covered by consecutive contracts between the same parties, the duration shall be that of the continuous possession or use of the means of transport provided for under the contracts as a whole.

For the purposes of the first subparagraph a contract and its extensions shall be consecutive contracts.

However, the duration of the short-term hire contract or contracts preceding a contract which is regarded as long-term shall not be called into question provided there is no abusive practice.

3 Unless there is abusive practice, consecutive contracts between the same parties for different means of transport shall not be considered to be consecutive contracts for the purposes of paragraph 2.

#### *Article 40*

The place where the means of transport is actually put at the disposal of the customer as referred to in Article 56(1) of Directive 2006/112/EC, shall be the place where the customer or a third party acting on his behalf takes physical possession of it.

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### *Subsection 11*

## ***Supply of services to non-taxable persons outside the Community***

### *Article 41*

The supply of services of translation of texts to a non-taxable person established outside the Community shall be covered by point (c) of the first paragraph of Article 59 of Directive 2006/112/EC.

## CHAPTER VI

### TAXABLE AMOUNT

#### (TITLE VII OF DIRECTIVE 2006/112/EC)

### *Article 42*

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 Articles 73 to 80 of Directive 2006/112/EC.

## CHAPTER VII

### RATES

### *Article 43*

‘Provision of holiday accommodation’ as referred to in point (12) of Annex III to Directive 2006/112/EC shall include the hiring out of tents, caravans or mobile homes installed on camping sites and used as accommodation.

## CHAPTER VIII

### EXEMPTIONS

#### SECTION 1

### ***Exemptions for certain activities in the public interest***

#### ***(Articles 132, 133 and 134 of Directive 2006/112/EC)***

### *Article 44*

Vocational training or retraining services provided under the conditions set out in point (i) of Article 132(1) of Directive 2006/112/EC shall include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating

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knowledge for vocational purposes. The duration of a vocational training or retraining course shall be irrelevant for this purpose.

## SECTION 2

### **Exemptions for other activities**

**(Articles 135, 136 and 137 of Directive 2006/112/EC)**

#### *Article 45*

The exemption provided for in point (e) of Article 135(1) of Directive 2006/112/EC shall not apply to platinum nobles.

## SECTION 3

### **Exemptions on importation**

**(Articles 143, 144 and 145 of Directive 2006/112/EC)**

#### *Article 46*

The exemption provided for in Article 144 of Directive 2006/112/EC shall apply to transport services connected with the importation of movable property carried out as part of a change of residence.

## SECTION 4

### **Exemptions on exportation**

**(Articles 146 and 147 of Directive 2006/112/EC)**

#### *Article 47*

‘Means of transport for private use’ as referred to in point (b) of Article 146(1) of Directive 2006/112/EC 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 13 of that Directive and associations.

#### *Article 48*

In order to determine whether, as a condition for the exemption of the supply of goods carried in the personal luggage of travellers, the threshold set by a Member State in accordance with point (c) of the first subparagraph of Article 147(1) of Directive 2006/112/EC 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.

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## SECTION 5

### ***Exemptions relating to certain transactions treated as exports***

#### ***(Articles 151 and 152 of Directive 2006/112/EC)***

##### *Article 49*

The exemption provided for in Article 151 of Directive 2006/112/EC shall also apply to electronic services where these are provided by a taxable person to whom the special scheme for electronically supplied services provided for in Articles 357 to 369 of that Directive applies.

##### *Article 50*

1 In order to qualify for recognition as an international body for the application of point (g) of Article 143(1) and point (b) of the first subparagraph of Article 151(1) of Directive 2006/112/EC a body which is to be set up as a European Research Infrastructure Consortium (ERIC), as referred to in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)<sup>(4)</sup> shall fulfil all of the following conditions:

- a it shall have a distinct legal personality and full legal capacity;
- b it shall be set up under and shall be subject to European Union law;
- c its membership shall include Member States and, where appropriate, third countries and inter-governmental organisations, but exclude private bodies;
- d it shall have specific and legitimate objectives that are jointly pursued and essentially non-economic in nature.

2 The exemption provided for in point (g) of Article 143(1) and point (b) of the first subparagraph of Article 151(1) of Directive 2006/112/EC shall apply to an ERIC referred to in paragraph 1 where it is recognised as an international body by the host Member State.

The limits and conditions of such an exemption shall be laid down by agreement between the members of the ERIC in accordance with point (d) of Article 5(1) of Regulation (EC) No 723/2009. Where the goods are not dispatched or transported out of the Member State in which the supply takes place, and in the case of services, the exemption may be granted by means of a refund of the VAT in accordance with Article 151(2) of Directive 2006/112/EC.

##### *Article 51*

1 Where the recipient of a supply of goods or services is established within the Community but not in the Member State in which the supply takes place, the VAT and/or excise duty exemption certificate set out in Annex II to this Regulation shall, subject to the explanatory notes set out in the Annex to that certificate, serve to confirm that the transaction qualifies for the exemption under Article 151 of Directive 2006/112/EC.

When making use of that certificate, the Member State in which the recipient of the supply of goods or services is established may decide to use either a common VAT and excise duty exemption certificate or two separate certificates.

2 The certificate referred to in paragraph 1 shall be stamped by the competent authorities of the host Member State. However, if the goods or services are intended for official use, Member States may dispense the recipient from the requirement to have the certificate stamped

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under such conditions as they may lay down. This dispensation may be withdrawn in the case of abuse.

Member States shall inform the Commission of the contact point designated to identify the services responsible for stamping the certificate and the extent to which they dispense with the requirement to have the certificate stamped. The Commission shall inform the other Member States of the information received from Member States.

3 Where direct exemption is applied in the Member State in which the supply takes place, the supplier shall obtain the certificate referred to in paragraph 1 of this Article from the recipient of the goods or services and retain it as part of his records. If the exemption is granted by means of a refund of the VAT, pursuant to Article 151(2) of Directive 2006/112/EC, the certificate shall be attached to the request for refund submitted to the Member State concerned.

## CHAPTER IX

### DEDUCTIONS

#### (TITLE X OF DIRECTIVE 2006/112/EC)

##### *Article 52*

Where the Member State of importation has introduced an electronic system for completing customs formalities, the term ‘import document’ in point (e) of Article 178 of Directive 2006/112/EC shall cover electronic versions of such documents, provided that they allow for the exercise of the right of deduction to be checked.

## CHAPTER X

### OBLIGATIONS OF TAXABLE PERSONS AND CERTAIN NON-TAXABLE PERSONS

#### (TITLE XI OF DIRECTIVE 2006/112/EC)

##### *SECTION 1*

##### *Persons liable to pay the VAT*

##### *(Articles 192a to 205 of Directive 2006/112/EC)*

##### *Article 53*

1 For the application of Article 192a of Directive 2006/112/EC, a fixed establishment of the taxable person shall be taken into consideration only when it is characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to make the supply of goods or services in which it intervenes.

2 Where a taxable person has a fixed establishment within the territory of the Member State where the VAT is due, that establishment shall be considered as not intervening in the supply of goods or services within the meaning of point (b) of Article 192a of Directive 2006/112/EC, unless the technical and human resources of that fixed establishment are used by



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him for transactions inherent in the fulfilment of the taxable supply of those goods or services made within that Member State, before or during this fulfilment.

Where the resources of the fixed establishment are only used for administrative support tasks such as accounting, invoicing and collection of debt-claims, they shall not be regarded as being used for the fulfilment of the supply of goods or services.

However, if an invoice is issued under the VAT identification number attributed by the Member State of the fixed establishment, that fixed establishment shall be regarded as having intervened in the supply of goods or services made in that Member State unless there is proof to the contrary.

#### *Article 54*

Where a taxable person has established his place of business within the territory of the Member State where the VAT is due, Article 192a of Directive 2006/112/EC shall not apply whether or not that place of business intervenes in the supply of goods or services he makes within that Member State.

### *SECTION 2*

#### *Miscellaneous provisions*

#### *(Articles 272 and 273 of Directive 2006/112/EC)*

#### *Article 55*

For the transactions referred to in Article 262 of Directive 2006/112/EC, taxable persons to whom a VAT identification number has been attributed in accordance with Article 214 of that Directive and non-taxable legal persons identified for VAT purposes shall be required, when acting as such, to communicate their VAT identification number forthwith to those supplying goods and services to them.

The taxable persons referred to in point (b) of Article 3(1) of Directive 2006/112/EC, who are entitled to non-taxation of their intra-Community acquisitions of goods in accordance with the first paragraph of Article 4 of this Regulation, shall not be required to communicate their VAT identification number to those supplying goods to them when a VAT identification number has been attributed to them in accordance with Article 214(1)(d) or (e) of that Directive.

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## CHAPTER XI

### SPECIAL SCHEMES

#### SECTION 1

##### *Special scheme for investment gold*

*(Articles 344 to 356 of Directive 2006/112/EC)*

##### *Article 56*

‘Weights accepted by the bullion markets’ as referred to in point (1) of Article 344(1) of Directive 2006/112/EC shall at least cover the units and the weights traded as set out in Annex III to this Regulation.

##### *Article 57*

For the purposes of establishing the list of gold coins referred to in Article 345 of Directive 2006/112/EC, ‘price’ and ‘open market value’ as referred to in point (2) of Article 344(1) of that Directive 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.

#### SECTION 2

##### *Special scheme for non-established taxable persons supplying electronic services to non-taxable persons*

*(Articles 357 to 369 of Directive 2006/112/EC)*

##### *Article 58*

Where, in the course of a calendar quarter, a non-established taxable person using the special scheme for electronically supplied services provided for in Articles 357 to 369 of Directive 2006/112/EC meets at least one of the criteria for exclusion laid down in Article 363 of that Directive, 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 services supplied electronically prior to exclusion but during the calendar quarter in which exclusion occurs, the non-established taxable person shall submit a VAT return for the entire quarter in accordance with Article 364 of Directive 2006/112/EC. The requirement to submit this return shall have no effect on the requirement, if any, to be identified for VAT purposes in a Member State under the normal rules.

##### *Article 59*

Any return period (calendar quarter) within the meaning of Article 364 of Directive 2006/112/EC shall be a separate return period.

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#### *Article 60*

Once a VAT return has been submitted as provided for under Article 364 of Directive 2006/112/EC, 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.

#### *Article 61*

Amounts on VAT returns made under the special scheme for electronically supplied services provided for in Articles 357 to 369 of Directive 2006/112/EC shall not be rounded up or down to the nearest whole monetary unit. The exact amount of VAT shall be reported and remitted.

#### *Article 62*

A Member State of identification which receives a payment in excess of that resulting from the VAT return submitted for electronically supplied services under Article 364 of Directive 2006/112/EC shall reimburse the overpaid amount directly to the taxable person concerned.

Where the Member State of identification has received an amount pursuant to a VAT 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.

#### *Article 63*

Amounts of VAT paid under Article 367 of Directive 2006/112/EC shall be specific to the VAT return submitted pursuant to Article 364 of that Directive. 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.

## CHAPTER XII

### FINAL PROVISIONS

#### *Article 64*

Regulation (EC) No 1777/2005 is hereby repealed.

References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV.

#### *Article 65*

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 July 2011.

However:

- point (a) of Article 3, point (b) of Article 11(2), Article 23(1) and Article 24(1) shall apply from 1 January 2013,
- point (b) of Article 3 shall apply from 1 January 2015,

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— point (c) of Article 11(2) shall apply until 31 December 2014.

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

Done at Brussels, 15 March 2011.

*For the Council*

*The President*

MATOLCSY Gy.

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- (1) OJ L 268, 12.10.2010, p. 1.
- (2) OJ L 326, 21.11.1986, p. 40.
- (3) OJ L 44, 20.2.2008, p. 23.
- (4) OJ L 206, 8.8.2009, p. 1.

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