

Council Directive 2008/8/EC of 12 February 2008 amending
Directive 2006/112/EC as regards the place of supply of services

COUNCIL DIRECTIVE 2008/8/EC

of 12 February 2008

amending Directive 2006/112/EC as regards the place of supply of services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Whereas:

- (1) The realisation of the internal market, globalisation, deregulation and technology change have all combined to create enormous changes in the volume and pattern of trade in services. It is increasingly possible for a number of services to be supplied at a distance. In response, piece-meal steps have been taken to address this over the years and many defined services are in fact at present taxed on the basis of the destination principle.
- (2) The proper functioning of the internal market requires the amendment of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁽³⁾ as regards the place of supply of services, following the Commission's strategy of modernisation and simplification of the operation of the common VAT system.
- (3) For all supplies of services the place of taxation should, in principle, be the place where the actual consumption takes place. If the general rule for the place of supply of services were to be altered in this way, certain exceptions to this general rule would still be necessary for both administrative and policy reasons.
- (4) For supplies of services to taxable persons, the general rule with respect to the place of supply of services should be based on the place where the recipient is established, rather than where the supplier is established. For the purposes of rules determining the place of supply of services and to minimise burdens on business, taxable persons who also have non-taxable activities should be treated as taxable for all services rendered to them. Similarly, non-taxable legal persons who are identified for VAT purposes should be regarded as taxable persons. These provisions, in accordance with normal rules, should not extend to supplies of services received by a taxable person for his own personal use or that of his staff.

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- (5) Where services are supplied to non-taxable persons, the general rule should continue to be that the place of supply of services is the place where the supplier has established his business.
- (6) In certain circumstances, the general rules as regards the place of supply of services for both taxable and non-taxable persons are not applicable and specified exclusions should apply instead. These exclusions should be largely based on existing criteria and reflect the principle of taxation at the place of consumption, while not imposing disproportionate administrative burdens upon certain traders.
- (7) Where a taxable person receives services from a person not established in the same Member State, the reverse charge mechanism should be obligatory in certain cases, meaning that the taxable person should self-assess the appropriate amount of VAT on the acquired service.
- (8) To simplify the obligations on businesses engaging in activities in Member States where they are not established, a scheme should be set up enabling them to have a single point of electronic contact for VAT identification and declaration. Until such a scheme is established, use should be made of the scheme introduced to facilitate compliance with fiscal obligations by taxable persons not established within the Community.
- (9) In order to further the correct application of this Directive every taxable person identified for VAT purposes should submit a recapitulative statement of the taxable persons and the non-taxable legal persons identified for VAT purposes to whom he has supplied taxable services which fall under the reverse charge mechanism.
- (10) Some of the changes made to the place of supply of services could have a considerable impact on the budget of Member States. To ensure a smooth transition these changes should be introduced over time.
- (11) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽⁴⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (12) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

From 1 January 2009, Directive 2006/112/EC is hereby amended as follows:

1. in Article 56, paragraph 3 shall be replaced by the following:
3. Points (j) and (k) of paragraph 1 and paragraph 2 shall apply until 31 December 2009.;
2. in Article 57, paragraph 2 shall be replaced by the following:
2. Paragraph 1 shall apply until 31 December 2009.;
3. in Article 59, paragraph 2 shall be replaced by the following:

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2. Until 31 December 2009, Member States shall apply Article 58(b) to radio and television broadcasting services, as referred to in Article 56(1)(j), supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or who has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.;

4. Article 357 shall be replaced by the following:
Article 357

This Chapter shall apply until 31 December 2014..

Article 2

From 1 January 2010, Directive 2006/112/EC is hereby amended as follows:

1. Chapter 3 of Title V shall be replaced by the following:

CHAPTER 3

Place of supply of services

Section 1

Definitions

Article 43

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

1. a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2(1) shall be regarded as a taxable person in respect of all services rendered to him;
2. a non-taxable legal person who is identified for VAT purposes shall be regarded as a taxable person.

Section 2

General rules

Article 44

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

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Article 45

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

Section 3

Particular provisions

Subsection 1

Supply of services by intermediaries

Article 46

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

Subsection 2

Supply of services connected with immovable property

Article 47

The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.

Subsection 3

Supply of transport

Article 48

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

Article 49

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

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Article 50

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

Article 51

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

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

Article 52

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

Subsection 4

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

Article 53

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

Article 54

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

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

Subsection 5

Supply of restaurant and catering services

Article 55

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

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Subsection 6

Hiring of means of transport

Article 56

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

2 For the purposes of paragraph 1, “short-term” shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days.

Subsection 7

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

Article 57

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

2 For the purposes of paragraph 1, “section of a passenger transport operation effected within the Community” shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

“Point of departure of a passenger transport operation” shall mean the first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community.

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

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

Subsection 8

Supply of electronic services to non-taxable persons

Article 58

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

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resides outside the Community, shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

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

Subsection 9

Supply of services to non-taxable persons outside the Community

Article 59

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

- (a) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- (b) advertising services;
- (c) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- (d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this Article;
- (e) banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- (f) the supply of staff;
- (g) the hiring out of movable tangible property, with the exception of all means of transport;
- (h) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- (i) telecommunications services;
- (j) radio and television broadcasting services;
- (k) electronically supplied services, in particular those referred to in Annex II.

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

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Subsection 10

Prevention of double taxation or non-taxation

Article 59a

In order to prevent double taxation, non-taxation or distortion of competition, Member States may, with regard to services the place of supply of which is governed by Articles 44, 45, 56 and 59:

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

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

Article 59b

Member States shall apply Article 59a(b) to telecommunications services and radio and television broadcasting services, as referred to in point (j) of the first paragraph of Article 59, supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.;

- 2. in Article 98(2), the second subparagraph shall be replaced by the following:

The reduced rates shall not apply to electronically supplied services.;

- 3. the introductory sentence of Article 170 shall be replaced by the following:

All taxable persons who, within the meaning of Article 1 of Directive 86/560/EEC⁽⁵⁾, Article 2(1) and Article 3 of Directive 2008/9/EC⁽⁶⁾ and Article 171 of this Directive, are not established in the Member State in which they purchase goods and services or import goods subject to VAT shall be entitled to obtain a refund of that VAT insofar as the goods and services are used for the purposes of the following.;

- 4. Article 171 shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

1. VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9/EC.;

- (b) paragraph 3 shall be replaced by the following:

3. Directive 86/560/EEC shall not apply to:

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- a amounts of VAT which according to the legislation of the Member State of refund have been incorrectly invoiced;
- b invoiced amounts of VAT in respect of supplies of goods the supply of which is, or may be, exempt pursuant to Article 138 or Article 146(1)(b).;

5. the following Article 171a shall be inserted:

Article 171a

Member States may, instead of granting a refund of VAT pursuant to Directives 86/560/EEC or 2008/9/EC on those supplies of goods or services to a taxable person in respect of which the taxable person is liable to pay the tax in accordance with Articles 194 to 197 or Article 199, allow deduction of this tax pursuant to the procedure laid down in Article 168. The existing restrictions pursuant to Article 2(2) and Article 4(2) of Directive 86/560/EEC may be retained.

To that end, Member States may exclude the taxable person who is liable to pay the tax from the refund procedure pursuant to Directives 86/560/EEC or 2008/9/EC.;

6. in Section 1 of Chapter 1 of Title XI, the following Article 192a shall be inserted:

Article 192a

For the purposes of this Section, a taxable person who has a fixed establishment within the territory of the Member State where the tax is due shall be regarded as a taxable person who is not established within that Member State when the following conditions are met:

- (a) he makes a taxable supply of goods or of services within the territory of that Member State;
- (b) an establishment which the supplier has within the territory of that Member State does not intervene in that supply.;

7. Article 196 shall be replaced by the following:

Article 196

VAT shall be payable by any taxable person, or non-taxable legal person identified for VAT purposes, to whom the services referred to in Article 44 are supplied, if the services are supplied by a taxable person not established within the territory of the Member State.;

8. in Article 214, the following points shall be added:

- (d) every taxable person who within their respective territory receives services for which he is liable to pay VAT pursuant to Article 196;
- (e) every taxable person, established within their respective territory, who supplies services within the territory of another Member State for which VAT is payable solely by the recipient pursuant to Article 196.;

9. Article 262 shall be replaced by the following:

Article 262

Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:

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- (a) the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and (2)(c);
 - (b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions referred to in Article 42;
 - (c) the taxable persons, and the non-taxable legal persons identified for VAT purposes, to whom he has supplied services, other than services that are exempted from VAT in the Member State where the transaction is taxable, and for which the recipient is liable to pay the tax pursuant to Article 196.;
10. in Article 264, paragraph 1 shall be amended as follows:
- (a) points (a) and (b) shall be replaced by the following:
 - (a) the VAT identification number of the taxable person in the Member State in which the recapitulative statement must be submitted and under which he has carried out the supply of goods in accordance with the conditions specified in Article 138(1) and under which he effected taxable supplies of services in accordance with the conditions laid down in Article 44;
 - (b) the VAT identification number of the person acquiring the goods or receiving the services in a Member State other than that in which the recapitulative statement must be submitted and under which the goods or services were supplied to him;;
 - (b) point (d) shall be replaced by the following:
 - (d) for each person who acquired goods or received services, the total value of the supplies of goods and the total value of the supplies of services carried out by the taxable person;;
11. Article 358 shall be amended as follows:
- (a) point (2) shall be replaced by the following:
 - (2) “electronic services” and “electronically supplied services” mean the services referred to in point (k) of the first paragraph of Article 59;;
 - (b) point (4) shall be replaced by the following:
 - (4) “Member State of consumption” means the Member State in which, pursuant to Article 58, the supply of the electronic services is deemed to take place;;
12. in Annex II, the heading shall be replaced by the following:
INDICATIVE LIST OF THE ELECTRONICALLY SUPPLIED SERVICES REFERRED TO IN ARTICLE 58 AND POINT (K) OF THE FIRST PARAGRAPH OF ARTICLE 59.

Article 3

From 1 January 2011, Articles 53 and 54 of Directive 2006/112/EC shall be replaced by the following:

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Article 53

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

Article 54

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

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

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

Article 4

From 1 January 2013, Article 56(2) of Directive 2006/112/EC shall be replaced by the following:

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

However, the place of hiring a pleasure boat to a non-taxable person, other than short-term hiring, shall be the place where the pleasure boat is actually put at the disposal of the customer, where this service is actually provided by the supplier from his place of business or a fixed establishment situated in that place.

3 For the purposes of paragraphs 1 and 2, “short-term” shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than 90 days..

Article 5

From 1 January 2015, Directive 2006/112/EC is hereby amended as follows:

1. in Section 3 of Chapter 3 of Title V, Subsection 8 shall be replaced by the following:

Subsection 8

Supply of telecommunications, broadcasting and electronic services to non-taxable persons

Article 58

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

- (a) telecommunications services;
- (b) radio and television broadcasting services;
- (c) electronically supplied services, in particular those referred to in Annex II.

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

2. in Article 59, points (i), (j) and (k) of the first paragraph and the second paragraph shall be deleted;
3. Article 59a shall be replaced by the following:

Article 59a

In order to prevent double taxation, non-taxation or distortion of competition, Member States may, with regard to services the place of supply of which is governed by Articles 44, 45, 56, 58 and 59:

- (a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community if the effective use and enjoyment of the services takes place outside the Community;
 - (b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.;
4. Article 59b shall be deleted;
 5. in Article 204(1), the third subparagraph shall be replaced by the following:

However, Member States may not apply the option referred to in the second subparagraph to a taxable person not established within the Community, within the meaning of point (1) of Article 358a, who has opted for the special scheme for telecommunications, broadcasting or electronic services.;

6. in Title XII, the heading of Chapter 6 shall be replaced by the following:
Special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.;
7. Article 357 shall be deleted;
8. Article 358 shall be replaced by the following:

Article 358

For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

1. “telecommunications services” and “broadcasting services” mean the services referred to in points (a) and (b) of the first paragraph of Article 58;
 2. “electronic services” and “electronically supplied services” mean the services referred to in point (c) of the first paragraph of Article 58;
 3. “Member State of consumption” means the Member State in which the supply of the telecommunications, broadcasting or electronic services is deemed to take place according to Article 58;
 4. “VAT return” means the statement containing the information necessary to establish the amount of VAT due in each Member State.;
9. in Chapter 6 of Title XII, the heading of Section 2 shall be replaced by the following:
Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons not established within the Community;

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10. in Section 2 of Chapter 6 of Title XII, the following Article shall be inserted:

Article 358a

For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply:

1. “taxable person not established within the Community” means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there and who is not otherwise required to be identified for VAT purposes;
2. “Member State of identification” means the Member State which the taxable person not established within the Community chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Section.;

11. Articles 359 to 365 shall be replaced by the following:

Article 359

Member States shall permit any taxable person not established within the Community supplying telecommunications, broadcasting or electronic services to a non-taxable person who is established in a Member State or has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all those services supplied within the Community.

Article 360

The taxable person not established within the Community shall state to the Member State of identification when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

Article 361

- 1 The information which the taxable person not established within the Community must provide to the Member State of identification when he commences a taxable activity shall contain the following details:

- a name;
- b postal address;
- c electronic addresses, including websites;
- d national tax number, if any;
- e a statement that the person is not identified for VAT purposes within the Community.

- 2 The taxable person not established within in the Community shall notify the Member State of identification of any changes in the information provided.

Article 362

The Member State of identification shall allocate to the taxable person not established within the Community an individual VAT identification number and shall notify him of that number by electronic means. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

Article 363

The Member State of identification shall delete the taxable person not established within the Community from the identification register in the following cases:

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- (a) if he notifies that Member State that he no longer supplies telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

Article 364

The taxable person not established within the Community shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

Article 365

The VAT return shall show the identification number and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting and electronic services carried out during the tax period and total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.;

12. Article 366(1) shall be replaced by the following:

1. The VAT return shall be made out in euro.

Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the taxable person not established within the Community shall, for the purposes of completing the VAT return, use the exchange rate applying on the last day of the tax period.;

13. Articles 367 and 368 shall be replaced by the following:

Article 367

The taxable person not established within the Community shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.

Article 368

The taxable person not established within the Community making use of this special scheme may not deduct VAT pursuant to Article 168 of this Directive. Notwithstanding Article 1(1) of Directive 86/560/EEC, the taxable person in question shall be refunded in accordance with the said Directive. Articles 2(2) and (3) and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to telecommunications, broadcasting or electronic services covered by this special scheme.;

14. Article 369(1) shall be replaced by the following:

1. The taxable person not established within the Community shall keep records of the transactions covered by this special scheme. Those records must be sufficiently

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detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.;

15. in Chapter 6 of Title XII, the following Section shall be inserted:

Section 3

Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons established within the Community but not in the Member State of consumption

Article 369a

For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply:

1. “taxable person not established in the Member State of consumption” means a taxable person who has established his business in the territory of the Community or has a fixed establishment there but has not established his business and has no fixed establishment within the territory of the Member State of consumption;
2. “Member State of identification” means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.

Article 369b

Member States shall permit any taxable person not established in the Member State of consumption supplying telecommunications, broadcasting or electronic services to a non-taxable person who is established or has his permanent address or usually resides in that Member State, to use this special scheme. This special scheme applies to all those services supplied in the Community.

Article 369c

The taxable person not established in the Member State of consumption shall state to the Member State of identification when he commences and ceases his taxable activities covered by this special scheme, or changes those activities in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

Article 369d

A taxable person making use of this special scheme shall, for the taxable transactions carried out under this scheme, be identified for VAT purposes in the Member State of identification only. For that purpose the Member State shall use the individual VAT identification number already allocated to the taxable person in respect of his obligations under the internal system.

On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

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Article 369e

The Member State of identification shall exclude the taxable person not established in the Member State of consumption from this special scheme in any of the following cases:

- (a) if he notifies that he no longer supplies telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities covered by this special scheme have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

Article 369f

The taxable person not established in the Member State of consumption shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

Article 369g

The VAT return shall show the identification number referred to in Article 369d and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting or electronic services carried out during the tax period and the total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.

Where the taxable person has one or more fixed establishments, other than that in the Member State of identification, from which the services are supplied, the VAT return shall in addition to the information referred to in the first paragraph include the total value of supplies of telecommunications, broadcasting or electronic services covered by this special scheme, for each Member State in which he has an establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of consumption.

Article 369h

- 1 The VAT return shall be made out in euro.

Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the taxable person not established in the Member State of consumption shall, for the purposes of completing the VAT return, use the exchange rate applying on the last date of the tax period.

- 2 The conversion shall be made by applying 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.

Article 369i

The taxable person not established in the Member State of consumption shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

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Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.

Article 369j

The taxable person not established in the Member State of consumption making use of this special scheme may not, in respect of his taxable activities covered by this scheme, deduct VAT pursuant to Article 168 of this Directive. Notwithstanding Article 2(1) and Article 3 of Directive 2008/9/EC, the taxable person in question shall be refunded in accordance with the said Directive.

If the taxable person not established in the Member State of consumption making use of this special scheme also carries out in the Member State of consumption activities not covered by this scheme in respect of which he is obliged to be registered for VAT purposes, he shall deduct VAT in respect of his taxable activities which are covered by this scheme in the VAT return to be submitted pursuant to Article 250.

Article 369k

1 The taxable person not established in the Member State of consumption shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

2 The records referred to in paragraph 1 must be made available electronically on request to the Member State of consumption and to the Member State of identification.

Those records must be kept for a period of 10 years from 31 December of the year during which the transaction was carried out.;

16. in Annex II, the heading shall be replaced by the following:
INDICATIVE LIST OF THE ELECTRONICALLY SUPPLIED SERVICES REFERRED TO IN POINT (C) OF THE FIRST PARAGRAPH OF ARTICLE 58.

Article 6

The Commission shall, by 31 December 2014, submit a report on the feasibility of applying efficiently the rule laid down in Article 5 for the supply of telecommunications services, radio and television broadcasting services and electronically supplied services to non-taxable persons and on the question whether that rule still corresponds to the general policy at that time concerning the place of supply of services.

Article 7

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 5 of this Directive from the respective dates provided for in those provisions.

They shall forthwith inform the Commission thereof. When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

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Article 8

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 12 February 2008.

For the Council

The President

A. BAJUK

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- (1) [OJ C 104 E, 30.4.2004, p. 143](#) and opinion delivered on 16 May 2006 (not yet published in the Official Journal).
- (2) [OJ C 117, 30.4.2004, p. 15](#) and [OJ C 195, 18.8.2006, p. 54](#).
- (3) [OJ L 347, 11.12.2006, p. 1](#). Directive as last amended by Directive 2007/75/EC ([OJ L 346, 29.12.2007, p. 13](#)).
- (4) [OJ C 321, 31.12.2003, p. 1](#).
- (5) Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory ([OJ L 326, 21.11.1986, p. 40](#)).
- (6) 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 ([OJ L 44, 20.2.2008, p. 23](#)).’;