

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 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.

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.

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⁽¹⁾;
- 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

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⁽²⁾;
- 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

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

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⁽³⁾ 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.

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,

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,

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.

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.

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

- (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.