Council of European Union: Rules for Taxation of Electronic Services

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On 7 May 2002, the Council of the European Union updated the existing rules on taxation of e-commerce services and adopted two new regulations on the application of value added taxes (VAT) on services that are delivered over electronic networks, including e-commerce services, commercial radio and broadcasting services (e.g. pay-per-view, Pay-TV and other subscription-based services) as well as other electronically supplied services: Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services and Council Regulation (EC) No. 792/2002 of 7 May 2002 amending temporarily Regulation (EEC) No. 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce.

The goal of the amendments is to remove anti-competitive disadvantages for suppliers of electronic services within and outside the European Union. The existing system caused distortions in competition, as the existing VAT regime would tax electronic services irrespective of the place of consumption. As a consequence, services originating within the EU would be subject to taxes, even if the service itself were consumed outside the EU. Vice versa, services from outside the EU were not taxed even when delivered to consumers within the EU. The new framework translates the principles that were agreed within the international framework of the Organisation for Economic Co-operation and Development (OECD), and that established that electronically delivered services should be taxed in the jurisdiction where the consumption takes place.

The amendments concern, in the first place, the taxation of Business to Consumer (B2C) transactions, i.e., electronic services that are supplied to private consumers. According to the new framework, electronic services consumed by customers established in the EU are taxed in the EU and are not taxed if consumed outside the Internal Market. For service providers from outside the EU, this means that for the first time, they will have to charge VAT on electronic services that are provided to private consumers. They shall do so in the framework of a so-called "Special scheme for electronically supplied services" (Article 1, Section B of Directive 2002/38). Non-EU suppliers are required to register with a national tax authority in a Member State of their choice ("Member

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State of identification"). In the course of the registration process, service providers have to provide identification information such as the name, postal address, electronic address, including websites, national tax numbers and a statement that the person is not identified for value added tax purposes within the EU. Registered nonEU suppliers shall submit to the national tax authority a value added tax return (in Euros) for each calendar quarter (irrespective of whether or not electronic services have been supplied), together with the information on the State in which the tax has become due (i.e., where the service has been actually consumed - "Member State of consumption"), the total value, less value added tax, the total amount of the corresponding tax, the applicable tax rates, etc. Apart from that, non-EU service providers must keep records of the electronic transactions for a period of 10 years, in order to enable the national tax administration of the Member State of consumption to determine whether the value of tax return is correct. The State of identification will then re-allocate the VAT revenue to the State of consumption. All communications and transactions between the non-EU supplier, the State of consumption and the State of identification shall be made electronically. Member States are required to ensure that the necessary communication and information exchange systems are operational on 1 July 2003. On this date, the laws, regulations and administrative provisions that are necessary to comply with the new regulations must also enter into force.

The provisions on the special schedule shall apply for a temporary period of three years, starting from 1 July 2003, that may be extended and should be reviewed, on the basis of practical experience, within three years of the same date. On the other hand, the provisions and measures concerning the introduction of electronic tax returns and statements should be adopted on a permanent basis.

Council Regulation (EC) No. 792/2002 of 7 May 2002 amending temporarily Regulation (EEC) No 128/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce, Official Journal of the European Communities L 128/1, 15 May 2002

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002R0792:EN:HTML

Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, Official Journal of the European Communities L 128/41, 15 May 2002

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0038:EN:HTML

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