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AMD 1**

**LIMITE**

**FISC 15**

**NOTE**

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from: Presidency

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to: Working Party on Tax Questions – Indirect Taxation (VAT)

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No. Cion prop.: 5985/09 FISC 13 - COM(2009) 21 final

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Subject: Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

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In the light of discussions held by Fiscal Attachés on 23 February 2010, delegations will find in Annex amendments to doc. 6597/10 FISC 15.

The following points are amended as follows:

**Recitals**

**(11) Invoices should reflect actual supplies. Business control processes should create clear audit trails between invoices and supplies.**

**(11 bis) E-invoicing can help businesses to reduce costs and be more competitive. It may also facilitate the establishment of clear audit trails between invoices and supplies. Use of EDI and advanced digital signatures are two mechanisms which can be used to ensure that e-invoices are authentic and integer but by themselves cannot ensure that e-invoices reflect actual supplies. Their use should not be mandatory.**

**Article 1**

(2) In Article 64, paragraphs ~~1 and 2~~ **are is** replaced by the following:

~~“1. Where it gives rise to successive statements of account or successive payments, the supply of goods, other than that consisting in the hire of goods for a certain period or the sale of goods on deferred terms, as referred to in point (b) of Article 14(2), or the supply of services shall be regarded as being completed on expiry of the periods to which such statements of account or payments relate.~~

2. Continuous supplies of goods over a period of more than one **calendar** month which are dispatched or transported to a Member State other than that in which the dispatch or transport of those goods begins and which are supplied VAT-exempt or which are transferred VAT-exempt to another Member State by a taxable person for the purposes of his business, in accordance with the conditions laid down in Article 138, shall be regarded as being completed on expiry of each calendar month until such time as the supply comes to an end.

Supplies of services for which VAT is payable by the customer pursuant to Article 196, which are supplied continuously over a period of more than one year and which do not give rise to statements of account or payments during that period, shall be regarded as being completed on expiry of each calendar year until such time as the supply of services comes to an end.

Member States may provide that, in certain cases other than those referred to in the first and second subparagraphs, the continuous supply of goods or services over a period of time is to be regarded as being completed at least at intervals of one year.”

*Paragraph 1 has not changed from than in force.*

*The word calendar month is used twice in the same paragraph.*

(4) Article 67 is replaced by the following:

“~~Without prejudice to~~ **By way of derogation from** Article 63, where, in accordance with the conditions laid down in Article 138, goods dispatched or transported to a Member State other than that in which dispatch or transport of the goods begins are supplied VAT-exempt or where goods are transferred VAT-exempt to another Member State by a taxable person for the purposes of his business, VAT shall become chargeable on issue of the invoice, if that invoice is issued before expiration of the time limit referred to in Article 222, first paragraph, but after the ~~supply of goods~~ **chargeable event** occurs.

Where ~~the no~~ invoice is ~~not~~ issued, or **the invoice** is issued late, VAT shall become chargeable on expiration of the date referred to in Article 222, first paragraph.”

*The phrase by way of derogation is the appropriate wording. As with the current article 67, reference should be made to the "chargeable event" which is defined in Article 63 as when the goods are supplied. The change in the second paragraph is made to ensure that the paragraph applies to intracommunity transfers.*

(6) Article 69 is replaced by the following:

“Without prejudice to Article 68, in the case of the intra-Community acquisition of goods, VAT shall become chargeable on issue of the invoice, if that invoice is issued before expiration of the time limit referred to in Article 222, first paragraph, but after the ~~intra-Community acquisition~~ **chargeable event** occurs.

Where ~~the no~~ invoice is ~~not~~ issued, or **the invoice** is issued late, VAT shall become chargeable on expiration of the date referred to in Article 222, first paragraph.”

*As with the current article 69, reference should be made to the "chargeable event" which is defined. See note to article 67.*

(13) Article 218 is replaced by the following:

“Article 218

~~1.~~ For the purposes of this Directive, Member States shall accept documents or messages on paper form or in electronic format as invoices if they meet the conditions laid down in this Chapter and **their** authenticity ~~of their origin~~, ~~the integrity of their content~~ and ~~their~~ legibility are guaranteed **by the taxable person from issuance** until the end of the period of storage.

*The term taxable person is inserted for consistency with articles 220 (obligation to issue an invoice) and 244 (obligation to store an invoice). Article 218 now has only one paragraph and has been aligned with the text proposed for article 233.*

(15) Article 220 is replaced by the following:

“1. Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or **by his customer or**, in his name and on his behalf, by ~~his customer or~~ a third party:

(1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person;

(2) supplies of goods as referred to in Article 33;

(3) supplies of goods carried out in accordance with the conditions specified in Article 138;

(4) any payment on account made to him before one of the supplies of goods referred to in points (1) and (2) was carried out;

(5) any payment on account made to him by another taxable person or non-taxable legal person before the provision of services was completed.

2. By way of ~~exception~~ **derogation to** paragraph 1, **and without prejudice to Article 221(3)**, issuance of an invoice shall not be required in respect of exempt supplies of services [pursuant to points (a) to (g) of Article 135(1).]”

*Drafting improvements.*

*Articles 220(1) and 244 have returned to the text in force. See addition to 224.*

*Article 220(2) One delegation requested that the text in FISC 15 be clarified.*

(16) The following Article 220a is inserted:

“Article 220a

1. Member States shall allow the taxable person to issue a simplified invoice in any of the following cases:

- (a) where the amount of the invoice is EUR 100, or **the equivalent in national currency**, or less;
- (b) where the invoice issued is a document or message treated as an invoice pursuant to Article 219.

2. A simplified invoice ~~according to the first paragraph~~ shall not be permitted by Member States when invoices must be issued pursuant to points (2) and (3) of Article 220 or when the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due and the person liable for the payment of VAT is the person to whom the goods or services are supplied.”

*Articles 220a and 238 have been amended to take account of those Member States in which the EURO is not the national currency.*

*No need to refer to the first paragraph as it is already clear.*

(17) (as regards Article 224):

“Article 224

Invoices may be drawn up by the customer in respect of the supply to him, by a taxable person, of goods or services, if there is a prior agreement between the two parties and provided that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services. **Member State may require that such invoices be issued in the name and on behalf of the taxable person.**”

*See change to 220.1 and 244. The draft now reflects the text in force.*

(18) Article 226 is amended as follows:

(a) The following point (7a) is inserted:

“(7a) where the VAT becomes chargeable at the time when the payment is received according to Article 66 (b), and the Member State does not apply Article 167a.1, the mention “cash accounting”.

(b) The following point (10a) is inserted:

“(10a) where the customer receiving a supply issues the invoice instead of the supplier, the mention “self-billing”.

(c) Point (11) is replaced by the following:

“(11) "In the case of an exemption, one of the following:

a) Where in accordance with the conditions laid down in Article 138, goods dispatched or transported to a Member State other than that in which dispatch or transport of the goods begins are supplied VAT-exempt or where goods are transferred VAT-exempt to another Member State by a taxable person for the purposes of his business the mention "~~Exempt~~ intra-Community supply";

b) Where the supply is exempt pursuant to Articles 146 to 152 the mention "~~Exempt~~ exports";



~~c) Where the supply is exempt without deductibility of the VAT at the preceding stage the mention "Exempt - no right to deduct";~~

~~d) c) The mention "Exempt" in all other cases where the supply is exempt."~~

*Point 11 has been simplified.*

(d) The following point (11a) is inserted:

“(11a) where the customer is liable for the payment of the VAT, the mention “Reverse Charge”.”

(e) Point (13) is replaced by the following:

“(13) where the margin scheme for travel agents is applied, the mention “**Margin scheme - Travel agents** ~~margin scheme~~”.

(f) Point (14) is replaced by the following:

“(14) where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques is applied, the mention “**Margin scheme - Second-hand goods** ~~margin scheme~~”; “**Margin scheme - works of art** ~~margin scheme~~” or “**Margin scheme - collector's items and antiques** ~~margin scheme~~”, as corresponds.

*Points 13 and 14: better that mentions always start with margin scheme and the description after and use hyphens.*

(19) (Only as regards 226b):

“Article 226b

1. Member States shall require at least the following details on simplified invoices issued pursuant to Articles 220a and 221:

- (a) the date of issue;
- (b) identification of the taxable person **supplying the goods or services.**
- (c) identification of the type of goods or services supplied;
- (d) the VAT amount payable or the information needed to calculate it;
- (e) if the invoice issued is a document or message treated as an invoice pursuant to Article 219, specific and unambiguous mention to that invoice and the specific details which are being amended.

2. Member States ~~shall~~ **may** not require more details other than those provided for in Article 226 **and 227.**”

*226.b.1 Consistency with the text in article 226 (3)*

*226.b.2 Consistency with the reintroduction of article 227*

(21) Article 230 is replaced by the following:

**“Article 230**

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of VAT payable or to be ~~credited~~ **adjusted** is expressed in the national currency of the Member State, using the conversion rate mechanism provided for in Article 91.”

*One delegation requested that the term “adjusted” used in article 92, be used.*

(24) (Only as regards article 233):

**“Article 233**

**1. An invoice shall be accepted by Member States provided that the issuer and the recipient of the invoice can establish, by means of appropriate business control processes, an audit trail between an invoice and a supply. The business control processes used shall ensure that invoices are authentic, remain integer and legible from issuance until the end of the storage invoice.**

**“The authenticity of the invoice” shall mean the assurance of the identity of the issuer of the invoice.**

**“The integrity of the content” shall mean that the content required according to this Directive has not been altered.**

**2. Where using electronic invoicing, the following are two examples of electronic procedures which taxable persons may use as part of their business control processes in order to ensure the authenticity and integrity of an electronic invoice.**

a) -by means of an advanced electronic signature within the meaning of point (2) of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, based ~~or not~~ on a qualified certificate and created by a secure signature creation device, within the meaning of points (6) and (10) of Article 2 of Directive 1999/93/EC.

b) -by means of electronic data interchange (EDI), as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange, if the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.

c) ~~by means of other business controls that each trading partner can demonstrate to meet the requirements of paragraph (1) of this Article.~~

(28) Article 238 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. After consulting the VAT Committee, Member States may, in accordance with conditions which they may lay down, provide that in the following cases only the information required under Article 226b need be entered on invoices in respect of supplies of goods or services.

- (a) where the amount of the invoice is above EUR 100 but not higher than EUR 400, **or the equivalent in national currency.**
- (b) where commercial or administrative practice in the business sector concerned or the technical conditions under which the invoices are issued make it particularly difficult to comply with all the obligations referred to in Article 226 or Article 230.”

*See comment to article 220a concerning Member States outside the Euroarea.*

- (b) Paragraph 2 is deleted
- (c) Paragraph 3 is replaced by the following:

“3. The simplified arrangements provided for in paragraph 1 shall not be applied when invoices must be issued pursuant to points (2) and (3) of Article 220(1) or when the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due and the person liable for the payment of VAT is the person to whom the goods or services are supplied.”

- (29) Articles 242 is amended:

“Article 242

“1. Every taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the competent authorities.

[2. **Without prejudice to other rights granted to them by national legislation,** tThe competent authorities of a Member State shall have the right to require the taxable person who has established his business or has a fixed establishment in that Member State, or who is liable to pay tax in the particular Member State, to provide information or documents needed for control purposes.

A “document” may be a written paper document or information which may only be read by electronic means. The competent authorities shall have the right to access and inspect the accounts kept in paper or in electronic form and the taxable person must provide information and explanations on the system used. The taxable person must be able to present the information contained in electronic form in a legible format.” ]

*Delegations were divided as to the usefulness of this provision. The Presidency has redrafted it to make it clearer that it does not in any way restrict the rights of competent authorities under national legislation.*

(31) Article 244 is amended as follows:

“Article 244

Every taxable person required to ensure that an invoice is issued by himself or **by his customer or**, in his name and on his behalf, by ~~his customer or~~ a third party, shall ensure that copies of these invoices are stored.

Every taxable person receiving an invoice shall ensure that the invoice is stored.

For the purposes of this section, the storage of copies of **issued** invoices ~~issued~~ shall be subject to the rules applying in the Member State in which the supply invoiced is deemed to be made. By way of exception, it shall be subject to the rules applying in the Member State where the person required to store the copy of the invoice is established as regards the invoices mentioned in paragraph 2 of article 219a.

The storage of invoices received shall be subject to the rules in the Member State in which the taxable person has established his business. Where the fixed establishment for which the supply is made is in a different Member State to the place of establishment, the rules shall apply in the Member State of the relevant fixed establishment. In the absence of such a place of business or fixed establishment, the rules shall apply in the Member State in which he has his permanent address. Where no permanent address exists the rules shall be applicable in the Member State where he usually resides, or if no such place exists, in the Member State where he is otherwise liable to pay the VAT on the invoice which should be stored.”

*See notes to article 220.1 and 224.*

(33) Article 247 is amended as follows:

“Article 247

1. Each Member State shall determine a period for storage of invoices issued or received which is not shorter than five years and not longer than ten years. However, each Member State may require the taxable person to store invoices relating to the acquisition of capital goods subject to adjustment of deductions in accordance with article 187, **for a period of not more than ten years after expiry of** ~~during~~ the relevant adjustment period ~~plus not more than ten years~~.

2. ~~The~~ Member States may lay down specific conditions prohibiting or restricting the storage of invoices in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2008/55/EC and Regulation (EC) No 1798/2003 or to the right referred to in Article 249 to access by electronic means, to download and to use.

3. In order to ensure that the conditions laid down in Article 218 are met, the Member State referred to in paragraph 1 may require that invoices be stored in the original form in which they were sent or made available, whether paper or electronic. Additionally, in the case of invoices stored by electronic means, the Member State may require that the data guaranteeing the authenticity of the origin of the invoices and the integrity of their content, as provided for in ~~the first paragraph of~~ Article 218, also be stored **by electronic means**.

*Paragraph 1 better drafting.*

*Paragraph 3 Data guaranteeing the authenticity of the origin of invoices stored by electronic means should also be stored by electronic means.*

*Article 218 now has a single paragraph.*



(34) In Section 3 of Chapter 4 of Title XI, the following Article 248a is inserted:

“Article 248a

For control purposes, the Member States in which the tax is due may, for certain taxable persons or certain cases, require invoices to be translated into their official languages. Member States may however not ~~systematically~~ **impose a general requirement that invoices be translated”**

*Several attachés argued that the term “systematically” created some uncertainties.*

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