



STATUTORY INSTRUMENTS.

S.I. No. 612 of 2010

EUROPEAN UNION (VALUE-ADDED TAX) REGULATIONS 2010

(Prn. A10/1896)

EUROPEAN UNION (VALUE-ADDED TAX) REGULATIONS 2010

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive 2008/8/EC of 12 February 2008¹, Council Directive 2009/162/EU of 22 December 2009² and Council Directive 2010/66/EU of 14 October 2010³ hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Value-Added Tax) Regulations 2010.

(2) These Regulations come into operation on 1 January 2011.

Definition.

2. In these Regulations “Principal Act” means the Value-Added Tax Consolidation Act 2010 (No. 31 of 2010).

Amendments to the place of supply rules for services in respect of admissions to cultural, entertainment events, etc.

3. For the purpose of giving effect to Article 3 of Council Directive 2008/8/EC of 12 February 2008¹, the Principal Act is amended:

(a) by deleting section 13,

(b) in section 17(1) by substituting the following for paragraph (c):

“(c) Where a premises provider allows, in the course or furtherance of business, a promoter not established in the State to supply on the premises provider’s land—

(i) services consisting of the admission (including the provision of ancillary services related to admission) to a cultural, artistic, entertainment or similar event, and

(ii) where, in accordance with paragraph (g) or (ga) of section 34, the place of supply of those services is where the event concerned actually takes place,

then that premises provider shall, not later than 14 days before such services are scheduled to begin, furnish to the

¹OJ No. L 44 of 20 February 2008, p. 11

²OJ No. L 10 of 15 January 2010, p. 14

³OJ No. L 275 of 20 October 2010, p. 1

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 28th December, 2010.

Revenue Commissioners, at the relevant office, the following particulars:

- (I) the name and address of the promoter;
- (II) details (including the dates, duration and venue) of the event or performance commissioned or procured by the promoter in the provision of that service; and
- (III) any other information related to the promoter or the event or performance, as may be specified in regulations.”,

(c) in section 34—

(i) by substituting the following for paragraph (g):

“(g) if the supply of services, and of any ancillary services, is in respect of or related to admission to a cultural, artistic, sporting, scientific, educational, entertainment or similar event, such as a fair or exhibition, and the supply is to a taxable person, the place where that event actually takes place;”

and

(ii) by inserting the following after paragraph (g):

“(ga) if the supply of services, and of any ancillary services, is in respect of or related to admission to a cultural, artistic, sporting, scientific, educational, entertainment or similar activity, such as a fair or exhibition (including the supply of services of the organiser of such an activity), and the supply is to a non-taxable person, the place where that activity actually takes place;”,

and

(d) in each provision of that Act specified in column (1) of the Table to this Regulation, by substituting for the text set out in column (2) of that Table the text set out in the corresponding entry in column (3) of that Table.

TABLE

Provision of Principal Act (1)	Text to be replaced (2)	Text to be substituted (3)
section 5(1)(b)	sections 9, 10, 12, 13,	sections 9, 10, 12,
section 5(1)(c)	section 13 or 16(3),	section 16(3),
section 6(1)	sections 9, 10, 12, 13,	sections 9, 10, 12,
section 6(2)(d)	section 12(3) or (5), 13	section 12(3) or (5)
section 9(2)	sections 12(3) and (5), 13	sections 12(3) and (5),
section 9(4)(b)	section 12, 13 or 17(1)	section 12 or 17(1)
section 9(6)(c)	section 12, 13 or 17(1)	section 12 or 17(1)
section 12(3)	section 13 or 17(1)	section 17(1)
section 12(3)(b)	section 13 or 17(1)	section 17(1)
section 12(5)	section 13 or 17(1)	section 17(1)
section 12(5)(c)	section 13 or 17(1)	section 17(1)
section 17(2)(a)(iii)	section 12 or 13	section 12
section 26(1)	section 9, 10, 12, 13,	section 9, 10, 12,
section 42(3)	section 12, 13 or 17(1)	section 12 or 17(1)
section 59(2)(g)	section 12, 13 or 17(1)	section 12 or 17(1)
section 102(3)(b)	section 10, 12, 13,	section 10, 12,

Technical amendments.

4. For the purpose of giving effect to Council Directive 2009/162/EU of 22 December 2009², the Principal Act is amended:

(a) in section 19—

(i) in subsection (1)(g) by inserting “subject to subsection (1A),” before “the appropriation of the goods”, and

(ii) by inserting the following after subsection (1):

“(1A) Subsection (1)(g) does not apply in any case where the goods appropriated by an accountable person for any purpose other than the purposes of his or her business are immovable goods that are acquired or developed by an accountable person on or after 1 January 2011.”,

(b) in section 27—

(i) by substituting in subsection (2) “Subject to subsection (3), the use of immovable goods” for “The use of immovable goods”, and

(ii) by inserting the following after subsection (2):

“(3) Subsection (2) does not apply in the case of immovable goods that are acquired or developed by an accountable person on or after 1 January 2011.”,

(c) in section 31(1)—

- (i) by inserting “of heat or cooling energy through heating or cooling networks,” after “the natural gas distribution system,” in both paragraph (a) and paragraph (b)(i), and
- (ii) by inserting “situated within the territory of the Community or any network connected to such a system, of heat or cooling energy through heating or cooling networks” after “the natural gas distribution system” in paragraph (b)(ii),

(d) in section 33(5) by substituting the following for paragraph (h):

“(h) services that consist of the provision of access to a natural gas distribution system situated within the territory of the Community or to any network connected to such a system, to the electricity system or to the heating or cooling networks, or the transmission or distribution through these systems or networks, and the provision of other services directly linked to those systems;”,

(e) in section 60(2)(a) by inserting the following after subparagraph (ii):

“(iia) expenditure incurred by the accountable person on the acquisition or development, on or after 1 January 2011, of immovable goods forming part of the assets of a business where such goods are used or to be used for any purpose other than those of the accountable person’s business;”,

(f) in section 61(1) by substituting the following for the definition of “non-deductible supplies or activities”:

“‘non-deductible supplies or activities’ means the supply of goods or services or the carrying out of activities other than deductible supplies or activities, and, in the case of immovable goods acquired or developed by an accountable person on or after 1 January 2011, includes any activity consisting of the use of those goods, or part of those goods, for any purpose other than the accountable person’s business;”,

(g) in Schedule 1, Part 2, by substituting the following for paragraph 13:

“Gas and electricity services etc.

13. (1) The importation of gas through a natural gas distribution system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline network.

(2) The importation of electricity.

(3) The importation of heat or cooling energy through heating or cooling networks.”,

(h) in Schedule 1 Part 2 by inserting the following after paragraph 14:

“Imports by certain international bodies

15. (1) The importation of goods by—

(a) the European Union, the European Atomic Energy Community, the European Central Bank or the European Investment Bank, or

(b) the bodies set up by either or both the Union and the Community to which the Protocol of 8 April 1965 on the privileges and immunities of the European Communities applies,

within the limits and under the conditions of that Protocol and the agreements for its implementation or the agreements between the headquarters of those bodies and the host Member State of the headquarters, in so far as it does not lead to distortion of competition.

(2) The importation of goods by international bodies, other than those referred to in subparagraph (1), recognised as such by the host Member State, or by members of such bodies, within the limits and under the conditions laid down by the international conventions establishing the bodies or by the agreements between the headquarters of those bodies and the host Member State of the headquarters.”,

and

(i) in Schedule 2 Part 1 by substituting the following for paragraph 5(1):

“5. (1) The supply of goods or services to—

(a) the European Union, the European Atomic Energy Community, the European Central Bank or the European Investment Bank, or

(b) the bodies set up by either or both the Union and the Community to which the Protocol of 8 April 1965 on the privileges and immunities of the European Communities applies,

within the limits and under the conditions of that Protocol and the agreements for its implementation or the agreements between the headquarters of those bodies and the host Member State of the headquarters, in so far as it does not lead to distortion of competition.

(1A) The supply of goods and services to international bodies, other than those referred to in subparagraph (1), recognised as such by the host Member State, and to members of such bodies, within the limits and under the conditions laid down by the international conventions establishing the bodies or by the agreements between the headquarters of those bodies and the host Member State of the headquarters.”.

Amendments to the time limits for submission and receipt of intra-Community VAT repayments.

5. For the purpose of giving effect to Council Directive 2010/66/EU of 20 October 2010³, section 101(6) of the Principal Act is amended by the insertion of the following after paragraph (b):

“(ba) Notwithstanding paragraph (b), a refund application in respect of refund periods in the calendar year 2009 may be lodged only on or before 31 March 2011.”.



GIVEN under my Official Seal,
17 December 2010.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY MEMORANDUM

(This note is not part of these Regulations and does not purport to be a legal interpretation.)

These Regulations transpose into Irish law three Council Directives. The Directives in question are Council Directive 2008/8/EC of 12 February 2008 (OJ No. L 44 of 20 February 2008), Council Directive 2009/162/EU of 22 December 2009 (OJ No. L 10 of 15 January 2010) and Council Directive 2010/66/EU of 14 October 2010 (OJ No. L 275 of 20 October 2010). Transposition is effected by way of amendment of the Value-Added Tax Consolidation Act 2010, and the amendments come into force on 1 January 2011.

An explanation of the Regulations is set out below.

Regulation 1 gives the title and the date of coming into force of the Regulations.

Regulation 2 defines the Principal Act for these Regulations as the Value-Added Tax Consolidation Act 2010 (“the VAT Act”).

Regulation 3 amends the place of supply of services rules in respect of admissions to cultural, artistic, entertainment or similar events. It transposes Article 3 of Council Directive 2008/8/EC as regards the place of supply of services in respect of or related to admissions to such events.

Paragraph (a) deletes section 13 of the VAT Act, which deals with certain supplies of services by suppliers not established in the State, as its provisions are not in keeping with the new place of supply of services rules for the events mentioned above.

Paragraph (b) substitutes a new subsection for section 17(1)(c) of the VAT Act (dealing with the obligations of premises providers who allow their premises to be used by non-established promoters of the events in question) to reflect the new rules outlined in paragraph (c) below.

Paragraph (c) provides for the new place of supply of services rules in relation to admission to cultural, artistic, entertainment or similar events, by substituting a new section for the existing section 34(g) of the VAT Act and by adding a new section 34(ga) to that Act

- Subparagraph (i) contains the specific rule for admissions and ancillary services in relation to cultural events, etc, made to taxable persons. The place of taxation in such instances is where the events actually take place. This provision replaces the current section 34(g) of the VAT Act.
- Subparagraph (ii) contains the specific rule for admissions and ancillary services relating to cultural events, etc, made to non-taxable persons. The place of supply in such instances is where those activities actually take place. This provision is effected through a new section 34(ga) of the VAT Act.

Paragraph (d) deletes any references to section 13 of the VAT Act in any other provisions of that Act. This is consequential to the deletion of section 13 of the VAT Act by paragraph (a) of this Regulation.

Regulation 4 amends various provisions of the VAT Act in order to deal with (1) imports and supplies of gas through the natural gas distribution system, or of electricity or heating and cooling energy through heating and cooling networks; (2) the importation by, or supply of goods to, certain designated bodies under EU Protocol procedures and certain other international bodies; and (3) tax deductibility on immovable property used for both taxable and private purposes. It transposes Council Directive 2009/162/EU known as the “Technical Directive”.

Paragraph (a) provides that a new subsection (1A) is inserted into section 19 of the VAT Act to ensure that the rules set out in subsection 1(g) of that section, which provides that an appropriation of goods by an accountable person for any purpose other than business purposes is a taxable supply of goods, will not apply in the case of immovable goods acquired or developed by an accountable person on or after 1 January 2011 that are used for private purposes.

Paragraph (b) provides that a new subsection (3) is inserted into section 27 of the VAT Act to ensure that the rules set out in section 27(2) of that Act for the charging of tax on “self-supplies of services” do not apply to immovable goods acquired or developed on or after 1 January 2011.

Paragraph (c) inserts a reference into section 31(1)(a) and (b)(i) to ensure that supplies of heat or cooling energy through networks to a taxable dealer are incorporated into the existing place of supply rules for gas and electricity supplies. This aligns the text of these provisions with the Directive. This paragraph also amends section 31(1)(b)(ii) of the VAT Act to provide that the place of supply of gas through the natural gas distribution system situated in the Community or any connected network, or of heat or cooling energy through networks, made to a customer, who is not a taxable dealer, is where that customer uses and consumes those goods.

Paragraph (d) replaces section 33(5)(h) of the VAT Act. The new provision lists various services relating to providing access to a natural gas distribution system within the Community or to any network connected to such a system, to the electricity system or to heating or cooling networks or to the transmission or distribution through these systems or networks and also other services directly linked to those systems. This aligns the text with that of the Directive. The purpose of this provision is to clarify that the place of supply of such services, when supplied to a non-taxable person who is established, resides or has a permanent address outside the Community, is where that person is established, resides or has a permanent address.

Paragraph (e) provides for a new section 60(2)(a)(iia) of the VAT Act, which secures that VAT may not be deducted on the acquisition or development of immovable goods even where such goods form part of the assets of a business

to the extent that an accountable person uses those goods for any purpose other than for business.

Paragraph (f) replaces the definition of “non-deductible supplies or activities” in section 61(1) of the VAT Act to include the private use of immovable goods within that definition.

Paragraph (g) provides for a replacement paragraph for paragraph 13 of Schedule 1, Part 2, to the VAT Act (exempt activities). This aligns the scope of the exemption for the importation of gas, electricity and heat or cooling energy with that of the Directive. The head note of this paragraph has been amended slightly to better reflect the expanded content of the paragraph.

Paragraph (h) provides for a new paragraph 15 in Schedule 1, Part 2, to the VAT Act (exempt goods and services). Subparagraph (1) of the new paragraph 15 provides that certain named EU bodies, as well as bodies set up by the EU to which the Protocol on privileges and immunities applies, may be eligible to import goods exempt from VAT. Subparagraph (2) of the new paragraph 15 makes similar provision for the importation of goods by certain other international bodies.

Paragraph (i) provides for replacement paragraphs for paragraph 5(1) of Schedule 2, Part 1, of the VAT Act (zero-rated goods and services). The new paragraph 5(1) provides that supplies of goods and services to certain named EU bodies, as well as bodies set up by the EU to which the Protocol on privileges and immunities applies, may be eligible for the zero rate of VAT, subject to such limits and conditions as are agreed between the headquarters of those bodies and the host Member State of the headquarters. A new paragraph 5(1A) makes similar provision in the case of supplies of goods and services to certain other international bodies.

Regulation 5 amends section 101 of the VAT Act to reflect the extension to the existing time limits for the submission and receipt of repayments of VAT to taxable persons not established in the Member State of refund but in another Member State. A new paragraph has been added to section 101(6) of the VAT Act. The new paragraph (ba) covers the exceptional extension of time, which was necessitated due to the inoperability of electronic portals in a number of Member States, other than Ireland. This prevented the timely submission of certain refund applications. Accordingly, refund applications which relate to periods in 2009 must now be submitted on or before 31 March 2011 rather than the original deadline of 30 September 2010. This extension is already being applied administratively by the Revenue Commissioners following agreement by the EU Council of Ministers in October 2010.

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