



STATUTORY INSTRUMENTS.

S.I. No. 581 of 2018



EUROPEAN UNION (VALUE-ADDED TAX) REGULATIONS 2018

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I, PASCHAL DONOHOE, 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 Article 1 of Council Directive 2017/2455 of 5 December 2017¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Value-Added Tax) Regulations 2018.

2. These Regulations come into operation on 1 January 2019.

3. The Value-Added Tax Consolidation Act 2010 is amended—

(a) in section 33 by the insertion of the following subsection after subsection (4A):

“(4B) Where, during a calendar year, the threshold referred to in paragraph (kd)(iii) of section 34 is exceeded, paragraph (kc) shall apply from the date on which that threshold is exceeded.”,

(b) in section 34 by—

(i) the insertion of “subject to paragraph (kd),” before “if the supply of services” in paragraph (kc),

and

(ii) the insertion of the following paragraph after paragraph (kc):

“(kd) if the supply of services consists of the provision of services specified in paragraph (kc) and—

(i) the supplier of the services is established or, in the absence of an establishment, has a permanent address or usually resides in only one Member State,

(ii) the services are supplied to a non-taxable person who is established, has a permanent address or usually resides in a Member State other than the Member State referred to in subparagraph (i), and

¹OJ No. L 348, 29.12.2017, p. 7

- (iii) the total value (exclusive of value-added tax) of the services provided does not, in the current calendar year, and did not, in the preceding calendar year, exceed €10,000,

paragraph (b) shall apply unless the supplier opts for the place of supply to be determined in accordance with paragraph (kc) (which option the supplier is empowered by this paragraph to exercise), and such option, if exercised, shall apply for a period of not less than 2 calendar years from the date the option is exercised;”,

- (c) in section 91A, in the definition of “non-Union scheme”, by the deletion of “and is not otherwise required to be registered for value-added tax in any Member State”,

and

- (d) in section 91B—

- (i) in subsection (1)(a), by the substitution of the following subparagraph for subparagraph (ii):

“(ii) has not established his or her business in the Community and has no fixed establishment in the Community.”,

and

- (ii) in subsection (3), by the substitution of the following paragraph for paragraph (f):

“(f) a statement that the person has not established his or her business in the Community and has no fixed establishment in the Community.”.



GIVEN under my Official Seal,
18 December 2018.

PASCHAL DONOHOE,
Minister for Finance.

EXPLANATORY NOTE

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

These Regulations transpose into Irish VAT law Article 1 of Council Directive (EU) 2017/2455 (Modernisation of VAT on e-Commerce). This Directive amends the EU VAT Directive (2006/112/EC) as regards the introduction of a threshold of €10,000 for telecommunications, broadcasting and electronically supplied services made to non-taxable persons below which threshold suppliers may regard the place of supply of such services to be the supplier's Member State of establishment. It also provides that taxable persons not established in the EU but having a VAT registration number in a Member State can use the special scheme for taxable persons not established within the EU.

Transposition is effected by way of amendment of the Value-Added Tax Consolidation Act 2010. These amendments will come into force from 1 January 2019.

An explanation of the Regulations is set out below.

Regulation 1 gives the title of the Regulations.

Regulation 2 sets out the date of coming into effect of the Regulations.

Regulation 3 amends sections 33, 34, 91A and 91B as follows.

Paragraph (a) amends section 33 to provide that section 34(kc) applies in respect of supplies of telecommunications, broadcasting and electronically supplied services made to non-taxable persons from the date the threshold of €10,000 is exceeded. The place of supply is where the non-taxable person is established, has a permanent address or usually resides.

Paragraph (b) amends section 34, which deals with the place of supply of services. Paragraph (b)(i) provides that the rule as set out in section 34 (kc) is subject to paragraph (kd). Paragraph (b)(ii) provides that in the case of telecommunications services, radio or television broadcasting services or electronically supplied services made by a supplier who is established in only one Member State, other than the Member State of the non-taxable persons to whom such supplies are made, and provided the value of such supplies do not exceed in the previous calendar year nor in the current calendar year the figure of €10,000, exclusive of value-added tax, the place of supply is where the supplier is established unless the supplier has opted to have the place of supply determined in accordance with the provisions of paragraph (kc). Such option if exercised must remain in place for a period of 2 calendar years from the date the option is exercised.

Paragraph (c) amends section 91A dealing with definitions relating to the special schemes for telecommunications services, broadcasting services and electronically supplied services. In the definition of the non-Union scheme the reference to not being otherwise required to be registered for value-added tax in any Member State is no longer necessary and has been deleted.

Paragraph (d) amends section 91B dealing with the non-Union scheme for telecommunications services, broadcasting services and electronically supplied services and the rules applicable to taxable persons who choose to register in the State for the purposes of that scheme. The amended provision in subsection (1)(a)(ii) provides that taxable persons who have not established their business in the EU and have no fixed establishment in the EU can use the scheme. The restriction to use of the scheme where the taxable person had a VAT registration in the EU has been removed. Previously taxable persons not established in the EU but who had a VAT registration number in the EU were not allowed to use the scheme.

The new provision in subsection (3)(f) provides that taxable persons in the scheme are no longer required to provide information to Revenue that they are not registered for VAT in the EU but they must declare that they do not have an establishment or fixed establishment in the EU.

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