

91.—(1) In this section—

“electronic services scheme” means the special arrangements for the taxation of electronically supplied services provided for in Articles 358 to 369 of the VAT Directive;

“EU value-added tax” means value-added tax referred to in the VAT Directive and includes tax within the meaning of section 2;

“identified person” has the meaning assigned to it by subsection (5);

“Member State of consumption” means the Member State in which the supply of the electronic services takes place according to Article 58 of the VAT Directive;

“Member State of identification” means the Member State which the non-established person chooses to contact to state when his or her activity within the Community commences in accordance with the provisions of the electronic services scheme;

“national tax number” means a number (whether consisting of either or both numbers and letters) assigned to a non-established person by his or her own national taxation authorities;

“non-established person” means a person who has his or her establishment outside the Community and has not also an establishment in the Community and who is not otherwise required to be a person registered for value-added tax within the meaning of section 2;

“scheme participant” means a non-established person who supplies electronic services into the Community and who opts to use the electronic services scheme in any Member State;

“VAT return” means the statement containing the information necessary to establish the amount of EU value-added tax that has become chargeable in each Member State under the electronic services scheme.

(2) Subject to and in accordance with this section, a non-established person may opt to apply the electronic services scheme to his or her supplies of electronic services to non-taxable persons within the Community.

(3) The Revenue Commissioners shall set up and maintain a register (referred to in this section as an “identification register”) of non-established persons who are identified in the State for the purposes of the electronic services scheme.

(4) A non-established person who opts to be identified in the State for the purposes of the electronic services scheme shall inform the Revenue Commissioners, by electronic means in a manner specified by them, when his or her taxable activity commences and shall, at the same time, furnish them electronically with the

following information:

- (a) the person's name and postal address;
- (b) his or her electronic addresses, including website addresses;
- (c) his or her national tax number (if any); and
- (d) a statement that the person is not a person registered, or otherwise identified, for value-added tax purposes within the Community.

(5)(a) Where a person has furnished the particulars required under subsection (4), the Revenue Commissioners shall—

- (i) register that person in accordance with subsection (3),
- (ii) allocate to that person an identification number, and
- (iii) notify that person electronically of that identification number.

(b) For the purposes of this section, a person to whom such an identification number has been allocated shall be referred to as an "identified person".

(6)(a) Subject to paragraph (b), an identified person shall, within 20 days immediately following the end of each calendar quarter—

(i) furnish by electronic means to the Revenue Commissioners a VAT return, prepared in accordance with, and containing such particulars as are specified in, subsection (7), in respect of supplies made in the Community in that quarter, and

(ii) remit to the Revenue Commissioners, at the same time as so furnishing such return, into a bank account designated by them and denominated in euro, the amount of EU value-added tax (if any) payable by that person in respect of that quarter in relation to—

(I) supplies made in the State in accordance with section 34 (I), and

(II) supplies made in other Member States in accordance with the provisions implementing Article 58 of the VAT Directive in such other Member States.

(b) Where an identified person has not made any such electronic supplies to non-taxable persons into the Community within a calendar quarter, he or she shall furnish a nil VAT return in respect of that quarter.

(7) The VAT return referred to in subsection (6) shall be made in euro and shall contain—

(a) the person's identification number,

(b) for each Member State of consumption where EU value-added tax has become due—

(i) the total value, exclusive of EU value-added tax, of supplies of electronic services for the quarter,

(ii) the amount of such value liable to EU value-added tax at the applicable rate, and

(iii) the amount of EU value-added tax corresponding to such value at the applicable rate,

and

(c) the total EU value-added tax due (if any).

(8) Notwithstanding section 37 (4), where supplies have been made using a currency other than the euro, the exchange rate to be used for the purposes of expressing the corresponding amount in euro on the VAT return shall be that published by the European Central Bank for the last date of the calendar quarter for which the VAT return relates or, if there is no publication on that date, on the next day of publication.

(9) Notwithstanding Chapter 1 of Part 8, a scheme participant who supplies services which are deemed in accordance with section 34 (l) to be supplied in the State—

(a) shall not, in computing the amount of tax payable by him or her in respect of such supplies, be entitled to deduct any tax borne or paid in relation to those supplies, but

(b) shall be entitled to claim a refund of such tax in accordance with, and using the rules applicable to, Council Directive No. 86/560/EEC of 17 November 1986⁶, notwithstanding Articles 2(2), 2(3) and 4(2) of that Directive.

(10) A scheme participant who supplies services which are deemed in accordance with section 34 (l) to be supplied in the State shall be deemed to have fulfilled his or her obligations under Chapters 1, 3 and 7 of Part 9 if such participant has accounted in full in respect of such supplies in any Member State under the provisions of the electronic services scheme.

(11) For the purposes of this Act, a VAT return required to be furnished in accordance with the electronic services scheme shall, in so far as it relates to supplies made in accordance with section 34 (l), be treated, with any necessary modifications, as if it were a return required to be furnished in accordance with Chapter 3 of Part 9.

(12)(a) An identified person shall—

(i) keep full and true records of all transactions covered by the electronic services scheme which affect his or her liability to EU value-added tax,

(ii) make such records available, by electronic means and on request, to the Revenue Commissioners,

(iii) make such records available, by electronic means and on request, to all Member States of consumption, and

(iv) notwithstanding Chapter 7 of Part 9, retain such records for each transaction for a period of 10 years from the end of the year when that transaction occurred.

(b) A scheme participant who is deemed to supply services in the State in accordance with section 34 (l) shall be bound by the requirements of subparagraphs (i), (ii) and (iv) in relation to such supplies.

(13) An identified person shall notify the Revenue Commissioners electronically—

(a) of any changes in the information submitted under subsection (4), and

(b) if his or her taxable activity ceases or changes to the extent that he or she no longer qualifies for the electronic services scheme.

(14) The Revenue Commissioners shall exclude an identified person from the identification register if—

(a) they have reasonable grounds to believe that the person's taxable activities have ended, or

(b) the identified person—

(i) notifies the Commissioners that he or she no longer supplies electronic services,

(ii) no longer fulfils the requirements necessary to be allowed to use the electronic services scheme,
or

(iii) persistently fails to comply with the provisions of the electronic services scheme.

(15) The Revenue Commissioners may make regulations as necessary for the purpose of giving effect to the electronic services scheme.