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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. prev. doc.: 14481/17

Subject: VAT e-commerce package

- Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods
- Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax
- Proposal for a Council Regulation amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax
- = Adoption

1. On 1 December 2016, the Commission adopted a "VAT e-commerce package" composed of amendments to:
 - Council Directives 2006/112/EC ("VAT Directive") and 2009/132/EC as regards certain VAT obligations for supplies of services and distance sales of goods (doc. 14820/16);
 - Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of VAT (doc. 14821/16);and

- Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of VAT (doc. 14822/16).
- 2. The general objectives of the package are the smooth functioning of the internal market, the competitiveness of EU businesses and the need to ensure effective taxation of the digital economy. It is furthermore a key initiative of the Digital Single Market Strategy¹ ('DSM Strategy') as well as of the Single Market strategy² and e-Government Action Plan³.
- 3. The detailed implementation issues for the provisions of the VAT directive that will apply as from 2021 will be addressed in a forthcoming proposal by the Commission to revise the Council Implementing Regulation. In this respect, Fiscal Attachés had prepared as part of the overall compromise package a draft statement (see Annex 1) to be included in the Council minutes that highlights questions that will have to be considered in that phase.
- 4. At the ECOFIN meeting of 7 November 2017, the compromise text tabled by the Presidency (doc. 13841/17) received very wide support: all delegations could accept it as it stood, with the exception of one delegation. The Presidency committed to working towards a political agreement at the ECOFIN Council meeting in December, following the adoption of the European Parliament opinion on 30 November 2017.
- 5. Following the ECOFIN meeting, the WPTQ meeting of 9 November discussed the follow-up and Fiscal Attachés met three times (on 14, 17 and 21 November 2017) to discuss amendments to the draft statement. These amendments have allowed to address the concerns raised by delegations and agreement could be reached at technical level.
- 6. Malta and Cyprus informed other delegations that they will request to include an unilateral statement in the Council minutes (see Annex 2).

¹ Doc. 8672/15.

² Doc. 13370/15.

³ Doc. 8097/16.

7. At the Coreper meeting of 29 November 2017, three delegations (NL, HU and ES) have indicated a linguistic reserve, which should be lifted before the 5 December ECOFIN meeting. The UK furthermore indicated a parliamentary reserve, which will be lifted at ECOFIN level.
 8. The ECOFIN Council in December is therefore suggested to:
 - adopt the Directive, Implementing Regulation and Regulation, as finalised by legal/linguistic experts and set out respectively in doc.14126/17, doc.14127/17 and doc. 14128/17, as an "A" item on the agenda,
 - include the statements in annex to the present note in the Council minutes, and
 - agree on the publication of the above-mentioned Directive, Implementing Regulation and Regulation in the Official Journal.
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**STATEMENT TO BE INCLUDED IN THE COUNCIL MINUTES
REGARDING ARTICLE 2 OF THE AMENDING DIRECTIVE**

“The Council and the Commission acknowledge the need to lay down detailed implementation rules for the application of Article 2 in an Implementing Regulation of the Council to support the amendments to Directive 2006/112/EC which apply from 1 January 2021. The Council acknowledges the need for a timely adoption of such an Implementing Regulation before 1 January 2020 to ensure its application as from 2021.

The Council therefore calls upon the Commission to start preparing such implementation rules without delay and, taking into account the principles of Better Regulation, to consult businesses concerned and Member States in the preparation of these rules.

As regards, in particular, the provisions relating to electronic interfaces such as a market place, platform, portal or similar means, the following elements should, amongst others, be considered in the implementation rules:

- Definition of the situation in which a taxable person is considered to facilitate sales of goods through the use of an electronic interface;
- Specific provisions on deeming the dispatch or transport of the goods to be linked to the supply by the electronic interface to the customer where an electronic interface is used to facilitate sales of goods;
- Specific provisions on the conditions for determining when the payment is accepted, and the general obligations for electronic interfaces, where an electronic interface is used to facilitate sales of goods and is deemed to have received and supplied the goods himself;
- The type of information to be kept in the records of taxable persons facilitating supplies of goods and services to non-taxable persons in the Community through the use of an electronic interface, taking account of what information is available to such taxable persons, is relevant to tax administrations and is proportionate to the purpose of the provision, as well as taking into account the need to comply with the General Data Protection Regulation (EU) 2016/679.

The Council acknowledges the need to ensure that the implementation of the new rules, including in respect of compliance, should not disadvantage EU established businesses.

The Council calls on the Commission to provide the necessary framework for the implementation of the relevant Customs systems and monitor their implementation with a view to ensuring that these essential systems are in place by 2021 to support the implementation of the import One Stop Shop from that date.

The Council and Commission will do their utmost to ensure that:

- the implementing provisions necessary for the correct application of Article 2 of the amending Directive are adopted by the end of 2019, and
- the UCC National Import Systems Upgrade referred to in row 14 of the Table in point II of the Annex to the Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code, including the necessary amendments to the data model for the messages, are timely in place.

If it does not seem probable that the adoption of detailed implementation rules for the implementation of Article 2 of the amending Directive can be achieved within a reasonable period of time or that the necessary VAT and Customs IT systems will timely be in place, the Commission will, at the latest by the end of 2019, assess whether this Article can still be correctly applied from 1 January 2021.

Depending on this assessment of the Commission, the Council may invite the Commission to submit to it, as a matter of urgency, a proposal for an amendment of Directive 2006/112/EC, with a view to a full or partial postponement of the application of Articles 2 and 3 of the amending Directive.

The Commission acknowledges the Council's concern and will take utmost account of it in order to take appropriate actions as a matter of urgency.

The Council stresses the need to strengthen cooperation between Member States in order to tackle VAT fraud and welcomes in this respect the intention of the Commission, expressed in its communication “On the follow-up to the Action Plan on VAT. Towards a single EU VAT area – Time to act”, to table before the end of 2017 a legislative proposal to strengthen the legal and operational means in the area of administrative cooperation, including administrative enquiries, to fight more effectively against VAT fraud. The Council recalls in this respect the Council Conclusions of 25 May 2016.”

UNILATERAL STATEMENT

TO BE INCLUDED IN THE COUNCIL MINUTES

“Reference is made to the Council Statement regarding Article 2 of the draft Directive, in particular, the last paragraph thereof dealing with administrative cooperation between Member States.

Malta and Cyprus fully support the strengthening of administrative cooperation and invite the Commission to positively consider in any future proposals on the matter, to cater for adequate compensation in cases of a disproportionate burden on a member state; as already enunciated in the original proposal of 1st December 2016 (wherein the strengthened proposed rules on administrative enquiries routed through the Member States of identification were accompanied by an adequate retention fee from the Member States of consumption; compensating for the costs of collection and control).”
