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'A' ITEM NOTE

From: General Secretariat of the Council

To: Council

No. Cion doc.: 15471/18 - COM(2018) 819 final
15472/18 - COM(2018) 821 final

Subject: VAT implementing rules on e-commerce

a) Proposal for a Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods

b) Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

– General approach

I. INTRODUCTION

1. On 11 December 2018 the Commission submitted to the Council the following two legislative proposals, in accordance with its communication on an Action Plan towards a single EU VAT area¹:

¹ COM (2016) 148 final.

- a proposal for a Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods²; and
- a proposal for a for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.³

2. The aim of these proposals ("VAT e-commerce package") is to lay down detailed rules needed to ensure the functioning of the new VAT rules for e-commerce following the amendments introduced by Council Directive (EU) 2017/2455 ("the VAT e-commerce Directive")⁴, which will come into force in January 2021. The proposal for a Regulation clarifies in particular the situations in which electronic interfaces such as a marketplace, platform and portal are considered to facilitate sales of goods and services between users and specifies the type of information they must keep on sales made through an electronic interface. It also clarifies under which conditions marketplaces will not be liable to pay VAT on supplies of goods in excess of the VAT which is declared and paid on these supplies.

² Doc. 15471/18 FISC 556 ECOFIN 1192 DIGIT 253.

³ Doc. 15472/18 FISC 557 ECOFIN 1193 DIGIT 254.

⁴ OJ L 348, 29.12.2017, p. 7.

II. STATE OF PLAY

3. Opinions of the Economic and Social Committee and of the European Parliament on the inter-institutional file 2018/0415 (CNS) are pending.
4. On 8 March 2019, the Committee of Permanent Representatives agreed to forward the above proposals to the Council (ECOFIN) on 12 March 2019 as an "A" item.

III. CONCLUSION

5. The Council (ECOFIN) on 12 March 2019 is invited to reach a general approach on both proposals under "A" items.
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2018/0415 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Council Directive 2006/112/EC³ as amended by Council Directive (EU) 2017/2455⁴ provides that where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or other similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 or the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied the goods himself. As this provision splits a single supply into two supplies, it is necessary to determine to which of these supplies the dispatch or transport of the goods should be ascribed in order to properly determine their place of supply. It is also necessary to ensure that the chargeable event of these two supplies occurs at the same time.
- (2) While a taxable person who facilitates through the use of an electronic interface the supply of goods to a non-taxable person in the Community may deduct, in accordance with existing rules, the VAT paid to suppliers not established in the Community, the risk is that the latter may not pay the VAT to the tax authorities. To avoid that risk, the supply from the supplier selling goods through the use of an electronic interface should be exempt from VAT while that supplier should be granted the right to deduct the input VAT which it paid in respect of the purchase or import of the goods supplied. For this purpose, the supplier should always be registered in the Member State where he acquired or imported those goods.
- (3) Furthermore, suppliers who are not established in the Community, who make use of an electronic interface to sell goods may hold stock in several Member States and may in addition to intra-Community distance sales of goods, supply goods from this stock to customers in the same Member State. Currently, such supplies are not covered by the special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption. In order to reduce the administrative burden, those taxable persons who facilitate the supply of goods to non-taxable persons in the Community through the use of an electronic interface, who are deemed to have received and supplied the goods themselves, should also be allowed to use this special scheme to declare and pay VAT for those domestic supplies.

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁴ Council Directive (EU) 2017/2455 of 5 December 2017 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 (OJ L 348, 29.12.2017, p. 7).

- (4) To ensure consistency in terms of the payment of VAT and import duty upon the importation of goods, the time period for the payment of import VAT to customs where the special arrangements for the declaration and payment of import VAT are used, should be aligned to that laid down in respect of customs duty in Article 111 of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁵.
- (5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (6) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) in Section 2 of Chapter 1 of Title V, the following Article 36b is added:

'Article 36b

Where a taxable person is deemed to have received and supplied goods in accordance with Article 14a, the dispatch or transport of the goods shall be ascribed to the supply made by that taxable person.';

- (1a) Article 66a is replaced by the following:

'Article 66a

By way of derogation from Articles 63, 64 and 65, the chargeable event of supplies of goods by a taxable person who is deemed to have received and supplied the goods in accordance with Article 14a and of the supply to that taxable person shall occur and VAT shall become chargeable at the time when the payment has been accepted.'

⁵ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁶ OJ C 369, 17.12.2011, p. 14.

(2) the following Article 136a is inserted:

‘Article 136a

Where a taxable person is deemed to have received and supplied goods in accordance with paragraph 2 of Article 14a, Member States shall exempt the supply of those goods to that taxable person.’;

(3) in Article 169, point (b) is replaced by the following:

‘(b) transactions which are exempt pursuant to Articles 136a, 138, 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, Article 157(1)(b), Articles 158 to 161 or Article 164.’;

(4) in paragraph 1 of Article 204, the third subparagraph is replaced by the following:

‘However, Member States may not apply the option referred to in the second subparagraph to a taxable person within the meaning of point (1) of Article 358a, who has opted for the special scheme for services supplied by taxable persons not established within the Community.’;

(4a) In paragraph 1 of Article 272, point b) is replaced by the following:

‘b) taxable persons carrying out none of the transactions referred to in Article 20, 21, 22, 33, 36, 136a, 138 and 141.’

(5) the heading of Chapter 6 of Title XII is replaced by the following:

‘Special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods’;

(6) the heading of Section 3 in Chapter 6 of Title XII is replaced by the following:

‘Special scheme for intra-Community distance sales of goods, for supplies of goods within a Member State made by electronic interfaces facilitating those supplies and for services supplied by taxable persons established within the Community but not in the Member State of consumption’;

(7) Article 369a is replaced by the following:

Article 369a

For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply:

- (1) ‘taxable person not established in the Member State of consumption’ means a taxable person who has established his business in the territory of the Community or has a fixed establishment there but has not established his business and has no fixed establishment within the territory of the Member State of consumption;
- (2) ‘Member State of identification’ means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.

Where a taxable person has not established his business in the Community and has no fixed establishment therein, the Member State of identification shall be the Member State in which the dispatch or transport of the goods begins. Where there is more than one Member State in which the dispatch or transport of the goods begins, the taxable person shall indicate which of those Member States shall be the Member State of identification. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.

- (3) ‘Member State of consumption’ means one of the following:
 - (a) in the case of the supply of services, the Member State in which the supply is deemed to take place according to Chapter 3 of Title V;
 - (b) in the case of intra-Community distance sales of goods, the Member State where the dispatch or transport of the goods to the customer ends;
 - (c) in the case of the supply of goods made by a taxable person facilitating those supplies in accordance with paragraph 2 of Article 14a where the dispatch or transport of the goods supplied begins and ends in the same Member State, that Member State.’

(8) Article 369b is replaced by the following:

‘Article 369b

Member States shall permit the following taxable persons to use this special scheme:

- (a) a taxable person carrying out intra-Community distance sales of goods;
- (b) a taxable person facilitating the supply of goods in accordance with paragraph 2 of Article 14a where the transport of the goods supplied begins and ends in the same Member State;
- (c) a taxable person not established in the Member State of consumption supplying services to a non-taxable person.

This special scheme applies to all those goods or services supplied in the Community by the taxable person concerned.’;

(9) in Article 369e, point (a) is replaced by the following:

‘(a) if he notifies that he no longer carries out supplies of goods and services covered by this special scheme;’;

(10) Article 369f is replaced by the following:

‘Article 369f

The taxable person making use of this special scheme shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not supplies of goods and services covered by this special scheme have been carried out. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.’;

(11) in Article 369g, paragraphs 1, 2 and 3 are replaced by the following:

‘1. The VAT return shall show the VAT identification number referred to in Article 369d and, for each Member State of consumption in which VAT is due, the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due in respect of the following supplies covered by this special scheme carried out during the tax period:

- (a) intra-Community distance sales of goods;
- (b) supplies of goods in accordance with paragraph 2 of Article 14a where the dispatch or transport of those goods begins and ends in the same Member State;
- (c) supplies of services.

The VAT return shall also include amendments relating to previous tax periods as provided in paragraph 4 of this Article.

2. Where goods are dispatched or transported from Member States other than the Member State of identification, the VAT return shall also include, the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due of the following supplies covered by this special scheme, for each Member State where such goods are dispatched or transported from:

- (a) intra-Community distance sales of goods other than those made by a taxable person in accordance with paragraph 2 of Article 14a;
- (b) intra-Community distance sales of goods and supplies of goods where the dispatch or transport of those goods begins and ends in the same Member State, made by a taxable person in accordance with paragraph 2 of Article 14a.

In relation to the supplies referred to in point (a), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each such Member State.

In relation to the supplies referred to in point (b), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each such Member State, if available.

The VAT return shall include the information referred to in this paragraph broken down by Member State of consumption.’;

3. Where the taxable person supplying services covered by this special scheme has one or more fixed establishments, other than that in the Member State of identification, from which the services are supplied, the VAT return shall also include the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due of such supplies, for each Member State in which he has an establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of consumption.

(12) in Article 369zb, paragraph 2 is replaced by the following:

‘2. Member States shall require that the VAT referred to in paragraph 1 is payable monthly by the deadline for payment applicable to the payment of import duty.’.

Article 2

1. Member States shall adopt and publish, by 31 December 2020 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those measures from 1 January 2021.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

2018/0416 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Directive 2006/112/EC² was amended by Council Directive (EU) 2017/2455³ which *inter alia* extended the scope of the special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons to all types of services as well as to intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries. Directive (EU) 2017/2455 also introduced certain provisions for taxable persons facilitating supplies of goods or services made by other taxable persons through the use of an electronic interface such as a marketplace, platform, portal or similar means.

¹ OJ L 347, 11.12.2006, p. 1.

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 11.12.2006, p. 1).

³ Council Directive (EU) 2017/2455 of 5 December 2017 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 (OJ L 348, 29.12.2017, p. 7).

- (2) The detailed provisions for the application of those special schemes laid down in Council Implementing Regulation (EU) No 282/2011⁴ should be updated following the extension of their scope.
- (3) The definitions of ‘intra-Community distance sales of goods’ and ‘distance sales of goods imported from third territories or third countries’ in Directive 2006/112/EC also cover supplies of goods where the supplier intervenes indirectly in their dispatch or transport to the customer. Therefore, to ensure the correct and uniform application of those definitions across Member States and to enhance legal certainty for both economic operators and tax administrations, it is necessary to clarify and define the meaning of the term indirectly in this context.
- (4) Similarly, in order to ensure the uniform application across Member States of the provisions concerning taxable persons facilitating supplies of goods and services in the Community and to improve legal certainty for taxable persons subject to value added tax (VAT) rules and tax administrations that enforce these rules, it is necessary to further define the meaning of the term 'facilitates' and to clarify when a taxable person is not considered to facilitate supplies of goods or services through an electronic interface.
- (5) In order to ensure the uniform application of the VAT rules it is necessary to clearly define the moment when the payment by the customer can be considered to be accepted so as to determine in which taxable period supplies by taxable persons facilitating supplies of goods in the Community through the use of an electronic interface or by any taxable person making use of the special scheme for distance sales of goods from third territories or third countries have to be declared.
- (6) It is necessary to determine which type of information should be kept in the records of taxable persons facilitating supplies of goods and services in the Community through an electronic interface. This should take account of the nature of the information available to such taxable persons, its relevance for tax administrations and the requirement that such accounting and record keeping should be proportionate in order to comply with the rights and obligations laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council⁵.

⁴ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (7) A taxable person facilitating certain supplies of goods in the Community through the use of an electronic interface is deemed to have received and supplied the goods himself and is liable to pay VAT on these supplies. It is important to take into account that such a taxable person may be dependent on the accuracy of the information provided by the suppliers selling goods through that electronic interface to correctly declare and pay the amount of VAT due. It is therefore reasonable to provide that such a taxable person shall not be held liable for any amount of VAT in excess of the VAT which he declared and paid on these supplies when the information received is erroneous where he can demonstrate that he did not and could not reasonably have known this. This should allow Member States to release those taxable persons from additional VAT liability where they act in good faith.
- (8) In order to reduce the administrative burden on taxable persons facilitating certain supplies of goods in the Community through the use of an electronic interface it is appropriate to release them from the burden of having to prove the status of the seller and customer. Therefore certain rebuttable presumptions should be introduced whereby suppliers selling goods through that electronic interface are presumed to be taxable persons and their customers non-taxable persons.
- (9) To avoid doubt, it is necessary to specify that the identification number allocated to an intermediary acting in the name and on behalf of a taxable person using the import scheme is an authorisation enabling him to act as intermediary and cannot be used by the intermediary to declare VAT on taxable transactions that he carries out himself.
- (10) The provision excluding a taxable person who voluntarily ceased using a special scheme to re-enter that special scheme during a period of two calendar quarters is not considered useful by Member States and may create additional burdens for the taxable person concerned. That provision should therefore be removed.
- (11) To limit the IT impact of the change in the way corrections to previous VAT returns under a special scheme have to be made, it is preferable to provide that corrections to a VAT return relating to a tax period preceding the date from which Member States are to apply national measures to comply with Articles 2 and 3 of Directive (EU) 2017/2455 are to be made by means of amendments to that return. In addition, as corrections to previous VAT returns will have to be submitted in a subsequent return for tax periods as of 1 January 2021, taxable persons excluded from a special scheme will no longer be able to make corrections in a subsequent return. As a consequence, it is necessary to provide that such corrections should be discharged directly with the tax authorities of the Member States of consumption concerned.
- (12) As the name of the customer must only be kept in the records of a taxable person making use of a special scheme if available to that taxable person, is not needed to determine the Member State in which the supply is subject to VAT and may raise data protection issues, it is no longer necessary to include the name of the customer in the records to be kept by taxable persons making use of a special scheme. However, to facilitate the control of supplies of goods covered by a special scheme, it is necessary to include information on returns of goods and consignment or transaction numbers amongst the information to be kept by taxable persons.

- (13) In order to ensure consistency between the special arrangements for declaration and payment of import VAT, on the one hand, and customs provisions regarding deferment of payment of customs duty, on the other hand, and to guarantee the correct payment of import VAT where these arrangements are used, it should be specified that the monthly payment of import VAT under the special arrangements could be made subject to the normal conditions applied under customs law to authorise deferment of payment of import duty. Furthermore, it should be specified that the application of the special arrangements does not oblige Member States to require the person presenting the goods to customs to be empowered by the person for whom the goods are destined to present the goods to customs on his behalf.
- (14) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 282/2011 is amended as follows:

- (1) Chapter IV is amended as follows:
- (a) the heading of Chapter IV is replaced by the following:

TAXABLE TRANSACTIONS

(TITLE IV OF DIRECTIVE 2006/112/EC)

SECTION 1

Supply of goods

(Articles 14 to 19 of Directive 2006/112/EC);

- (b) the following Articles 5a, 5b and 5c and 5d are inserted:

'Article 5a

For the application of paragraph 4 of Article 14 of Directive 2006/112/EC, goods shall be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in particular in the following cases:

- (a) where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
- (b) where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer;
- (c) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;
- (d) where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer.

However, goods shall not be considered to have been dispatched or transported by or on behalf of the supplier where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly to provide or to help organise the dispatch or transport of those goods.

Article 5b

For the application of Article 14a of Directive 2006/112/EC, the term 'facilitates' means the use of an electronic interface to allow a customer and a supplier, offering goods for sale through the electronic interface, to enter into contact which results in a supply of goods through that electronic interface.

However, a taxable person shall not facilitate a supply of goods where all of the following conditions are met:

- (a) that taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;
- (b) that taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;
- (c) that taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods.

Article 14a of Directive 2006/112/EC shall not apply to a taxable person who only provides any of the following:

- (a) the processing of payments in relation to the supply of goods;
- (b) the listing or advertising of goods;

- (c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

Article 5c

For the application of Article 14a of Directive 2006/112/EC, a taxable person, who is deemed to have received and supplied the goods himself, shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies where all of the following conditions are met:

- (a) the taxable person is dependent on information provided by suppliers selling goods through an electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;
- (b) the information referred to in point (a) is erroneous;
- (c) the taxable person can demonstrate that he did not and could not reasonably know that this information was incorrect.

Article 5d

Unless he has information to the contrary, the taxable person deemed to have received and supplied the goods pursuant to Article 14a of Directive 2006/112/EC shall regard:

- (a) the person selling goods through an electronic interface as a taxable person;
- (b) the person buying those goods as a non-taxable person.

- (c) the following heading is inserted before Article 6:

‘SECTION 2

Supply of services

(Articles 24 to 29 of Directive 2006/112/EC)’;

- (2) Article 14 is deleted.;
- (3) the following Chapter Va is inserted:

‘CHAPTER Va

CHARGEABLE EVENT AND CHARGEABILITY OF VAT

(TITLE VI OF DIRECTIVE 2006/112/EC)

Article 41a

For the application of Article 66a of Directive 2006/112/EC, the time when the payment has been accepted means the time when the payment confirmation, the payment authorisation message or a commitment for payment from the customer is received by or on behalf of the supplier selling goods through the electronic interface regardless of when the actual payment of money is made, whichever is the earliest.’;

- (4) in Chapter X the following Section 1a is inserted:

‘SECTION 1a

Accounting

(Articles 241 to 249 of Directive 2006/112/EC)

Article 54b

1. For the application of Article 242a of Directive 2006/112/EC, the term ‘facilitates’ means the use of an electronic interface to allow a customer and a supplier offering services or goods for sale through the electronic interface to enter into contact which results in a supply of goods or services through that electronic interface.

However, the term 'facilitates' shall not cover a supply of goods or services where all of the following conditions are met:

- (a) the taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply is made;
- (b) the taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;
- (c) the taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods or in the supply of the services.

2. For the application of Article 242a of Directive 2006/112/EC, the term 'facilitates' shall not cover instances where a taxable person only provides any of the following:

- (a) the processing of payments in relation to the supply;
- (b) the listing or advertising of the goods or services;
- (c) the redirecting or transferring of customers to other electronic interfaces where goods or services are offered, without any further intervention in the supply.

Article 54c

1. The taxable person referred to in Article 242a of Directive 2006/112/EC, shall keep the following records in respect of supplies where he is deemed to have received and supplied goods himself in accordance with Article 14a of Directive 2006/112/EC or where he takes part in a supply of electronically supplied services for which he is presumed to be acting in his own name in accordance with Article 9a of this Regulation:

- (a) the records as set out in Article 63c of this Regulation, where the taxable person has opted to apply one of the special schemes provided for Chapter 6 of Title XII of Directive 2006/112/EC;
- (b) the records as set out in Article 242 of Directive 2006/112/EC, where the taxable person has not opted to apply any of the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC.

2. The taxable person referred to in Article 242a of Directive 2006/112/EC, shall keep the following information in respect of supplies other than those referred to in paragraph 1:

- (a) the name, postal address and electronic address or website of the supplier whose supplies are facilitated through the use of the electronic interface and if available:
 - (i) the VAT identification number or national tax number of the supplier;
 - (ii) the bank account number or number of virtual account of the supplier

- (b) a description of the goods, their value, the place where the dispatch or transport of the goods ends together with the time of supply and, if available, the order number or unique transaction number;
 - (c) a description of the services, their value, information in order to establish the place of supply and time of supply and, if available, the order number or unique transaction number;
- (5) Section 2 of Chapter XI is replaced by the following:

SECTION 2

Special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

(Articles 358 to 369x of Directive 2006/112/EC)

Subsection 1

Definitions

Article 57a

For the purposes of this Section, the following definitions shall apply:

- (1) ‘non-Union scheme’ means the special scheme for services supplied by taxable persons not established within the Community as set out in Section 2 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (2) ‘Union scheme’ means the special scheme for intra-Community distance sales of goods, for supplies of goods within a Member State made by electronic interfaces facilitating those supplies and for services supplied by taxable persons established within the Community but not in the Member State of consumption as set out in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (3) ‘import scheme’ means the special scheme for distance sales of goods imported from third territories or third countries as set out in Section 4 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (4) ‘special scheme’ means the ‘non-Union scheme’, the ‘Union scheme’ or the ‘import scheme’ as the context requires;

- (5) ‘taxable person’ means a taxable person referred to in Article 359 of Directive 2006/112/EC who is permitted to use the non-Union scheme, a taxable person referred to in Article 369b of that Directive who is permitted to use the Union scheme or a taxable person referred to in Article 369m of that Directive who is permitted to use the import scheme;
- (6) ‘intermediary’ means a person defined in point (2) of Article 369l of Directive 2006/112/EC.

Subsection 2

Application of the Union scheme

Article 57b

(deleted)

Subsection 3

Scope of the Union scheme

Article 57c

The Union scheme shall not apply to services supplied in a Member State where the taxable person has established his business or has a fixed establishment. The supply of those services shall be declared to the competent tax authorities of that Member State in the VAT return as provided for under Article 250 of Directive 2006/112/EC.

Subsection 4

Identification

Article 57d

1. Where a taxable person informs the Member State of identification that he intends to make use of the non-Union or the Union scheme, that special scheme shall apply as from the first day of the following calendar quarter.

However, where the first supply of goods or services to be covered by the non-Union scheme or the Union scheme takes place before that date, the special scheme shall apply from the date of that first supply, provided the taxable person informs the Member State of identification of the commencement of his activities to be covered by the scheme no later than the tenth day of the month following that first supply.

2. Where a taxable person or an intermediary acting on his behalf informs the Member State of identification that he intends to make use of the import scheme, that special scheme shall apply from the day the taxable person or the intermediary has been allocated the individual VAT identification number for the import scheme as laid down in paragraphs 1 and 3 of Article 369q of Directive 2006/112/EC.

Article 57e

The Member State of identification shall identify the taxable person using the Union scheme by means of his VAT identification number as referred to in Articles 214 and 215 of Directive 2006/112/EC.

The individual identification number allocated to an intermediary pursuant to paragraph 2 of Article 369q of Directive 2006/112/EC shall enable him to act as intermediary on behalf of taxable persons making use of the import scheme. However, this number cannot be used by the intermediary to declare VAT on taxable transactions.

Article 57f

1. Where a taxable person using the Union scheme ceases to meet the conditions of the definition laid down in point (2) of Article 369a of Directive 2006/112/EC, the Member State in which he has been identified shall cease to be the Member State of identification.

However, where that taxable person still fulfils the conditions for using that special scheme, he shall, in order to continue using that scheme, indicate as the new Member State of identification, the Member State in which he has established his business or, if he has not established his business in the Community, a Member State where he has a fixed establishment. Where the taxable person using the Union scheme for the supply of goods is not established in the Community, he shall indicate as the new Member State of identification a Member State from which he dispatches or transports goods.

Where the Member State of identification changes in accordance with the second subparagraph, that change shall apply from the date on which the taxable person ceases to have a place of business or a fixed establishment in the Member State previously indicated as the Member State of identification or from the date on which that taxable person ceases to dispatch or transport goods from that Member State.

2. Where a taxable person using the import scheme or an intermediary acting on his behalf ceases to meet the conditions laid down in points (b) to (e) of point (3) of the second paragraph of Article 369l of Directive 2006/112/EC, the Member State in which the taxable person or his intermediary has been identified shall cease to be the Member State of identification.

However, where that taxable person or his intermediary still fulfils the conditions for using that special scheme, he shall, in order to continue using that scheme, indicate as the new Member State of identification, the Member State in which he has established his business or if he has not established his business in the Community, a Member State where he has a fixed establishment.

Where the Member State of identification changes in accordance with the second subparagraph, that change shall apply from the date on which the taxable person or his intermediary ceases to have a place of business or a fixed establishment in the Member State previously indicated as the Member State of identification.

Article 57g

1. A taxable person using the non-Union or the Union scheme may cease using those special schemes regardless of whether he continues to supply goods or services, which can be eligible for those special schemes. The taxable person shall inform the Member State of identification at least 15 days before the end of the calendar quarter prior to that in which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next calendar quarter.

VAT obligations relating to supplies of goods or services arising after the date on which the cessation became effective shall be discharged directly with the tax authorities of the Member State of consumption concerned.

2. A taxable person using the import scheme may cease using that scheme regardless of whether he continues to carry out distance sales of goods imported from third territories or third countries. The taxable person or the intermediary acting on his behalf shall inform the Member State of identification at least 15 days before the end of the month prior to that in which he intends to cease using the scheme. Cessation shall be effective from the first day of the next month and the taxable person shall no longer be allowed to use the scheme for supplies carried out from that day.

Subsection 5

Reporting obligations

Article 57h

1. A taxable person or an intermediary acting on his behalf shall, no later than the tenth day of the next month, inform the Member State of identification by electronic means of any of the following:

- (a) the cessation of his activities covered by a special scheme;
- (b) any changes to his activities covered by a special scheme whereby he no longer meets the conditions necessary for using that special scheme;
- (c) any changes to the information previously provided to the Member State of identification.

2. Where the Member State of identification changes in accordance with Article 57f, the taxable person or the intermediary acting on his behalf shall inform both relevant Member States of the change no later than the tenth day of the month following that change. He shall communicate to the new Member State of identification the registration details required when a taxable person makes use of a special scheme for the first time.

Subsection 6

Exclusion

Article 58

1. Where a taxable person using one of the special schemes meets one or more of the criteria for exclusion laid down in Article 369e or for deletion from the identification register laid down in Article 363 or in paragraphs 1 and 3 of Article 369r of Directive 2006/112/EC, the Member State of identification shall exclude that taxable person from that scheme.

Only the Member State of identification can exclude a taxable person from one of the special schemes.

The Member State of identification shall base its decision on exclusion or deletion on any information available, including information provided by any other Member State.

2. The exclusion of a taxable person from the non-Union scheme or the Union scheme shall be effective from the first day of the calendar quarter following the day on which the decision on exclusion is sent by electronic means to the taxable person. However, where the exclusion is due to a change of place of business or fixed establishment or of the place from which dispatch or transport of goods begins, the exclusion shall be effective from the date of that change.

3. The exclusion of a taxable person from the import scheme shall be effective from the first day of the month following the day on which the decision on exclusion is sent by electronic means to the taxable person except for following situations:

- (a) where the exclusion is due to a change of his place of business or fixed establishment, in which case the exclusion shall be effective from the date of that change;
- (b) where the exclusion is due to his persistent failure to comply with the rules of this scheme, in which case the exclusion shall be effective from the day following the day on which the decision on exclusion is sent by electronic means to the taxable person.

4. Except for the situation covered by point (b) of paragraph 3, the individual VAT identification number allocated for the use of the import scheme shall remain valid for the period of time needed to import the goods that were supplied prior to the date of exclusion, which may however not exceed two months as from that date.

5. Where an intermediary meets one of the criteria for deletion laid down in paragraph 2 of Article 369r of Directive 2006/112/EC, the Member State of identification shall delete that intermediary from the identification register and shall exclude the taxable persons represented by that intermediary from the import scheme.

Only the Member State of identification can delete an intermediary from the identification register.

The Member State of identification shall base its decision on deletion on any information available, including information provided by any other Member State.

The deletion of an intermediary from the identification register shall be effective from the first day of the month following the day on which the decision on deletion is sent by electronic means to the intermediary and the taxable persons he represents, except in the following situations:

- (a) where the deletion is due to a change of his place of business or fixed establishment in which case the deletion shall be effective as from the date of that change;
- (b) where the deletion of the intermediary is due to his persistent failure to comply with the rules of the import scheme in which case the deletion shall be effective as from the day following the day on which the decision on deletion is sent by electronic means to the intermediary and the taxable persons he represents.

Article 58a

A taxable person using a special scheme who has, for a period of two years, made no supplies of goods or services covered by that scheme in any Member State of consumption, shall be assumed to have ceased his taxable activities within the meaning of point (b) of Article 363, point (b) of Article 369e, point (b) of Article 369r(1) or point (b) of Article 369r(3) of Directive 2006/112/EC respectively. This cessation shall not preclude him from using a special scheme if he recommences his activities covered by any scheme.

Article 58b

1. Where a taxable person is excluded from one of the special schemes for persistent failure to comply with the rules relating to that scheme, that taxable person shall remain excluded from using any of the special schemes in any Member State for two years following the return period during which the taxable person was excluded.

However, the first subparagraph shall not apply in respect of the import scheme where the exclusion was due to persistent failure to comply with the rules by the intermediary acting on behalf of the taxable person.

Where an intermediary is deleted from the identification register for persistent failure to comply with the rules of the import scheme, he shall not be allowed to act as an intermediary for two years following the month during which he was deleted from that register.

2. A taxable person or an intermediary shall be regarded as having persistently failed to comply with the rules relating to one of the special schemes, within the meaning of point (d) of Article 363, point (d) of Article 369e, point (d) of Article 369r(1), point (c) of Article 369r(2) or point (d) of Article 369r(3) of Directive 2006/112/EC, in at least the following cases:

- (a) where reminders pursuant to Article 60a have been issued to him or the intermediary acting on his behalf by the Member State of identification, for three immediately preceding return periods and the VAT return has not been submitted for each and every one of these return periods within 10 days after the reminder has been sent;
- (b) where reminders pursuant to Article 63a have been issued to him or the intermediary acting on his behalf by the Member State of identification, for three immediately preceding return periods and the full amount of VAT declared has not been paid by him or the intermediary acting on his behalf for each and every one of these return periods within 10 days after the reminder has been sent, except where the remaining unpaid amount is less than EUR 100 for each return period;
- (c) where following a request from the Member State of identification and one month after a subsequent reminder by the Member State of identification, he or the intermediary acting on his behalf has failed to make electronically available the records referred to in Articles 369, 369k and 369x of Directive 2006/112/EC.

Article 58c

A taxable person who has been excluded from the non-Union scheme or the Union scheme shall discharge all VAT obligations relating to supplies of goods or services arising after the date on which the exclusion became effective directly with the tax authorities of the Member State of consumption concerned.

Subsection 7

VAT return

Article 59

1. Any return period within the meaning of Article 364, Article 369f or Article 369s of Directive 2006/112/EC shall be a separate return period.

2. Where, in accordance with the second subparagraph of paragraph 1 of Article 57d, the non-Union or the Union scheme applies from the date of the first supply, the taxable person shall submit a separate VAT return for the calendar quarter during which the first supply took place.

3. Where a taxable person has been registered under the non-Union scheme and the Union scheme during a return period, he shall submit VAT returns and make the corresponding payments to the Member State of identification for each scheme in respect of the supplies made and the periods covered by that scheme.

4. Where the Member State of identification changes in accordance with Article 57f after the first day of the return period in question, the taxable person or the intermediary acting on his behalf shall submit VAT returns and make corresponding payments to both the former and the new Member State of identification covering the supplies made during the respective periods in which the Member States have been Member State of identification.

Article 59a

Where a taxable person using a special scheme has supplied no goods or services in any Member State of consumption under that special scheme during a return period and has no corrections to make in respect of previous returns, he or the intermediary acting on his behalf shall submit a VAT return indicating that no supplies have been made during that period (a nil-VAT return).

Article 60

Amounts on VAT returns made under the special schemes shall not be rounded up or down to the nearest whole monetary unit. The exact amount of VAT shall be reported and remitted.

Article 60a

The Member State of identification shall remind, by electronic means, taxable persons or intermediaries acting on their behalf who have failed to submit a VAT return under Article 364, Article 369f or Article 369s of Directive 2006/112/EC, of their obligation to submit such a return. The Member State of identification shall issue the reminder on the tenth day following that on which the return should have been submitted, and shall inform the other Member States by electronic means that a reminder has been issued.

Any subsequent reminders and steps taken to assess and collect the VAT shall be the responsibility of the Member State of consumption concerned.

Notwithstanding any reminders issued, and any steps taken, by a Member State of consumption, the taxable person or the intermediary acting on his behalf shall submit the VAT return to the Member State of identification.

Article 61

1. Changes to the figures contained in a VAT return relating to periods up to and including the last return period in 2020 shall, after its submission, be made only by means of amendments to that return and not by adjustments in a subsequent return.

Changes to the figures contained in a VAT return relating to periods from the first return period in 2021 shall, after its submission, be made only by adjustments in a subsequent return.

2. The amendments referred to in paragraph 1, shall be submitted electronically to the Member State of identification within three years of the date on which the initial return was required to be submitted.

However, the rules of the Member State of consumption on assessments and amendments shall remain unaffected.

Article 61a

1. A taxable person or an intermediary acting on his behalf shall submit his final VAT return and any late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of the cessation, exclusion or change where:

- (a) he ceases to use one of the special schemes;
- (b) he is excluded from one of the special schemes;
- (c) he changes the Member State of identification in accordance with Article 57f.

Any corrections to the final return and previous returns arising after the submission of the final return shall be discharged directly with the tax authorities of the Member State of consumption concerned.

2. An intermediary shall submit the final VAT returns in respect of all taxable persons on whose behalf he is acting and any late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of deletion or change where:

- (a) he is deleted from the identification register;
- (b) he changes the Member State of identification in accordance with Article 57f(2).

Any corrections to the final return and previous returns arising after the submission of the final return, shall be discharged directly with the tax authorities of the Member State of consumption concerned.

Subsection 7a

Import scheme – chargeable event

Article 61b

For the application of Article 369n of Directive 2006/112/EC, the time when the payment has been accepted means the time when the payment confirmation, the payment authorisation message or a commitment for payment from the customer has been received by or on behalf of the taxable person making use of the import scheme, regardless of when the actual payment of money is made, whichever is the earliest.

Subsection 8

Currency

Article 61c

Where a Member State of identification whose currency is not the euro determines that VAT returns are to be made out in its national currency, that determination shall apply to the VAT returns of all taxable persons using the special schemes.

Subsection 9

Payments

Article 62

Without prejudice to the third subparagraph of Article 63a, and to Article 63b, a taxable person or the intermediary acting on his behalf shall make any payment to the Member State of identification.

Payments of VAT made by the taxable person or the intermediary acting on his behalf under Article 367, Article 369i or Article 369v of Directive 2006/112/EC shall be specific to the VAT return submitted pursuant to Article 364, Article 369f or Article 369s of that Directive. Any subsequent adjustment to the amounts paid shall be effected by the taxable person or the intermediary acting on his behalf only by reference to that return and may neither be allocated to another return, nor adjusted on a subsequent return. Each payment shall refer to the reference number of that specific return.

Article 63

A Member State of identification which receives a payment in excess of that resulting from the VAT return submitted under Article 364, Article 369f or Article 369s of Directive 2006/112/EC shall reimburse the overpaid amount directly to the taxable person concerned or the intermediary acting on his behalf.

Where a Member State of identification has received an amount in respect of a VAT return subsequently found to be incorrect, and that Member State has already distributed that amount to the Member States of consumption, those Member States of consumption shall each reimburse their respective part of any overpaid amount directly to the taxable person or to the intermediary acting on his behalf.

However, where overpayments relate to periods up to and including the last return period in 2018, the Member State of identification shall reimburse the relevant portion of the corresponding part of the amount retained in accordance with Article 46(3) of Regulation (EU) No 904/2010 and the Member State of consumption shall reimburse the overpayment less the amount that shall be reimbursed by the Member State of identification.

The Member States of consumption shall, by electronic means, inform the Member State of identification of the amount of those reimbursements.

Article 63a

Where a taxable person or the intermediary acting on his behalf has submitted a VAT return under Article 364, Article 369f or Article 369s of Directive 2006/112/EC, but no payment has been made or the payment is less than that resulting from the return, the Member State of identification shall, by electronic means on the tenth day following the latest day on which the payment should have been made in accordance with Article 367, Article 369i or Article 369v of Directive 2006/112/EC, remind the taxable person or the intermediary acting on his behalf of any VAT payment outstanding.

The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent.

Any subsequent reminders and steps taken to collect the VAT shall be the responsibility of the Member State of consumption concerned. When such subsequent reminders have been issued by a Member State of consumption, the corresponding VAT shall be paid to that Member State.

The Member State of consumption shall, by electronic means, inform the Member State of identification that a reminder has been issued.

Article 63b

Where no VAT return has been submitted, or where the VAT return has been submitted late or is incomplete or incorrect, or where the payment of VAT is late, any interest, penalties or any other charges shall be calculated and assessed by the Member State of consumption. The taxable person or the intermediary acting on his behalf shall pay such interests, penalties or any other charges directly to the Member State of consumption.

Subsection 10

Records

Article 63c

1. In order to be regarded as sufficiently detailed within the meaning of Articles 369 and 369k of Directive 2006/112/EC, the records kept by the taxable person shall contain the following information:

- (a) the Member State of consumption to which the goods or services are supplied;
- (b) the type of services or the description and quantity of goods supplied;
- (c) the date of the supply of the goods or services;
- (d) the taxable amount indicating the currency used;
- (e) any subsequent increase or reduction of the taxable amount;
- (f) the VAT rate applied;
- (g) the amount of VAT payable indicating the currency used;
- (h) the date and amount of payments received;
- (i) any payments on account received before the supply of the goods or services;
- (j) where an invoice is issued, the information contained on the invoice;
- (k) in respect of services, the information used to determine the place where the customer is established or has his permanent address or usually resides and, in respect of goods, the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends;
- (l) any proof of possible returns of goods, including the taxable amount and the VAT rate applied.

2. In order to be regarded as sufficiently detailed within the meaning of Article 369x of Directive 2006/112/EC, the records kept by the taxable person or the intermediary acting on his behalf shall contain the following information:

- (a) the Member State of consumption to which the goods are supplied;
- (b) the description and quantity of goods supplied;
- (c) the date of the supply of goods;
- (d) the taxable amount indicating the currency used;
- (e) any subsequent increase or reduction of the taxable amount;
- (f) the VAT rate applied;
- (g) the amount of VAT payable indicating the currency used;
- (h) the date and amount of payments received;
- (i) where an invoice is issued, the information contained on the invoice;
- (j) the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends;
- (k) proof of possible returns of goods, including the taxable amount and VAT rate applied;
- (l) the order number or unique transaction number;
- (m) the unique consignment number where that taxable person is directly involved in the delivery.

3. The information referred to in paragraphs 1 and 2 shall be recorded by the taxable person or the intermediary acting on his behalf in such a way that it can be made available by electronic means without delay and in respect of each individual good or service supplied.

Where a taxable person or the intermediary acting on his behalf has been requested to submit, by electronic means the records referred to in Articles 369, 369k and 369x of Directive 2006/112/EC and he has failed to submit them within 20 days of the date of the request, the Member State of identification shall remind the taxable person or the intermediary acting on his behalf to submit those records. The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent.?

Subsection 11

Special arrangements for declaration and payment of import VAT

Article 63d

The application of monthly payment of import VAT in accordance with the special arrangements for declaration and payment of import VAT provided for in Chapter 7 of Title XII of Directive 2006/112/EC may be subject to the conditions applicable for the deferment of payment of customs duty in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.⁶

For the purpose of the application of the special arrangements, Member States may regard the condition “presenting the goods to customs on behalf of the person for whom the goods are destined” as fulfilled if the person presenting the goods to customs declares his intention to make use of the special arrangement and to collect the VAT from the person for whom the goods are destined.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

However, Member States shall allow taxable persons and intermediaries acting on their behalf to submit the information required under Article 360, Article 369c or Article 369o of Directive 2006/112/EC for registration under the special schemes as from 1 October 2020.

⁶ OJ L 269, 10.10.2013, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President
