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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods

COUNCIL DIRECTIVE (EU) 2019/...

of ...

**amending Directive 2006/112/EC
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 Opinion of ... [(OJ ...)] [(not yet published in the Official Journal)].

² Opinion of ... [(OJ ...)] [(not yet published in the Official Journal)].

Whereas:

- (1) Council Directive 2006/112/EC¹ as amended by Council Directive (EU) 2017/2455² 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 that Directive splits a single supply into two supplies, it is necessary to determine to which of those 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 those two supplies occurs at the same time.

¹ 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).

² 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) Since 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 value added tax (VAT) paid to suppliers not established in the Community, there is a risk that the latter might 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 he paid in respect of the purchase or import of the goods supplied. For that 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, might hold stock in several Member States and might, in addition to intra-Community distance sales of goods, supply goods from that 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.

- (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 Council¹.
- (5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents², 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:

¹ 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).

² OJ C 369, 17.12.2011, p. 14.

Article 1

Directive 2006/112/EC is amended as follows:

- (1) in Section 2 of Chapter 1 of Title V, the following Article 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.';

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

'Article 66a

By way of derogation from Articles 63, 64 and 65, the chargeable event of the supply 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 of goods to that taxable person shall occur and VAT shall become chargeable at the time when the payment has been accepted.';

- (3) the following Article is inserted:

'Article 136a

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

- (4) 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;';

- (5) in Article 204(1), 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.';

- (6) in Article 272(1), point (b) is replaced by the following:

'(b) taxable persons carrying out none of the transactions referred to in Articles 20, 21, 22, 33, 36, 136a, 138 and 141;';

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

'Special schemes for taxable persons supplying services to non-taxable persons or making distance sales of goods or certain domestic supplies of goods';

(8) the heading of Section 3 of 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';

(9) 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 Community or has a fixed establishment there but who 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 that 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 that 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 Article 14a(2) where the dispatch or transport of the goods supplied begins and ends in the same Member State, that Member State.';

(10) 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 Article 14a(2) where the dispatch or 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.';

(11) 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;';

(12) 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.';

(13) 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 Article 14a(2) 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 in respect 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 Article 14a(2);
 - (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 Article 14a(2).

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 Member State where such goods are dispatched or transported from.

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 Member State where such goods are dispatched or transported from, 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.';

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

- '2. Member States shall require that the VAT referred to in paragraph 1 be 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 ...,

For the Council

The President
