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**NOTE**

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From:	General Secretariat of the Council
On:	8 May 2025
To:	Council

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Subject:	Draft Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT - General approach = Compromise text
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Delegations will find attached a Presidency compromise text for the above Directive.

Draft

**COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT**

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 Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (1) It has been demonstrated that the use of the Import One Stop Shop (IOSS) scheme facilitates and guarantees increased VAT compliance in relation to imports and thereby ensures that there is no distortion of competition to the detriment of EU supplies through less effective tax collection on imports of low-value consignments from third countries to consumers in the EU. Against the backdrop of exponentially increasing imports, it is necessary to further incentivise the use of the IOSS scheme. Therefore, in order to achieve this objective, traders who are not registered in the IOSS scheme, but who are making supplies within the scope of the IOSS, should, as a rule, be made liable for import VAT and VAT on the distance sales of imported goods in the Member States of final destination of the goods, which would require registration in each of these Member States.
- (2) In order to protect Member States' tax revenues, traders not established in the Union and not availing themselves of the use of the IOSS, should be obliged to designate a tax representative assuming all VAT obligations related to all eligible import consignments. However, that obligation should not apply if the trader is established in a country listed in Commission Implementing Decision (EU) 2021/942<sup>3</sup> with which the Union or the Member State of importation has concluded an agreement on mutual assistance. In order to enhance enforcement, the use of obligation to use a tax representative is therefore an appropriate and proportionate alternative for suppliers or deemed suppliers not established in the Union and not making use of the IOSS.

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<sup>3</sup> Commission Implementing Decision (EU) 2021/942 of 10 June 2021 laying down rules for the application of Council Directive 2006/112/EC as regards the establishment of the list of third countries with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Council Regulation (EU) No 904/2010.

- (3) The conditions for appointing such a tax representative for the payment of VAT should therefore be aligned with the obligation of non-EU established traders to appoint an intermediary for the use of IOSS, in order to ensure the level playing field for the collection of VAT on eligible distance sales of imported goods. Accordingly, certain non-EU established suppliers or deemed suppliers would be obliged to have a tax representative for both the importation and the distance sales of imported goods in each Member State where such supplies take place. However, as the Member State of importation and that of the distance sales of imported goods will be the same Member State when the IOSS is not used, there might be no need to appoint two different tax representatives in that particular Member State.
- (4) Where the IOSS is not used, the import VAT on eligible consignments is collected directly by the Member State of final destination of the goods, which is the Member State where the import occurs. By contrast, in cases where the IOSS is used, the importation is exempt from import VAT and the VAT on the distance sales of imported goods is collected by the supplier and paid to their Member State of identification, that transmits the VAT to the relevant Member States of consumption. When establishing the conditions for appointing a tax representative when the IOSS is not used, this situation should therefore be taken into consideration. When establishing the conditions for appointing an intermediary when the IOSS is used, Member States are allowed to require guarantees which are adequate and proportionate to the risks associated to subjects and transactions intermediated.

- (5) Indirect customs representatives have a considerable role in the procedures attached to the importation of consignments. Although their task primarily encompasses customs rules, they can play an active role in ensuring that VAT on importation is collected. Currently, this is possible where the indirect customs representative is designated as the person liable to pay the import VAT. However, under the incentivised IOSS approach, the indirect customs representative could be held liable to pay the import VAT where he is acting as a tax representative of the person liable to pay the import VAT. Because acting as a tax representative is an option for the indirect customs representative, but not an obligation, it is appropriate to enable Member States to make indirect customs representatives who do not act as a tax representative jointly and severally liable for the import VAT, in order to secure the payment of VAT on importation. Besides this, Member States should be enabled to make other persons, for example persons liable to pay the customs debt in case of customs irregularities, jointly and severally liable for the import VAT.

- (6) Under the incentivised IOSS approach, the supplier or deemed supplier is systematically liable for VAT at import. Consequently, when the supplier, the deemed supplier, and, where applicable, the tax representative appointed by them or the person that can be held jointly and severally liable for the VAT on importation does not comply, the goods will not be released for free circulation. In order to avoid that the customer faces the negative consequences of the non-compliance of the persons liable for the payment of VAT on importation, Member States may allow that the customer - upon his agreement - pays the import VAT which is due by the supplier or deemed supplier, where they fail to fulfil the registration and payment obligations, and where the supplier or deemed supplier is unknown to the person filing the customs declaration at the moment of importation. However, Member States should be able to establish the appropriate conditions and procedures for applying this possibility, so as to avoid that the payment of import VAT by the customer would weaken the effectiveness of the measure intended to incentivise the use of the IOSS. This payment should be without prejudice to the possibility for the customer to reclaim the import VAT from the supplier or deemed supplier under the relevant civil law. As this possibility is intended to overcome the difficulties arising from the transition from the customer's liability to the supplier's liability on the import consignments, the Commission should assess whether maintaining those rules after the completion of the customs reform is justified.
- (7) The special arrangements as set out in Chapter 7 of Title XII provide that the person liable for the payment of import VAT relating to eligible distance sales of imported goods is the customer. This runs counter to the objective of shifting the liability from the customer to the supplier or deemed supplier, and making them systematically liable for the import VAT relating to those goods. Even in those cases where the customer pays the VAT on import, the supplier or deemed supplier remains liable in principle. Therefore, the special arrangements should no longer be applied and be deleted.

- (8) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>4</sup>, 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.
- (9) Since the objective of this Directive, namely to advance the concept of a single VAT registration in the Union, can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (10) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

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<sup>4</sup> OJ C 369, 17.12.2011, p. 14.

## *Article 1*

### **Amendments to Directive 2006/112/EC with effect from 1 July 2028**

Directive 2006/112/EC is amended as follows:

- (1) Article 201 is replaced by the following:

#### *‘Article 201*

On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation.

By way of derogation from the first paragraph, the supplier or, where applicable, the deemed supplier in accordance with Article 14a(1), making distance sales of goods imported from third territories or third countries that would be eligible for the special scheme set out in Section 4 of Chapter 6 of Title XII, shall be the person liable to pay the VAT on importation.

Where the supplier or the deemed supplier, referred to in the second paragraph, is not established in the Community but in a third country with which neither the Union, nor the Member State of importation has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Regulation (EU) No 904/2010, that person shall appoint a tax representative in the Member State of importation as the person liable for payment of VAT on importation.

Where the importation of goods is exempted in accordance with Article 143 (1) (ca), the third paragraph shall not apply.



- (2) the following article is inserted:

*‘Article 201a*

Without prejudice to the second and third paragraph of Article 201 and where the persons liable for the payment of VAT on importation fails to fulfil their tax obligations under those paragraphs, Member States may allow, according to conditions and procedures they may lay down, the customer to pay the VAT on importation, which is due by these persons.’;

- (3) in Article 204(1), the second subparagraph is amended as follows:

‘Furthermore, where the taxable transaction is carried out by a taxable person who is not established in the Member State in which the VAT is due and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that provided for in Council Directive 2010/24/EU and Regulation (EU) No 904/2010, Member States may take measures to provide that the person liable for payment of VAT is to be a tax representative appointed by the non-established taxable person.’;

- (4) in Article 204(1), the following subparagraph is inserted after the third paragraph:

‘By way of derogation from the first and second subparagraph, where a taxable person is required to appoint a tax representative in accordance with the third paragraph of Article 201, that person shall appoint a tax representative as the person liable for the the payment of the VAT on distance sales of goods imported from third territories or third countries that would be eligible for the special scheme set out in Section 4 of Chapter 6 of Title XII.’;

- (5) in Article 205, the following paragraph is inserted after the first paragraph:

‘In addition, in the situation referred to in second and third paragraph of Article 201, Member States may provide that a person other than the customer and the person liable for the payment of VAT is to be held jointly and severally liable for payment of VAT on importation.’;

- (6) the following article is inserted:

*‘Article 205a*

By [31 March 2032] at the latest, the Commission shall, based on the information provided by Member States, present to the Council an evaluation report on the functioning of the provisions included in second, third and fourth paragraphs of Article 201, in Article 201a, in subparagraph 4 of paragraph 1 of Article 204 and in paragraph 2 of Article 205, including their impact on the functioning of the internal market and assess the need of maintaining Article 201a and paragraph 2 of Article 205, and if deemed necessary, make an appropriate legislative proposal.’;

- (7) Chapter 7 of Title XII is deleted.

## *Article 2*

### **Transposition**

1. Member States shall adopt and publish, by 30 June 2028 at the latest, the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 July 2028.

When Member States adopt those provisions, 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*

### **Entry into force**

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*

### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*

*The President*