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#### **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: 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

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**COUNCIL DIRECTIVE (EU) .../...**

**of ...**

**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,

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<sup>1</sup> Opinion of ... (not yet published in the Official Journal).

<sup>2</sup> OJ C, C/2024/1579, 5.3.2024, ELI: <http://data.europa.eu/eli/C/2024/1579/oj>.

Whereas:

- (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 Union supplies through less effective tax collection on imports of low-value consignments from third countries to consumers in the Union. Against the backdrop of exponentially increasing imports, it is necessary to further incentivise the use of the IOSS scheme. Therefore, in order to achieve that objective, suppliers or deemed suppliers that are not registered in the IOSS scheme, but that are making supplies within the scope of the IOSS scheme, should, as a rule, be made liable for import VAT and VAT on distance sales of imported goods in the Member States of final destination of the goods, which would require registration in each of those Member States.

- (2) In order to protect tax revenues of Member States, suppliers or deemed suppliers not established in the Union and not availing themselves of the use of the IOSS scheme should be obliged to appoint a tax representative assuming all VAT obligations related to all eligible import consignments. However, that obligation should not apply if the supplier or deemed supplier is established in a country listed in Commission Implementing Decision (EU) 2021/942<sup>3</sup> or in a country with which the Member State of importation has concluded an agreement on mutual assistance. In order to enhance enforcement, the obligation to use a tax representative is an appropriate and proportionate measure for suppliers or deemed suppliers not established in the Union and not making use of the IOSS scheme.

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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 (OJ L 205, 11.6.2021, p. 80, ELI: [http://data.europa.eu/eli/dec\\_impl/2021/942/oj](http://data.europa.eu/eli/dec_impl/2021/942/oj)).

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

- (5) Indirect customs representatives have a considerable role in the procedures for the importation of consignments. Although their task primarily encompasses customs rules, they can play an active role in ensuring that import VAT is collected. Currently, that is possible where the indirect customs representative is designated as the person liable to pay the import VAT. However, under the measures to incentivise the use of the IOSS scheme introduced by this Directive, the indirect customs representative could be held liable to pay the import VAT where the indirect customs representative 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 that do not act as a tax representative jointly and severally liable for the import VAT, in order to secure the payment of import VAT. In addition, 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 measures to incentivise the use of the IOSS scheme introduced by this Directive, the supplier or deemed supplier is systematically made liable for import VAT. 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 import VAT does not comply with the VAT obligations concerning certain imported goods, the goods in question will not be released for free circulation. In order to avoid that it is the customer that faces the negative consequences of the non-compliance of the persons liable for payment of import VAT, Member States should be able to allow that the customer, upon the customer's agreement, pays the import VAT due by the supplier or deemed supplier, where the supplier or deemed supplier fails 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 allowed to establish the appropriate conditions and procedures for applying that possibility, in order to avoid that the payment of import VAT by the customer weakens the effectiveness of the measures to incentivise the use of the IOSS scheme introduced by this Directive. That 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 that possibility is intended to overcome the difficulties arising from the transition from the customer's liability to the supplier's or deemed supplier's liability on import consignments, the Commission should assess whether maintaining those rules after the completion of the customs reform is justified.

- (7) In accordance with the special arrangements as set out in Title XII, Chapter 7, of Council Directive 2006/112/EC<sup>4</sup> the person liable for payment of import VAT relating to eligible distance sales of imported goods is the customer. This is contrary 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 import VAT, the supplier or deemed supplier remains liable in principle. Therefore, the special arrangements should no longer be applied and they should be deleted.
- (8) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>5</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 that objective.

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<sup>4</sup> 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, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>).

<sup>5</sup> OJ C 369, 17.12.2011, p. 14.



(10) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

## *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*

1. On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation.
2. By way of derogation from paragraph 1 of this Article, 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 Title XII, Chapter 6, Section 4, shall be the person liable to pay the import VAT.
3. Where the supplier or the deemed supplier referred to in paragraph 2 of this Article 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 supplier or deemed supplier shall appoint a tax representative in the Member State of importation as the person liable for payment of import VAT.

4. Where the importation of goods is exempted in accordance with Article 143(1), point (ca), paragraph 3 of this Article shall not apply.

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\* Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1, ELI: <http://data.europa.eu/eli/dir/2010/24/oj>).’;

- (2) the following article is inserted:

*‘Article 201a*

Without prejudice to Article 201(2) and (3), and where the persons liable for payment of import VAT fail to fulfil their tax obligations under those paragraphs, Member States may allow, according to conditions and procedures to be laid down by them, the customer to pay the import VAT which is due by those persons.’;

- (3) Article 204, paragraph 1 is amended as follows:

- (a) the second subparagraph is replaced by the following:

‘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 their seat, relating to mutual assistance similar in scope to that provided for in 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.’;

(b) the following subparagraph is added:

‘By way of derogation from the first and second subparagraph of this paragraph, where a taxable person is required to appoint a tax representative in accordance with Article 201(3), that taxable person shall appoint a tax representative as the person liable for payment of VAT on distance sales of goods imported from third territories or third countries that would be eligible for the special scheme set out in Title XII, Chapter 6, Section 4.’;

(4) in Article 205, the following paragraph is added:

‘In addition, in the situations referred to in Article 201(2) and (3), Member States may provide that a person other than the customer and the person liable for payment of VAT is to be held jointly and severally liable for payment of import VAT.’;

(5) the following article is inserted:

*‘Article 205a*

By 31 March 2032, the Commission shall, based on the information provided by Member States, present to the Council an evaluation report on the functioning of Article 201(2), (3) and (4), Article 201a, Article 204(1), fourth subparagraph, and Article 205, second paragraph, including their impact on the functioning of the internal market, and assess the need of maintaining Article 201a and Article 205, second paragraph, and if deemed necessary, make an appropriate legislative proposal.’;

(6) Title XII, Chapter 7, is deleted.

*Article 2*  
*Transposition*

1. Member States shall adopt and publish, by 30 June 2028, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 1 July 2028.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures 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 ..., ...

*For the Council*  
*The President*

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