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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. Cion doc.:	9461/18 FISC 231 ECOFIN 502 - COM(2018) 298 final
Subject:	Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud – General approach

1. On 25 May 2018, the Commission transmitted the proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud¹.
2. The purpose of this legislative proposal for a Directive amending Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax² (hereafter the VAT Directive) is to prolong:

¹ Doc. 9461/18 FISC 231 ECOFIN 502.

² OJ L 347, 11.12.2006, p.1.

- a) the possibility for Member States to apply the reverse charge mechanism³ to combat existing fraud in supplies of goods and services included in Article 199a(1) of the VAT Directive; and
 - b) the possibility to use the Quick Reaction Mechanism (QRM) to combat fraud.
3. At the meeting of the Working Party on Tax Questions on 11-12 September 2018, all Member States could agree on the substance of the proposal.
 4. The European Economic and Social Committee has delivered its opinion on this legislative proposal on 11 July 2018⁴, the opinion of the European Parliament is pending.
 5. The Committee of Permanent Representatives (Part 2) on 26 September 2018 decided to recommend that this dossier is submitted to the Council as an "A" ("no discussion") item.⁵ The remaining parliamentary scrutiny reserves were lifted by all delegations.
 6. The Council is therefore invited to reach a general approach on the draft Directive, on the basis of the text of the Commission proposal, set out in Annex I to this note, with a view to adopting the Directive, subject to legal-linguistic revision.
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³ As a general rule, Article 193 of the VAT Directive stipulates that the taxable person supplying goods or services is liable to pay VAT. As a derogation from this system of fractioned payment, the reverse charge mechanism allows to designate the recipient (taxable person) of the supply as the person liable for the payment of VAT.

⁴ Doc. 9762/18 FISC 246 ECOFIN 570.

⁵ Doc. 12163/18 FISC 359 ECOFIN 824.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud

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 Parliament⁶,

Having regard to the opinion of the European Economic and Social Committee⁷,

Acting in accordance with a special legislative procedure,

⁶ OJ C , , p. .

⁷ OJ C , , p. .

Whereas:

- (1) Tax fraud in the field of value added tax (VAT) leads to considerable budget losses and has an impact on the operation of the internal market.
- (2) Article 199a of Council Directive 2006/112/EC⁸ allows Member States to provide that the person liable for payment of VAT on supplies listed in that Article is the taxable person to whom the supply is made (the reverse charge mechanism) in order to quickly tackle the problem of the missing trader fraud in intra-Community trade (MTIC). The Member States may apply this mechanism until 31 December 2018 and for a minimum period of two years.
- (3) The Quick Reaction Mechanism (QRM) special measure set out in Article 199b of Directive 2006/112/EC offers Member States a faster procedure allowing the introduction of the reverse charge mechanism as regards specific supplies of goods and services in order to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses. In accordance with Article 3 of Council Directive 2013/42/EU⁹ Member States may apply the QRM special measure until 31 December 2018.
- (4) On 8 March 2018 the Commission presented a Report on the effects of the mechanisms on combatting fraud referred to in Articles 199a and 199b of Directive 2006/112/EC to the European Parliament and to the Council¹⁰.

⁸ 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.).

⁹ Council Directive 2013/42/EU of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards a quick Reaction Mechanism against VAT fraud (OJ L 201, 26.7.2013, p. 1).

¹⁰ Report from the Commission to the Council and the European Parliament on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on combatting fraud, COM(2018) 118 of 8 March 2018.

- (5) According to the Report, Member States and stakeholders generally consider the reverse charge mechanism set out in Article 199a of Directive 2006/112/EC as an effective and efficient temporary tool in fighting VAT fraud in the given sectors or in preventing the fraud from taking place. The requirement of a minimum of two years for the application of the measure included in Article 199a(1) proved to be an impediment to a few Member States wishing to introduce the reverse charge mechanism and not fulfilling this condition. Consequently, the requirement of minimum period of two years is removed from the provision.
- (6) Regarding the QRM special measure referred to in Article 199b of Directive 2006/112/EC, although it has never been effectively used, Member States consider that it should remain as a useful tool and a precautionary measure against exceptional cases of VAT fraud.
- (7) Given the findings and the conclusion of the Report it appears that the measures referred to in Articles 199a and 199b of Directive 2006/112/EC have proved to be useful temporary and targeted measures to fight VAT fraud. Those measures are to expire on 31 December 2018 and that would deprive Member States of an efficient tool to fight VAT fraud. It is therefore appropriate to prolong the application of those measures for a limited period of time, until the envisaged entry into force of the definitive VAT regime.
- (8) 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 Article 199a(1), the introductory words are replaced by the following:

'Member States may, until 30 June 2022, provide that the person liable for the payment of VAT is the taxable person to whom any of the following supplies are made:';

(2) Article 199b is replaced by the following:

"Article 199b

1. A Member State may, in cases of imperative urgency and in accordance with paragraphs 2 and 3, designate the recipient as the person liable to pay VAT on specific supplies of goods and services by derogation from Article 193 as a Quick Reaction Mechanism ("QRM") special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.

The QRM special measure shall be subject to appropriate control measures by the Member State with respect to taxable persons who supply the goods or services to which that measure applies, and shall be for a period not exceeding nine months.

2. A Member State wishing to introduce a QRM special measure as provided for in paragraph 1 shall send a notification to the Commission using the standardised form established in accordance with paragraph 4 and at the same time send it to the other Member States. The Member State shall provide the Commission with the information indicating the sector concerned, the type and the features of the fraud, the existence of imperative grounds of urgency, the sudden and massive character of the fraud and its consequences in terms of considerable and irreparable financial losses. If the Commission considers it does not have all the necessary information, it shall contact the Member State concerned within two weeks of receipt of the notification and specify what additional information is required. Any additional information provided by the Member State concerned to the Commission shall at the same time be sent to the other Member States. If the additional information provided is not sufficient, the Commission shall inform the Member State concerned thereof within one week.

The Member State wishing to introduce a QRM special measure as provided for in paragraph 1 of this Article shall at the same time also make an application to the Commission in accordance with the procedure laid down in Article 395(2) and (3).

In cases of imperative urgency as set out in paragraph 1 of this Article the procedure laid down in Article 395(2) and (3) shall be completed within six months of receipt of the application by the Commission.

3. Once the Commission has all the information it considers necessary for appraisal of the notification referred to in the first subparagraph of paragraph 2, it shall notify the Member States thereof. Where it objects to the QRM special measure, it shall produce a negative opinion within one month of that notification, and shall inform the Member State concerned and the VAT Committee thereof. Where the Commission does not object, it shall confirm this in writing to the Member State concerned and to the VAT Committee within the same time period. The Member State may adopt the QRM special measure from the date of receipt of that confirmation. In appraising the notification, the Commission shall take into account the views of any other Member State sent to it in writing.
4. The Commission shall adopt an implementing act establishing a standardised form for the submission of the notification for the QRM special measure referred to in paragraph 2 and of the information referred to in the first subparagraph of paragraph 2. That implementing act shall be adopted in accordance with the examination procedure referred to in paragraph 5.
5. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*) shall apply and for this purpose the committee shall be the committee established by Article 58 of Council Regulation (EU) No 904/2010(**).

6. The QRM special measure as provided for in paragraph 1 shall apply until 30 June 2022.;

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(**) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).";

- (3) in Article 395, paragraph 5 is deleted.

Article 2

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
