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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States

COUNCIL DIRECTIVE (EU) 2018/...

of ...

amending Directive 2006/112/EC

**as regards the harmonisation and simplification of certain rules
in the value added tax system for the taxation of trade
between Member States**

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) In 1967, when the Council adopted the common system of value added tax (VAT) by means of First Council Directive 67/227/EEC¹ and Second Council Directive 67/228/EEC², the commitment was made to establish a definitive VAT system operating within the European Community in the same way as it would within a single Member State. Since the political and technical conditions were not ripe for such a system when the fiscal frontiers between Member States were abolished by the end of 1992, transitional VAT arrangements were adopted. Council Directive 2006/112/EC³ provides that those transitional arrangements have to be replaced by definitive arrangements.
- (2) In accordance with its communication of 7 April 2016 on an action plan on VAT, the Commission put forward a proposal setting out the elements for a definitive VAT system for cross-border business-to-business (B2B) trade between Member States that would be based on the principle of taxation of cross-border supplies of goods in the Member State of destination.

¹ First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ 71, 14.4.1967, p. 1301).

² Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p. 1303).

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).

- (3) The Council, in its conclusions of 8 November 2016, invited the Commission to make certain improvements to the Union VAT rules for cross-border transactions with regard to the role of the VAT identification number in the context of the exemption for intra-Community supplies, call-off stock arrangements, chain transactions and the proof of transport for the purposes of the exemption for intra-Community transactions.
- (4) In light of the request made by the Council and that it will take several years for the definitive VAT system for intra-Community trade to be implemented, these specific measures, intended to harmonise and simplify certain arrangements for businesses, are appropriate.

- (5) Call-off stock refers to the situation where, at the time of the transport of goods to another Member State, the supplier already knows the identity of the person acquiring the goods, to whom these goods will be supplied at a later stage and after they have arrived in the Member State of destination. This currently gives rise to a deemed supply (in the Member State of departure of the goods) and a deemed intra-Community acquisition (in the Member State of arrival of the goods), followed by a ‘domestic’ supply in the Member State of arrival, and requires the supplier to be identified for VAT purposes in that Member State. To avoid this, such transactions, where they take place between two taxable persons should be, under certain conditions, considered to give rise to one exempt supply in the Member State of departure and one intra-Community acquisition in the Member State of arrival.
- (6) Chain transactions refer to successive supplies of goods which are subject to a single intra-Community transport. The intra-Community movement of the goods should only be ascribed to one of the supplies, and only that supply should benefit from the VAT exemption provided for the intra-Community supplies. The other supplies in the chain should be taxed and could require the VAT identification of the supplier in the Member State of supply. In order to avoid different approaches amongst Member States, which may lead to double taxation or non-taxation, and in order to enhance legal certainty for operators, a common rule should be established that, provided certain conditions are met, the transport of the goods should be attributed to one supply within the chain of transactions.

- (7) As regards the VAT identification number in relation to the exemption for the supply of goods in the intra-Community trade, it is proposed that the inclusion of the VAT identification number of the person acquiring the goods in the VAT Information Exchange System (VIES), assigned by a Member State other than that in which the transport of the goods begins, become, in addition to the condition of transport of the goods outside the Member State of supply, a substantive condition for the application of exemption rather than a formal requirement. Furthermore, the VIES listing is essential for informing the Member State of arrival of the presence of goods in its territory and is therefore a key element in the fight against fraud in the Union. For that reason, Member States should ensure that, where the supplier does not comply with his VIES listing obligations, the exemption should not apply except where the supplier is acting in good faith, that is to say, where he can duly justify before the competent tax authorities any of his shortcomings relating to the recapitulative statement, which could also include at that time the provision by the supplier of the correct information as required under Article 264 of Directive 2006/112/EC.
- (8) Since the objective of this Directive, namely the improved operation of VAT arrangements in the context of cross-border B2B trade, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effect, be better 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.

- (9) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, 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.
- (10) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

¹ OJ C 369, 17.12.2011, p. 14.

Article 1

Directive 2006/112/EC is amended as follows:

(1) the following Article is inserted:

‘Article 17a

1. The transfer by a taxable person of goods forming part of his business assets to another Member State under call-off stock arrangements shall not be treated as a supply of goods for consideration.
2. For the purposes of this Article, call-off stock arrangements shall be deemed to exist where the following conditions are met:
 - (a) goods are dispatched or transported by a taxable person, or by a third party on his behalf, to another Member State with a view to those goods being supplied there, at a later stage and after arrival, to another taxable person who is entitled to take ownership of those goods in accordance with an existing agreement between both taxable persons;
 - (b) the taxable person dispatching or transporting the goods has not established his business nor has a fixed establishment in the Member State to which the goods are dispatched or transported;

- (c) the taxable person to whom the goods are intended to be supplied is identified for VAT purposes in the Member State to which the goods are dispatched or transported and both his identity and the VAT identification number assigned to him by that Member State are known to the taxable person referred to in point (b) at the time when the dispatch or transport begins;
 - (d) the taxable person dispatching or transporting the goods records the transfer of the goods in the register provided for in Article 243(3) and includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to him by the Member State to which the goods are dispatched or transported in the recapitulative statement provided for in Article 262(2).
3. Where the conditions laid down in paragraph 2 are met, the following rules shall apply at the time of the transfer of the right to dispose of the goods as owner to the taxable person referred to in point (c) of paragraph 2, provided that the transfer occurs within the deadline referred to in paragraph 4:
- (a) a supply of goods in accordance with Article 138(1) shall be deemed to be made by the taxable person that dispatched or transported the goods either by himself or by a third party on his behalf in the Member State from which the goods were dispatched or transported;
 - (b) an intra-Community acquisition of goods shall be deemed to be made by the taxable person to whom those goods are supplied in the Member State to which the goods were dispatched or transported.

4. If, within 12 months after the arrival of the goods in the Member State to which they were dispatched or transported, the goods have not been supplied to the taxable person for whom they were intended, referred to in point (c) of paragraph 2 and paragraph 6, and none of the circumstances laid down in paragraph 7 have occurred, a transfer within the meaning of Article 17 shall be deemed to take place on the day following the expiry of the 12-month period.
5. No transfer within the meaning of Article 17 shall be deemed to take place where the following conditions are met:
 - (a) the right to dispose of the goods has not been transferred, and those goods are returned to the Member State from which they were dispatched or transported within the time limit referred to in paragraph 4; and
 - (b) the taxable person who dispatched or transported the goods records their return in the register provided for in Article 243(3).
6. Where, within the period referred to in paragraph 4, the taxable person referred to in point (c) of paragraph 2 is substituted by another taxable person, no transfer within the meaning of Article 17 shall be deemed to take place at the time of the substitution, provided that:
 - (a) all other applicable conditions in paragraph 2 are met; and
 - (b) the substitution is recorded by the taxable person referred to in point (b) of paragraph 2 in the register provided for in Article 243(3).

7. Where, within the time limit referred to in paragraph 4, any of the conditions set out in paragraphs 2 and 6 ceases to be fulfilled, a transfer of goods according to Article 17 shall be deemed to take place at the time that the relevant condition is no longer fulfilled.

If the goods are supplied to a person other than the taxable person referred to in point (c) of paragraph 2 or in paragraph 6, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled immediately before such supply.

If the goods are dispatched or transported to a country other than the Member State from which they were initially moved, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled immediately before such dispatch or transport starts.

In the event of the destruction, loss or theft of the goods, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled on the date that the goods were actually removed or destroyed, or, if it is impossible to determine that date, the date on which the goods were found to be destroyed or missing.’;

(2) the following Article is inserted:

Article 36a

1. Where the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain, the dispatch or transport shall be ascribed only to the supply made to the intermediary operator.
2. By way of derogation from paragraph 1, the dispatch or transport shall be ascribed only to the supply of goods by the intermediary operator where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.
3. For the purposes of this Article, “intermediary operator” means a supplier within the chain other than the first supplier in the chain who dispatches or transports the goods either himself or through a third party acting on his behalf.
4. This Article shall not apply to the situations covered by Article 14a.’;

(3) Article 138 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met:

(a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins;

(b) the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier.’;

(b) the following paragraph is inserted:

‘1a. The exemption provided for in paragraph 1 shall not apply where the supplier has not complied with the obligation provided for in Articles 262 and 263 to submit a recapitulative statement or the recapitulative statement submitted by him does not set out the correct information concerning this supply as required under Article 264, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities.’;

(4) in Article 243, the following paragraph is added:

‘3. Every taxable person who transfers goods under the call-off stock arrangements referred to in Article 17a shall keep a register that permits the tax authorities to verify the correct application of that Article.

Every taxable person to whom goods are supplied under the call-off stock arrangements referred to in Article 17a shall keep a register of those goods.’;

(5) Article 262 is replaced by the following:

Article 262

1. Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:
 - (a) the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and point (c) of Article 138(2);
 - (b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisition of goods referred to in Article 42;
 - (c) the taxable persons, and the non-taxable legal persons identified for VAT purposes, to whom he has supplied services other than services that are exempted from VAT in the Member State where the transaction is taxable and for which the recipient is liable to pay the tax pursuant to Article 196.

2. In addition to the information referred to in paragraph 1, every taxable person shall submit information about the VAT identification number of the taxable persons for whom goods, dispatched or transported under call-off stock arrangements in accordance with the conditions set out in Article 17a, are intended and about any change in the submitted information.’;

(6) Articles 403 and 404 are deleted.

Article 2

1. Member States shall adopt and publish, by 31 December 2019, 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 provisions from 1 January 2020.

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

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
