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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	11 December 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 821 final
Subject:	Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

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Delegations will find attached document COM(2018) 821 final.

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Encl.: COM(2018) 821 final



Brussels, 11.12.2018  
COM(2018) 821 final

2018/0416 (NLE)

Proposal for a

## **COUNCIL IMPLEMENTING REGULATION**

**amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

Article 397 of Council Directive 2006/112/EC<sup>1</sup> (“the VAT Directive”) provides that “the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive”.

On that basis, Council Regulation (EU) No 282/2011<sup>2</sup> (“the VAT Implementing Regulation”) provides binding rules on the application of certain provisions of the VAT Directive. More in particular, Section 2 of Chapter XI of this Regulation lays down detailed provisions for the application of the special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons, as defined in Articles 358 to 369k of the VAT Directive (the so-called “mini One Stop Shop”). The mini One Stop Shop allows suppliers of such services to use a web portal in the Member State in which they are identified to account for the VAT due in other Member States.

On 5 December 2017, the Council adopted Directive (EU) 2017/2455<sup>3</sup> (“the VAT e-commerce Directive”) amending the VAT Directive which, inter alia:

- Extends the scope of the mini One Stop Shop to all types of services as well as to intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries, turning the mini One Stop Shop into a One Stop Shop;
- Introduces special provisions applicable to taxable persons who facilitate certain supplies made by other taxable persons through the use of an electronic interface such as a marketplace, platform, portal or similar means.

The objective of this proposal is to lay down detailed implementation rules needed to support these amendments to the VAT Directive which apply from 1 January 2021. This is achieved through an amendment to the VAT Implementing Regulation.

#### • **Consistency with existing policy provisions in the policy area**

This proposal lays down detailed provisions required to implement the VAT e-commerce Directive which is part of the VAT Action Plan<sup>4</sup>.

#### • **Consistency with other Union policies**

In addition to the VAT Action Plan, the VAT e-commerce Directive has been identified as a key initiative in the Digital Single Market Strategy<sup>5</sup> as well as in the Single Market strategy<sup>6</sup> and the E-Government Action Plan<sup>7</sup>.

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<sup>1</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).

<sup>2</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) (OJ L 77, 23.3.2011, p. 1).

<sup>3</sup> 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).

<sup>4</sup> COM(2016) 148 final – “Towards a single EU VAT area – Time to decide”

<sup>5</sup> COM(2015) 192 final.

<sup>6</sup> COM(2015) 550 final.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This proposal is based on Article 397 of the VAT Directive. This Article provides that the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.

- **Subsidiarity (for non-exclusive competence)**

The proposal amends the detailed provisions required for the proper functioning of the mini One Stop Shop laid down in the VAT Implementing Regulation, following the extension of its scope. The functioning of the One Stop Shop relies on an EU-wide IT system allowing the electronic exchange of VAT registration and VAT return information between Member States, which must be based on harmonised detailed legal provisions. Furthermore, it implements the provisions included in the VAT e-commerce Directive concerning taxable persons who facilitate supplies of goods or services, through the use of an electronic interface such as a marketplace, platform, portal or similar means. These provisions have to be applied in a harmonised way by all Member States in order not to create loopholes that could generate revenue losses.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality**

This proposal is necessary to adapt the VAT Implementing Regulation to take account of the provisions of the VAT Directive as amended by the VAT e-commerce Directive. The proposal is consistent with the principle of proportionality, i.e. it does not go beyond what is necessary to meet the objectives intended by the VAT e-commerce Directive.

- **Choice of the instrument**

The proposal amends Council Implementing Regulation (EU) 282/2011 laying down implementing measures for the VAT Directive.

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The Impact Assessment accompanying the Commission proposal resulting in the adoption of the VAT e-commerce Directive contained an evaluation of the mini One Stop Shop which, inter alia, identified a number of shortcomings such as the complexity for taxable persons to make corrections to VAT returns. These shortcomings have been addressed in the VAT e-commerce Directive but require detailed implementing provisions to be laid down in the VAT Implementing Regulation.

- **Stakeholder consultations**

The Commission undertook several consultation rounds with Member States' authorities, both from the tax administration and the customs administration, within the framework of the Group on the Future of VAT. It also met with the businesses concerned both in the framework of the VAT Expert Group and at targeted meetings with electronic interfaces and postal operators. Finally, a dedicated Fiscalis 2020 Workshop took place in March 2018 in Malta

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<sup>7</sup> COM(2016) 179 final.

where representatives of the tax and customs authorities and of the business sectors concerned jointly discussed the issues arising from the implementation of the VAT e-commerce Directive.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The measures concerned are of purely technical nature and are merely setting out the application of the provisions adopted by the Council. Hence, there has been no need for an impact assessment.

- **Regulatory fitness and simplification**

This proposal implements the VAT e-commerce Directive which extends the scope of the mini One Stop Shop to all cross-border business-to-consumer supplies of services as well as to distance sales of goods (both intra-EU and from third countries or territories to the EU). The One Stop Shop is an important simplification for the suppliers concerned in that it allows declaring and paying VAT in a single Member State on all supplies made to customers in other Member States. This is particularly relevant for SMEs for whom the cost of compliance with VAT obligations is relatively more important than for larger companies.

#### **4. BUDGETARY IMPLICATIONS**

This proposal has no budgetary implications.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Implementation will be overseen by the Standing Committee on Administrative Cooperation (SCAC), supported by its IT subcommittee, the Standing Committee on Information Technology (SCIT).

- **Detailed explanation of the specific provisions of the proposal**

1. Indirect intervention of the supplier in the dispatch or transport

Article 14(4) of the VAT Directive as amended by the VAT e-commerce Directive defines ‘intra-Community distance sales of goods’ and ‘distance sales of goods imported from third territories or third countries’. These definitions also cover supplies of goods where the supplier intervenes indirectly in their dispatch or transport to the customer. To ensure the correct and uniform application of these definitions, it is necessary to define the meaning of ‘indirectly’. So far, this notion has only been clarified in guidelines of the VAT Committee. The proposal inserts the text of these guidelines in the VAT Implementing Regulation to enhance legal certainty for both economic operators and tax administrations (Article 1, point (1)(b), adding a new Article 5a to the Regulation).

2. Provisions relating to electronic interfaces

Articles 14a and 242a of the VAT Directive as amended by the VAT e-commerce Directive introduce specific provisions for electronic interfaces such as a marketplace, platform or portal facilitating certain supplies of goods or services made by other taxable persons. In the

statements included in the Council minutes when adopting the VAT e-commerce Directive, the Council invited the Commission to propose the necessary implementation rules for the application of these provisions, considering the following elements:

- Definition of the situation in which a taxable person is considered to facilitate sales of goods or services through the use of an electronic interface (this is proposed in Article 1, point (1)(b), adding a new Article 5b to the Regulation and point (4), adding a new Article 54b to the Regulation);
- Specific provisions on the conditions for determining when the payment is accepted to determine in which taxable period supplies by taxable persons facilitating supplies of goods in the Community through an electronic interface or by any taxable person making use of the special scheme for distance sales of goods from third territories or third countries should be declared (this is specified by Article 1, point (3), adding a new Chapter Va and Article 41a to the Regulation and point (5), adding a new Article 61b to the Regulation);
- The type of information to be kept in the records of taxable persons facilitating supplies of goods and services in the Community through the use of an electronic interface. Account should be taken of what information is available to such taxable persons, is relevant to tax administrations and is proportionate to the purpose of the provision, as well as of the need to comply with the General Data Protection Regulation (EU) 2016/679 (see Article 1, points (4), adding a new Section 1a and Article 54c to the Regulation).

Further to the discussions with Member States' authorities and businesses, Article 1, point (1)(b) inserts a new Article 5c in the VAT Implementing Regulation specifying that:

- When an electronic interface is deemed to have received and supplied goods itself, it shall not be held liable for the payment of any amount of VAT in excess of the VAT which it declared and paid on sales made through the electronic interface. Such a provision is required in order to allow Member States to release electronic interfaces from additional VAT payments where the electronic interface depends on information provided by the supplier selling goods through the electronic interface and can prove that it acted in good faith;
  - Any supplier selling goods through the interface shall be presumed to be a taxable person and his customer to be a non-taxable person. This presumption releases the interface from the burden of having to prove the status of the seller and customer.
3. Provisions relating to the extension of the scope of the One Stop Shop (Article 1, point (5), replacing Section 2 of Chapter XI of the VAT Implementing Regulation)

Most of these provisions update Section 2 of Chapter XI of the VAT Implementing Regulation, laying down implementing provisions required for the proper functioning of the mini One Stop Shop, following the extension of its scope.

In addition, as a result of the stakeholder consultation, a number of changes are proposed which go beyond the mere alignment of these provisions to the extension of the scope of the mini One Stop Shop. These changes relate to the following issues:

- (a) Article 369q of the VAT Directive as amended by the VAT e-commerce Directive provides that the Member State of identification shall allocate an identification number to an intermediary acting in the name and on behalf of a taxable person using

the One Stop Shop for distance sales of goods imported from third territories or third countries. A second paragraph is added to Article 57e of the VAT Implementing Regulation clarifying that this identification number is an authorisation enabling him to act as intermediary and cannot be used by the intermediary to declare VAT on taxable transactions.

- (b) Article 57g of the VAT Implementing Regulation provides that where a taxable person voluntarily ceases using the mini One Stop Shop regardless of whether he continues to supply goods or services which can be eligible for its use, he shall be excluded from the mini One Stop Shop in any Member State for two calendar quarters. This provision is removed as it is not considered useful by Member States and may create additional burdens for the taxable persons concerned.
- (c) The VAT e-commerce Directive allows making corrections to previous One Stop Shop VAT returns, within three years, in a subsequent return instead of having to re-submit the return of the tax period to which the corrections relate, as is the case in the mini One Stop Shop. The VAT e-commerce Directive does however not specify how corrections to returns relating to tax periods preceding 1 January 2021 have to be made as of 2021. To limit the IT impact of the changeover from one system to another, it is preferable to keep in place the current system for making corrections to mini One Stop Shop VAT returns relating to the periods from the fourth quarter of 2017 to the fourth quarter of 2020. The proposal amends Article 61 of the VAT Implementing Regulation accordingly.
- (d) Under the One Stop Shop, corrections to previous VAT returns will have to be submitted in a subsequent return. Once the final VAT return has been submitted, it will no longer be possible for a taxable person excluded from the One Stop Shop pursuant to Article 61a of the VAT Implementing Regulation to submit subsequent VAT returns. As a consequence, the proposal provides that any corrections to the final return and previous returns arising after the submission of the final return shall be discharged directly with the tax authorities of the Member State of consumption concerned.
- (e) The records to be kept by a taxable person using the mini One Stop Shop currently include the name of the customer, where known to the taxable person. As this information must only be kept if available, is not needed to determine the Member State in which the supply is taxable, and may raise data protection issues, it is no longer included in the records to be kept by taxable persons using the One Stop Shop listed in Article 63c of the VAT Implementing Regulation. Further information on returns of goods and consignment or transaction numbers are included in Article 63c to facilitate the control of those operations.

#### 4. Other provisions

Article 14 is deleted following the deletion of Article 34 of the VAT Directive by the VAT e-commerce Directive (Article 1, point (2)).

Article 2 provides that the measures shall apply from 1 January 2021, which is the date of application of the relevant provisions of the VAT e-commerce Directive which this proposal implements. Furthermore, it provides for the possibility for taxable persons to register for the One Stop Shop as of 1 October 2020, to allow them to make use of it as of 1 January 2021.



Proposal for a

## COUNCIL IMPLEMENTING REGULATION

**amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making 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,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>1</sup>, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Directive 2006/112/EC<sup>2</sup> was amended by Council Directive (EU) 2017/2455<sup>3</sup> which *inter alia* extended the scope of the special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons to all types of services as well as to intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries. Directive (EU) 2017/2455 also introduced certain provisions for taxable persons facilitating supplies of goods or services made by other taxable persons through the use of an electronic interface such as a marketplace, platform, portal or similar means.
- (2) The detailed provisions for the application of those special schemes laid down in Council Implementing Regulation (EU) No 282/2011<sup>4</sup> should be updated following the extension of their scope.
- (3) The definitions of ‘intra-Community distance sales of goods’ and ‘distance sales of goods imported from third territories or third countries’ in Directive 2006/112/EC also cover supplies of goods where the supplier intervenes indirectly in their dispatch or transport to the customer. Therefore, to ensure the correct and uniform application of those definitions across Member States and to enhance legal certainty for both economic operators and tax administrations, it is necessary to clarify and define the meaning of the term indirectly in this context.

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1.

<sup>2</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).

<sup>3</sup> 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).

<sup>4</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).



- (4) Similarly, in order to ensure the uniform application across Member States of the provisions concerning taxable persons facilitating supplies of goods and services in the Community and to improve legal certainty for taxable persons subject to value added tax (VAT) rules and tax administrations that enforce these rules, it is necessary to further define the meaning of the term 'facilitates' and to clarify when a taxable person is not considered to facilitate supplies of goods or services through an electronic interface.
- (5) In order to ensure the uniform application of the VAT rules it is necessary to clearly define the moment when the payment by the customer can be considered to be accepted so as to determine in which taxable period supplies by taxable persons facilitating supplies of goods in the Community through the use of an electronic interface or by any taxable person making use of the special scheme for distance sales of goods from third territories or third countries have to be declared.
- (6) It is necessary to determine which type of information should be kept in the records of taxable persons facilitating supplies of goods and services in the Community through an electronic interface. This should take account of the nature of the information available to such taxable persons, its relevance for tax administrations and the requirement that such accounting and record keeping should be proportionate in order to comply with the rights and obligations laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>5</sup>.
- (7) A taxable person facilitating certain supplies of goods in the Community through the use of an electronic interface is deemed to have received and supplied the goods himself and is liable to pay VAT on these supplies. It is important to take into account that such a taxable person may be dependent on the accuracy of the information provided by the suppliers selling goods through that electronic interface to correctly declare and pay the amount of VAT due. It is therefore reasonable to provide that such a taxable person shall not be held liable for any amount of VAT in excess of the VAT which he declared and paid on these supplies when the information received is erroneous where he can demonstrate that he did not and could not reasonably have known this. This should allow Member States to release those taxable persons from additional VAT liability where they act in good faith.
- (8) In order to reduce the administrative burden on taxable persons facilitating certain supplies of goods in the Community through the use of an electronic interface it is appropriate to release them from the burden of having to prove the status of the seller and customer. Therefore certain rebuttable presumptions should be introduced whereby suppliers selling goods through that electronic interface are presumed to be taxable persons and their customers non-taxable persons.
- (9) To avoid doubt, it is necessary to specify that the identification number allocated to an intermediary acting in the name and on behalf of a taxable person using the import scheme is an authorisation enabling him to act as intermediary and cannot be used by the intermediary to declare VAT on taxable transactions that he carries out himself.
- (10) The provision excluding a taxable person who voluntarily ceased using a special scheme to re-enter that special scheme during a period of two calendar quarters is not

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<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

considered useful by Member States and may create additional burdens for the taxable person concerned. That provision should therefore be removed.

- (11) To limit the IT impact of the change in the way corrections to previous VAT returns under a special scheme have to be made, it is preferable to provide that corrections to a VAT return relating to a tax period preceding the date from which Member States are to apply national measures to comply with Articles 2 and 3 of Directive (EU) 2017/2455 are to be made by means of amendments to that return. In addition, as corrections to previous VAT returns will have to be submitted in a subsequent return for tax periods as of 1 January 2021, taxable persons excluded from a special scheme will no longer be able to make corrections in a subsequent return. As a consequence, it is necessary to provide that such corrections should be discharged directly with the tax authorities of the Member States of consumption concerned.
- (12) As the name of the customer must only be kept in the records of a taxable person making use of a special scheme if available to that taxable person, is not needed to determine the Member State in which the supply is subject to VAT and may raise data protection issues, it is no longer necessary to include the name of the customer in the records to be kept by taxable persons making use of a special scheme. However, to facilitate the control of supplies of goods covered by a special scheme, it is necessary to include information on returns of goods and consignment or transaction numbers amongst the information to be kept by taxable persons.
- (13) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Implementing Regulation (EU) No 282/2011 is amended as follows:

- (1) Chapter IV is amended as follows:
  - (a) the heading of Chapter IV is replaced by the following:

### **TAXABLE TRANSACTIONS**

#### ***(TITLE IV OF DIRECTIVE 2006/112/EC)***

#### *SECTION 1*

#### ***Supply of goods***

#### ***(Articles 14 to 19 of Directive 2006/112/EC)***;

- (b) the following Articles 5a, 5b and 5c are inserted:

#### *Article 5a*

For the application of paragraph 4 of Article 14 of Directive 2006/112/EC, goods shall be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in the following cases:

- (a) where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
- (b) where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer;
- (c) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;
- (d) where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and the third party in contact or otherwise provides to the third party the information needed for the delivery of the goods to the consumer.

However, goods shall not be considered to have been dispatched or transported by or on behalf of the supplier where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly to provide or to help organise the dispatch or transport of those goods.

#### *Article 5b*

For the application of Article 14a of Directive 2006/112/EC, the term 'facilitates' means the use of an electronic interface to allow a customer and a supplier, selling goods through the electronic interface, to enter into contact which results in a supply of goods through that electronic interface to that customer.

However, a taxable person shall not facilitate a supply of goods where the following conditions are met:

- (a) he does not set, either directly or indirectly, the general terms under which the supply of goods is made;
- (b) he is not, either directly or indirectly, involved in charging the customer in respect of the payment made;
- (c) he is not, either directly or indirectly, involved in the ordering or delivery of the goods.

In addition, Article 14a of Directive 2006/112/EC shall not apply to a taxable person who only provides any of the following:

- (a) the processing of payments in relation to the supply of goods;
- (b) the listing or advertising of goods;
- (c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

#### *Article 5c*

1. For the application of Article 14a of Directive 2006/112/EC, a taxable person, who is deemed to have received and supplied the goods himself, shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies where the following conditions are met:

- (a) the taxable person is dependent on information provided by suppliers selling goods through an electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;
- (b) the information received by the taxable person is erroneous;
- (c) the taxable person can demonstrate that he did not and could not reasonably know that this information was incorrect.

2. For the application of Article 14a of Directive 2006/112/EC, the following shall be presumed:

- (a) that the person selling goods through an electronic interface is a taxable person;
- (b) that the person buying those goods is a non-taxable person.

However, the taxable person deemed to have received and supplied the goods himself may rebut the presumptions referred to in the first subparagraph where he has information to the contrary.’;

- (c) the following heading is inserted before Article 6:

*‘SECTION 2*

***Supply of services***

*(Articles 24 to 29 of Directive 2006/112/EC)’;*

- (2) Article 14 is deleted.;
- (3) the following Chapter Va is inserted:

*‘CHAPTER Va*

**CHARGEABLE EVENT AND CHARGEABILITY OF VAT**

**(TITLE VI OF DIRECTIVE 2006/112/EC)**

*Article 41a*

For the application of Article 66a of Directive 2006/112/EC, the time when the payment has been accepted means the time when the payment confirmation, the payment authorisation message or a commitment for payment from the customer is received by or on behalf of the supplier selling goods through the electronic interface regardless of when the actual payment of money is made.’;

- (4) in Chapter X the following Section 1a is inserted:

*‘SECTION 1a*  
*Accounting*  
*(Articles 241 to 249 of Directive 2006/112/EC)*

*Article 54b*

1. For the application of Article 242a of Directive 2006/112/EC, the term ‘facilitates’ means the use of an electronic interface to allow a customer and a supplier selling goods or supplying services through the electronic interface to enter into contact which results in a supply of goods or services through that electronic interface to that customer.

However, the term ‘facilitates’ shall not cover a supply of goods or services where the following conditions are met:

- (a) the taxable person does not set, either directly or indirectly, the general terms under which the supply is made;
- (b) the taxable person is not, either directly or indirectly, involved in charging the customer in respect of the payment made;
- (c) the taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods;
- (d) the taxable person is not, either directly or indirectly, involved in the supply of the service.

2. For the application of Article 242a of Directive 2006/112/EC, the term ‘facilitates’ shall not cover instances where a taxable person only provides any of the following:

- (a) the processing of payments in relation to the supply;
- (b) the listing or advertising of the goods or services;
- (c) the redirecting or transferring of customers to other electronic interfaces where goods or services are offered, without any further intervention in the supply.

*Article 54c*

1. The taxable person referred to in Article 242a of Directive 2006/112/EC, shall keep the following records in respect of supplies where he is deemed to have received and supplied goods himself in accordance with Article 14a of Directive 2006/112/EC or where he takes part in a supply of electronically supplied services for which he is presumed to be acting in his own name in accordance with Article 9a of this Regulation:

- (a) the records as set out in Article 63c of this Regulation, where the taxable person has opted to apply one of the special schemes provided for Chapter 6 of Title XII of Directive 2006/112/EC;
- (b) the records as set out in Article 242 of Directive 2006/112/EC, where the taxable person has not opted to apply any of the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC.

2. The taxable person referred to in Article 242a of Directive 2006/112/EC, shall keep the following information in respect of supplies other than those referred to in paragraph 1:

- (a) the name and address of the supplier whose supplies are facilitated through the use of the electronic interface and if available:

- (i) the electronic address or website of the supplier;
  - (ii) the VAT identification number or national tax number of the supplier;
  - (iii) the bank account number or number of virtual account of the supplier
- (b) a description of the goods, their value and if available, the place where the dispatch or transport of the goods ends together with the time of supply;
  - (c) a description of the services, their value and if available, information in order to establish the place of supply and time of supply.’;
- (5) Section 2 of Chapter XI is replaced by the following:

*‘SECTION 2*

***Special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods***

*(Articles 358 to 369x of Directive 2006/112/EC)*

Subsection 1

**Definitions**

*Article 57a*

For the purposes of this Section, the following definitions shall apply:

- (1) ‘non-Union scheme’ means the special scheme for services supplied by taxable persons not established within the Community as set out in Section 2 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (2) ‘Union scheme’ means the 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 as set out in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (3) ‘import scheme’ means the special scheme for distance sales of goods imported from third territories or third countries as set out in Section 4 of Chapter 6 of Title XII of Directive 2006/112/EC;
- (4) ‘special scheme’ means the ‘non-Union scheme’, the ‘Union scheme’ or the ‘import scheme’ as the context requires;
- (5) ‘taxable person’ means a taxable person referred to in Article 359 of Directive 2006/112/EC who is permitted to use the non-Union scheme, a taxable person referred to in Article 369b of that Directive who is permitted to use the Union scheme or a taxable person referred to in Article 369m of that Directive who is permitted to use the import scheme;
- (6) ‘intermediary’ means a person defined in point (2) of Article 369l of Directive 2006/112/EC.

## Subsection 2

### **Application of the Union scheme**

#### *Article 57b*

1. Where a taxable person using the Union scheme has established his business within the Community, the Member State in which his place of business is established shall be the Member State of identification.

Where a taxable person using the Union scheme has established his business outside the Community, but has more than one fixed establishment in the Community, he may choose any Member State in which he has a fixed establishment as the Member State of identification, in accordance with the second paragraph of Article 369a of Directive 2006/112/EC.

2. Where a taxable person not established within the Community uses the Union scheme for sales of goods, the Member State from which the goods are dispatched or transported shall be the Member State of identification. Where there is more than one Member State from which goods are dispatched or transported, he may choose any Member State from which goods are dispatched or transported as the Member State of identification, in accordance with the second paragraph of Article 369a of Directive 2006/112/EC.

## Subsection 3

### **Scope of the Union scheme**

#### *Article 57c*

The Union scheme shall not apply to services supplied in a Member State where the taxable person has established his business or has a fixed establishment. The supply of those services shall be declared to the competent tax authorities of that Member State in the VAT return as provided for under Article 250 of Directive 2006/112/EC.

## Subsection 4

### **Identification**

#### *Article 57d*

1. Where a taxable person informs the Member State of identification that he intends to make use of the non-Union or the Union scheme, that special scheme shall apply as from the first day of the following calendar quarter.

However, where the first supply of goods or services to be covered by the non-Union scheme or the Union scheme takes place before that date, the special scheme shall apply from the date of that first supply, provided the taxable person informs the Member State of identification of the commencement of his activities to be covered by the scheme no later than the tenth day of the month following that first supply.

2. Where a taxable person or an intermediary acting on his behalf informs the Member State of identification that he intends to make use of the import scheme, that special scheme shall apply from the day the taxable person or the intermediary has been



allocated the individual VAT identification number for the import scheme as laid down in paragraphs 1 and 3 of Article 369q of Directive 2006/112/EC.

#### *Article 57e*

The Member State of identification shall identify the taxable person using the Union scheme by means of his VAT identification number as referred to in Articles 214 and 215 of Directive 2006/112/EC.

The individual identification number allocated to an intermediary pursuant to paragraph 2 of Article 369q of Directive 2006/112/EC shall enable him to act as intermediary on behalf of taxable persons making use of the import scheme. However, this number cannot be used by the intermediary to declare VAT on taxable transactions.

#### *Article 57f*

1. Where a taxable person using the Union scheme ceases to meet the conditions of the definition laid down in point (2) of the first paragraph of Article 369a of Directive 2006/112/EC, the Member State in which he has been identified shall cease to be the Member State of identification.

However, where that taxable person still fulfils the conditions for using that special scheme, he shall, in order to continue using that scheme, indicate as the new Member State of identification, the Member State in which he has established his business or, if he has not established his business in the Community, a Member State where he has a fixed establishment. Where the taxable person using the Union scheme for the supply of goods is not established in the Community, he shall indicate as the new Member State of identification a Member State from which he dispatches or transports goods.

Where the Member State of identification changes in accordance with the second subparagraph, that change shall apply from the date on which the taxable person ceases to have a place of business or a fixed establishment in the Member State previously indicated as the Member State of identification or from the date on which that taxable person ceases to dispatch or transport goods from that Member State.

2. Where a taxable person using the import scheme or an intermediary acting on his behalf ceases to meet the conditions laid down in points (b) to (e) of point (3) of the second paragraph of Article 369l of Directive 2006/112/EC, the Member State in which the taxable person or his intermediary has been identified shall cease to be the Member State of identification.

However, where that taxable person or his intermediary still fulfils the conditions for using that special scheme, he shall, in order to continue using that scheme, indicate as the new Member State of identification, the Member State in which he has established his business or if he has not established his business in the Community, a Member State where he has a fixed establishment.

Where the Member State of identification changes in accordance with the second subparagraph, that change shall apply from the date on which the taxable person or his intermediary ceases to have a place of business or a fixed establishment in the Member State previously indicated as the Member State of identification.

### *Article 57g*

1. A taxable person using the non-Union or the Union scheme may cease using those special schemes regardless of whether he continues to supply goods or services, which can be eligible for those special schemes. The taxable person shall inform the Member State of identification at least 15 days before the end of the calendar quarter prior to that in which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next calendar quarter.

VAT obligations relating to supplies of goods or services arising after the date on which the cessation became effective shall be discharged directly with the tax authorities of the Member State of consumption concerned.

2. A taxable person using the import scheme may cease using that scheme regardless of whether he continues to carry out distance sales of goods imported from third territories or third countries. The taxable person or the intermediary acting on his behalf shall inform the Member State of identification at least 15 days before the end of the month prior to that in which he intends to cease using the scheme. Cessation shall be effective from the first day of the next month and the taxable person shall no longer be allowed to use the scheme for supplies carried out from that day.

### Subsection 5

#### **Reporting obligations**

### *Article 57h*

1. A taxable person or an intermediary acting on his behalf shall, no later than the tenth day of the next month, inform the Member State of identification by electronic means of any of the following:
  - (a) the cessation of his activities covered by a special scheme;
  - (b) any changes to his activities covered by a special scheme whereby he no longer meets the conditions necessary for using that special scheme;
  - (c) any changes to the information previously provided to the Member State of identification.
2. Where the Member State of identification changes in accordance with Article 57f, the taxable person or the intermediary acting on his behalf shall inform both relevant Member States of the change no later than the tenth day of the month following the change of establishment. He shall communicate to the new Member State of identification the registration details required when a taxable person makes use of a special scheme for the first time.

### Subsection 6

#### **Exclusion**

### Article 58

1. Where a taxable person using one of the special schemes meets one or more of the criteria for exclusion laid down in Article 369e or for deletion from the identification register laid down in Article 363 or in paragraphs 1 and 3 of Article 369r of Directive

2006/112/EC, the Member State of identification shall exclude that taxable person from that scheme.

Only the Member State of identification can exclude a taxable person from one of the special schemes.

The Member State of identification shall base its decision on exclusion or deletion on any information available, including information provided by any other Member State.

2. The exclusion of a taxable person from the non-Union scheme or the Union scheme shall be effective from the first day of the calendar quarter following the day on which the decision on exclusion is sent by electronic means to the taxable person. However, where the exclusion is due to a change of place of business or fixed establishment or of the place from which dispatch or transport of goods begins, the exclusion shall be effective from the date of that change.
3. The exclusion of a taxable person from the import scheme shall be effective from the first day of the month following the day on which the decision on exclusion is sent by electronic means to the taxable person except for following situations:
  - (a) where the exclusion is due to a change of his place of business or fixed establishment, in which case the exclusion shall be effective from the date of that change;
  - (b) where the exclusion is due to his persistent failure to comply with the rules of this scheme, in which case the exclusion shall be effective from the day following the day on which the decision on exclusion is sent by electronic means to the taxable person.
4. Except for the situation covered by point (b), the individual VAT identification number allocated for the use of the import scheme shall remain valid for the period of time needed to import the goods that were supplied prior to the date of exclusion, which may however not exceed two months as from that date.
5. Where an intermediary meets one of the criteria for deletion laid down in paragraph 2 of Article 369r of Directive 2006/112/EC, the Member State of identification shall delete that intermediary from the identification register and shall exclude the taxable persons represented by that intermediary from the import scheme.

Only the Member State of identification can delete an intermediary from the identification register.

The Member State of identification shall base its decision on deletion on any information available, including information provided by any other Member State.

The deletion of an intermediary from the identification register shall be effective from the first day of the month following the day on which the decision on deletion is sent by electronic means to the intermediary and the taxable persons he represents, except in the following situations:

- (a) where the deletion is due to a change of his place of business or fixed establishment in which case the deletion shall be effective as from the date of that change;
- (b) where the deletion of the intermediary is due to his persistent failure to comply with the rules of the import scheme in which case the deletion shall be effective as from the day following the day on which the decision on deletion is sent by electronic means to the intermediary and the taxable persons he represents.

### *Article 58a*

A taxable person using a special scheme who has, for a period of two years, made no supplies of goods or services covered by that scheme in any Member State of consumption, shall be assumed to have ceased his taxable activities within the meaning of point (b) of Article 363, point (b) of Article 369e, point (b) of Article 369r(1) or point (b) of Article 369r(3) of Directive 2006/112/EC respectively. This cessation shall not preclude him from using a special scheme if he recommences his activities covered by any scheme.

### *Article 58b*

1. Where a taxable person is excluded from one of the special schemes for persistent failure to comply with the rules relating to that scheme, that taxable person shall remain excluded from using any of the special schemes in any Member State for two years following the return period during which the taxable person was excluded.

However, the first subparagraph shall not apply in respect of the import scheme where the exclusion was due to persistent failure to comply with the rules by the intermediary acting on behalf of the taxable person.

Where an intermediary is deleted from the identification register for persistent failure to comply with the rules of the import scheme, he shall not be allowed to act as an intermediary for two years following the month during which he was deleted from that register.

2. A taxable person or an intermediary shall be regarded as having persistently failed to comply with the rules relating to one of the special schemes, within the meaning of point (d) of Article 363, point (d) of Article 369e, point (d) of Article 369r(1), point (c) of Article 369r(2) or point (d) of Article 369r(3) of Directive 2006/112/EC, in at least the following cases:
  - (a) where reminders pursuant to Article 60a have been issued to him or the intermediary acting on his behalf by the Member State of identification, for three immediately preceding return periods and the VAT return has not been submitted for each and every one of these return periods within 10 days after the reminder has been sent;
  - (b) where reminders pursuant to Article 63a have been issued to him or the intermediary acting on his behalf by the Member State of identification, for three immediately preceding return periods and the full amount of VAT declared has not been paid by him or the intermediary acting on his behalf for each and every one of these return periods within 10 days after the reminder has been sent, except where the remaining unpaid amount is less than EUR 100 for each return period;
  - (c) where following a request from the Member State of identification and one month after a subsequent reminder by the Member State of identification, he or the intermediary acting on his behalf has failed to make electronically available the records referred to in Articles 369, 369k and 369x of Directive 2006/112/EC.

### *Article 58c*

A taxable person who has been excluded from the non-Union scheme or the Union scheme shall discharge all VAT obligations relating to supplies of goods or services arising after the date on which the exclusion became effective directly with the tax authorities of the Member State of consumption concerned.

## Subsection 7

### VAT return

#### *Article 59*

1. Any return period within the meaning of Article 364, Article 369f or Article 369s of Directive 2006/112/EC shall be a separate return period.
2. Where, in accordance with the second subparagraph of paragraph 1 of Article 57d, the non-Union or the Union scheme applies from the date of the first supply, the taxable person shall submit a separate VAT return for the calendar quarter during which the first supply took place.
3. Where a taxable person has been registered under the non-Union scheme and the Union scheme during a return period, he shall submit VAT returns and make the corresponding payments to the Member State of identification for each scheme in respect of the supplies made and the periods covered by that scheme.
4. Where the Member State of identification changes in accordance with Article 57f after the first day of the return period in question, the taxable person or the intermediary acting on his behalf shall submit VAT returns and make corresponding payments to both the former and the new Member State of identification covering the supplies made during the respective periods in which the Member States have been Member State of identification.

#### *Article 59a*

Where a taxable person using a special scheme has supplied no goods or services in any Member State of consumption under that special scheme during a return period and has no corrections to make in respect of previous returns, he or the intermediary acting on his behalf shall submit a VAT return indicating that no supplies have been made during that period (a nil-VAT return).

#### *Article 60*

Amounts on VAT returns made under the special schemes shall not be rounded up or down to the nearest whole monetary unit. The exact amount of VAT shall be reported and remitted.

#### *Article 60a*

The Member State of identification shall remind, by electronic means, taxable persons or intermediaries acting on their behalf who have failed to submit a VAT return under Article 364, Article 369f or Article 369s of Directive 2006/112/EC, of their obligation to submit such a return. The Member State of identification shall issue the reminder on the tenth day following that on which the return should have been submitted, and shall inform the other Member States by electronic means that a reminder has been issued.

Any subsequent reminders and steps taken to assess and collect the VAT shall be the responsibility of the Member State of consumption concerned.

Notwithstanding any reminders issued, and any steps taken, by a Member State of consumption, the taxable person or the intermediary acting on his behalf shall submit the VAT return to the Member State of identification.

### *Article 61*

1. Changes to the figures contained in a VAT return relating to periods up to and including the last return period in 2020 shall, after its submission, be made only by means of amendments to that return and not by adjustments in a subsequent return.

Changes to the figures contained in a VAT return relating to periods from the first return period in 2021 shall, after its submission, be made only by adjustments in a subsequent return.

2. The amendments referred to in paragraph 1, shall be submitted electronically to the Member State of identification within three years of the date on which the initial return was required to be submitted.

However, the rules of the Member State of consumption on assessments and amendments shall remain unaffected.

### *Article 61a*

1. A taxable person or an intermediary acting on his behalf shall submit his final VAT return and any late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of the cessation, exclusion or change where:

- (a) he ceases to use one of the special schemes;
- (b) he is excluded from one of the special schemes;
- (c) he changes the Member State of identification in accordance with Article 57f.

Any corrections to the final return and previous returns arising after the submission of the final return shall be discharged directly with the tax authorities of the Member State of consumption concerned.

2. An intermediary shall submit the final VAT returns in respect of all taxable persons on whose behalf he is acting and any late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of deletion or change where:

- (a) he is deleted from the identification register;
- (b) he changes the Member State of identification in accordance with Article 57f(2).

Any corrections to the final return and previous returns arising after the submission of the final return, shall be discharged directly with the tax authorities of the Member State of consumption concerned.

### Subsection 7a

#### **Import scheme – chargeable event**

### *Article 61b*

For the application of Article 369n of Directive 2006/112/EC, the time when the payment has been accepted means the time when the payment confirmation, the payment authorisation message or a commitment for payment from the customer has been received by or on behalf of the taxable person making use of the import scheme or, for the purposes of paragraph 1 of Article 14a of Directive 2006/112/EC, by the supplier selling goods through the electronic interface, regardless of when the actual payment of money is made.



## Subsection 8

### **Currency**

#### *Article 61c*

Where a Member State of identification whose currency is not the euro determines that VAT returns are to be made out in its national currency, that determination shall apply to the VAT returns of all taxable persons using the special schemes.

## Subsection 9

### **Payments**

#### *Article 62*

Without prejudice to the third subparagraph of Article 63a, and to Article 63b, a taxable person or the intermediary acting on his behalf shall make any payment to the Member State of identification.

Payments of VAT made by the taxable person or the intermediary acting on his behalf under Article 367, Article 369i or Article 369v of Directive 2006/112/EC shall be specific to the VAT return submitted pursuant to Article 364, Article 369f or Article 369s of that Directive. Any subsequent adjustment to the amounts paid shall be effected by the taxable person or the intermediary acting on his behalf only by reference to that return and may neither be allocated to another return, nor adjusted on a subsequent return. Each payment shall refer to the reference number of that specific return.

#### *Article 63*

A Member State of identification which receives a payment in excess of that resulting from the VAT return submitted under Article 364, Article 369f or Article 369s of Directive 2006/112/EC shall reimburse the overpaid amount directly to the taxable person concerned or the intermediary acting on his behalf.

Where a Member State of identification has received an amount in respect of a VAT return subsequently found to be incorrect, and that Member State has already distributed that amount to the Member States of consumption, those Member States of consumption shall each reimburse their respective part of any overpaid amount directly to the taxable person or to the intermediary acting on his behalf.

However, where overpayments relate to periods up to and including the last return period in 2018, the Member State of identification shall reimburse the relevant portion of the corresponding part of the amount retained in accordance with Article 46(3) of Regulation (EU) No 904/2010 and the Member State of consumption shall reimburse the overpayment less the amount that shall be reimbursed by the Member State of identification.

The Member States of consumption shall, by electronic means, inform the Member State of identification of the amount of those reimbursements.

#### *Article 63a*

Where a taxable person or the intermediary acting on his behalf has submitted a VAT return under Article 364, Article 369f or Article 369s of Directive 2006/112/EC, but no payment has been made or the payment is less than that resulting from the return, the Member State of



identification shall, by electronic means on the tenth day following the latest day on which the payment should have been made in accordance with Article 367, Article 369i or Article 369v of Directive 2006/112/EC, remind the taxable person or the intermediary acting on his behalf of any VAT payment outstanding.

The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent.

Any subsequent reminders and steps taken to collect the VAT shall be the responsibility of the Member State of consumption concerned. When such subsequent reminders have been issued by a Member State of consumption, the corresponding VAT shall be paid to that Member State.

The Member State of consumption shall, by electronic means, inform the Member State of identification that a reminder has been issued.

#### *Article 63b*

Where no VAT return has been submitted, or where the VAT return has been submitted late or is incomplete or incorrect, or where the payment of VAT is late, any interest, penalties or any other charges shall be calculated and assessed by the Member State of consumption. The taxable person or the intermediary acting on his behalf shall pay such interests, penalties or any other charges directly to the Member State of consumption.

#### Subsection 10

#### **Records**

#### *Article 63c*

1. In order to be regarded as sufficiently detailed within the meaning of Articles 369 and 369k of Directive 2006/112/EC, the records kept by the taxable person shall contain the following information:

- (a) the Member State of consumption to which the goods or services are supplied;
- (b) the type of services or the description and quantity of goods supplied;
- (c) the date of the supply of the goods or services;
- (d) the taxable amount indicating the currency used;
- (e) any subsequent increase or reduction of the taxable amount;
- (f) the VAT rate applied;
- (g) the amount of VAT payable indicating the currency used;
- (h) the date and amount of payments received;
- (i) any payments on account received before the supply of the goods or services, if available;
- (j) where an invoice is issued, the information contained on the invoice;
- (k) in respect of services, the information used to determine the place where the customer is established or has his permanent address or usually resides and, in respect of goods, the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends;

(l) any proof of possible returns of goods, including the taxable amount and the VAT rate applied.

2. In order to be regarded as sufficiently detailed within the meaning of Article 369x of Directive 2006/112/EC, the records kept by the taxable person or the intermediary acting on his behalf shall contain the following information:

- (a) the Member State of consumption to which the goods are supplied;
- (b) the description and quantity of goods supplied;
- (c) the date of the supply of goods;
- (d) the taxable amount indicating the currency used;
- (e) any subsequent increase or reduction of the taxable amount;
- (f) the VAT rate applied;
- (g) the amount of VAT payable indicating the currency used;
- (h) the date and amount of payments received;
- (i) any payments on account received before the supply of goods, if available;
- (j) where an invoice is issued, the information contained on the invoice;
- (k) the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends;
- (l) proof of possible returns of goods, including the taxable amount and VAT rate applied;
- (m) the unique consignment number or unique transaction number.

3. The information referred to in paragraphs 1 and 2 shall be recorded by the taxable person or the intermediary acting on his behalf in such a way that it can be made available by electronic means without delay and in respect of each individual good or service supplied.

Where a taxable person or the intermediary acting on his behalf has been requested to submit, by electronic means the records referred to in Articles 369, 369k and 369x of Directive 2006/112/EC and he has failed to submit them within 20 days of the date of the request, the Member State of identification shall remind the taxable person or the intermediary acting on his behalf to submit those records. The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent.’

#### *Article 2*

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

It shall apply from 1 January 2021.

However, Member States shall allow taxable persons and intermediaries acting on their behalf to submit the information required under Article 360, Article 369c or Article 369o of Directive 2006/112/EC for registration under the special schemes as from 1 October 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.  
Done at Brussels,

*For the Council  
The President*