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2018/0415 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

On 5 December 2017, the Council adopted Council Directive (EU) 2017/2455¹ (“the VAT e-commerce Directive”) amending Directive 2006/112/EC² (“the VAT Directive”) which, inter alia:

- Extends the scope 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") 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. 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;
- Introduces special provisions applicable to taxable persons who facilitate certain supplies to non-taxable persons 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 additional rules needed to support these amendments to the VAT Directive which apply from 1 January 2021, insofar as such support cannot be attained through implementing measures laid down in Council Implementing Regulation (EU) No 282/2011³ (“the VAT Implementing Regulation”). This concerns, in particular, the provisions relating to electronic interfaces facilitating supplies of goods to non-taxable persons in the EU by taxable persons not established in the EU and the special arrangements for declaration and payment of import VAT where the One Stop Shop for distance sales of goods imported from third territories or third countries is not used.

• **Consistency with existing policy provisions in the policy area and with other Union policies**

This proposal lays down detailed provisions required to supplement the VAT e-commerce Directive which is part of the VAT Action Plan⁴.

• **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 Strategy⁵ as well as in the Single Market strategy⁶ and the E-Government Action Plan⁷.

¹ 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).

² 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 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).

⁴ COM(2016) 148 final – “Towards a single VAT area – Time to decide”

⁵ COM(2015) 192 final.

⁶ COM(2015) 550 final.

⁷ COM(2016) 179 final.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

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

The proposal is addressing certain issues arising from the adoption of the VAT e-commerce Directive which has to be applied by all Member States alike. The changes serve, in particular, to ensure that the provisions on electronic interfaces are 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**

The proposal is consistent with the principle of proportionality i.e. it does not go beyond what is necessary to meet the objectives of the VAT e-commerce Directive and equally the smooth functioning of the single market. As with the subsidiarity test, it is not possible for Member States to address the issues without a proposal to amend the VAT Directive.

- **Choice of the instrument**

The proposal requires amending the VAT Directive. It lays down the specific rules necessary for the correct application of certain provisions of the VAT e-commerce Directive, where the goals pursued cannot be reached through the adoption of implementing measures as they require amending basic provisions of the VAT Directive. This concerns, in particular, provisions relating to electronic interfaces facilitating supplies of goods in the EU made by taxable persons not established in the EU and the special arrangements for declaration and payment of import VAT where the Import One Stop Shop is not used.

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

- **Stakeholder consultations**

The Commission undertook several consultation rounds with the 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 where representatives of the tax and customs authorities and the business sectors concerned jointly discussed the issues arising from the implementation of the VAT e-commerce Directive.

- **Impact assessment**

An impact assessment was carried out for the proposal which led to the adoption of the VAT e-commerce Directive. The current proposal only amends what is necessary for the functioning of some of the provisions of that Directive.

- **Regulatory fitness and simplification**

The main goal of the proposal is to expand on the provisions concerning taxable persons operating electronic interfaces such as marketplaces, platforms and portals facilitating supplies of goods in the EU by taxable persons not established in the EU. The proposed changes will further simplify the administrative burden of such taxable persons by allowing more transactions to be reported in the One Stop Shop, thus improving the VAT collection. These provisions therefore do not have any impact for micro-enterprises or SMEs established in the EU.

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**

Article 14a inserted in the VAT Directive by the VAT e-commerce Directive provides that where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform or portal either distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 (Article 14a(1)) or the supply of goods within the Community by a taxable person not established there to a non-taxable person (Article 14a(2)), the taxable person who facilitates the supply shall be deemed to have received and supplied the goods himself.

This effectively splits a business to consumer supply (B2C supply) from the supplier selling goods through the use of the electronic interface to the customer into two supplies: a supply from that supplier to the electronic interface (B2B supply) and a supply from the electronic interface to the customer (B2C supply). It is therefore necessary to determine to which supply the dispatch or transport of the goods should be ascribed to properly determine their place of supply. Article 1, point (1) provides that the dispatch or transport should be ascribed to the supply from the electronic interface to the customer, as also indicated in the statement included in the Council minutes upon the adoption of the VAT e-commerce Directive.

The straightforward application of Article 14a(2) would create additional administrative burdens for the companies concerned as well as the risk of VAT revenue losses resulting from the payment of VAT by the electronic interface to the supplier selling goods through the use of the electronic interface. The following amendments proposed address these issues:

- The B2B supply from the supplier selling goods through the use of the electronic interface to the electronic interface is exempt (Article 1, point (2)) with a right for that supplier to deduct the input VAT he paid himself in respect of the purchase or import of the goods supplied (Article 1, point (3));
- According to Article 369b of the VAT Directive as amended by the VAT e-commerce Directive, the One Stop Shop can only be used to declare and pay VAT on intra-Community distance sales of goods and not for a domestic supply of goods. As

suppliers selling goods through the use of an electronic interface may hold a stock of goods in different Member States from which they make domestic supplies, electronic interfaces deemed to have supplied those goods themselves would be obliged to register for VAT in all these Member States to account for VAT on these domestic supplies. This would remove the simplification of the One Stop Shop for electronic interfaces and thus result in additional obligations for them. It is therefore proposed to allow electronic interfaces to use the One Stop Shop also for domestic supplies to customers when they are deemed to supply the goods themselves under Article 14a(2) of the VAT Directive. This requires the following changes to Chapter 6 of Title XII of the VAT Directive:

- Amend the heading of the Chapter and of its Section 3 (Article 1, points (5) and (6));
- Amend the definition of the Member State of consumption (Article 1, point (7)(a));
- Extend the scope of the special scheme (Article 1, point (8));
- Amend the provision on the exclusion of a taxable person from the special scheme (Article 1, point (9));
- Allow the declaration of these domestic supplies in the One Stop Shop VAT return (Article 1, points (10) and (11)).

Finally, a last amendment is proposed in the special arrangements for declaration and payment of import VAT where the One Stop Shop is not used to declare VAT on distance sales of goods imported from third territories or third countries. According to Articles 369y to 369zb as inserted in the VAT Directive by the VAT e-commerce Directive global payment of import VAT must be made to customs by the end of the month following that of importation. This payment deadline is however not aligned to the deadline laid down for global payment of the customs debt in Article 111 of the Union Custom Code, providing for deferred payment until the middle of the month following the month of importation. With this proposal, the deadline for deferred payment under these special arrangements is aligned with that provided for in the Union Customs Code⁸ (Article 1, point (12)).

Article 2 provides that the measures shall apply from 1 January 2021, which is the date of application of the relevant provisions of the e-commerce Directive.

⁸ OJ L 269, 10.10.2013, p. 1.

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amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to 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, 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,

Whereas:

- (1) Council Directive 2006/112/EC³ as amended by Council Directive (EU) 2017/2455⁴ provides that where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or other similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 or the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied the goods himself. As this provision splits a single supply into two supplies, it is necessary to determine to which of these supplies the dispatch or transport of the goods should be ascribed in order to properly determine their place of supply.
- (2) While a taxable person who facilitates through the use of an electronic interface the supply of goods to a non-taxable person in the Community may deduct, in accordance with existing rules, the VAT paid to suppliers not established in the Community, the risk is that the latter may not pay the VAT to the tax authorities. To avoid that risk, the supply from the supplier selling goods through the use of an electronic interface should be exempt from VAT while that supplier should be granted the right to deduct the input VAT which it paid in respect of the purchase or import of the goods supplied.

¹ OJ C , , p. .

² OJ C , , p. .

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).

⁴ 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).

- (3) Furthermore, suppliers who are not established in the Community, who make use of an electronic interface to sell goods may hold stock in several Member States and may in addition to intra-Community distance sales of goods, supply goods from this stock to customers in the same Member State. Currently, such supplies are not covered by the special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption. In order to reduce the administrative burden, those taxable persons who facilitate the supply of goods to non-taxable persons in the Community through the use of an electronic interface, who are deemed to have received and supplied the goods themselves, should also be allowed to use this special scheme to declare and pay VAT for those domestic supplies.
- (4) To ensure consistency in terms of the payment of VAT and import duty upon the importation of goods, the time period for the payment of import VAT to customs where the special arrangements for the declaration and payment of import VAT are used, should be aligned to that laid down in respect of customs duty in Article 111 of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁵.
- (5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶, 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.
- (6) 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 Section 2 of Chapter 1 of Title V, the following Article 36b is added:

'Article 36b

Where a taxable person is deemed to have received and supplied goods in accordance with Article 14a, the dispatch or transport of the goods shall be ascribed to the supply made by that taxable person.';

- (2) the following Article 136a is inserted:

'Article 136a

Where a taxable person is deemed to have received and supplied goods in accordance with paragraph 2 of Article 14a, Member States shall exempt the supply of those goods to that taxable person.';

- (3) in Article 169, point (b) is replaced by the following:

⁵ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁶ OJ C 369, 17.12.2011, p. 14.

‘(b) transactions which are exempt pursuant to Articles 136a, 138, 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, Article 157(1)(b), Articles 158 to 161 or Article 164;’;

(4) in paragraph 1 of Article 204, the third subparagraph is replaced by the following:

‘However, Member States may not apply the option referred to in the second subparagraph to a taxable person within the meaning of point (1) of Article 358a, who has opted for the special scheme for services supplied by taxable persons not established within the Community.’;

(5) the heading of Chapter 6 of Title XII is replaced by the following:

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

(6) the heading of Section 3 in Chapter 6 of Title XII is replaced by the following:

‘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’;

(7) Article 369a is amended as follows:

(a) in the first paragraph, point (3) is replaced by the following:

‘(3) ‘Member State of consumption’ means one of the following:

- (a) in the case of the supply of services, the Member State in which the supply is deemed to take place according to Chapter 3 of Title V;
- (b) in the case of intra-Community distance sales of goods, the Member State where the dispatch or transport of the goods to the customer ends;
- (c) in the case of the supply of goods made by an electronic interface facilitating those supplies in accordance with paragraph 2 of Article 14a where the dispatch or transport of the goods supplied begins and ends in the same Member State, that Member State.’;

(b) the following third paragraph is added:

‘Where a taxable person has not established his business in the Community and has no fixed establishment therein, the Member State of identification shall be the Member State from which the goods are dispatched or transported. Where there is more than one Member State from which goods are dispatched or transported, the taxable person shall indicate which of those Member States shall be the Member State of identification. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.’;

(8) Article 369b is replaced by the following:

‘Article 369b

Member States shall permit the following taxable persons to use this special scheme:

(a) a taxable person carrying out intra-Community distance sales of goods;

- (b) a taxable person facilitating the supply of goods in accordance with paragraph 2 of Article 14a where the transport of the goods supplied begins and ends in the same Member State;
- (c) a taxable person not established in the Member State of consumption supplying services to a non-taxable person.

This special scheme applies to all those goods or services supplied in the Community by the taxable person concerned.’;

- (9) in Article 369e, point (a) is replaced by the following:
 - ‘(a) if he notifies that he no longer carries out supplies of goods and services covered by this special scheme;’;
- (10) Article 369f is replaced by the following:

‘Article 369f

The taxable person making use of this special scheme shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not supplies of goods and services covered by this special scheme have been carried out. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.’;

- (11) in Article 369g, paragraphs 1 and 2 are replaced by the following:
 - ‘1. The VAT return shall show the VAT identification number referred to in Article 369d and, for each Member State of consumption in which VAT is due, the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due in respect of the following supplies covered by this special scheme carried out during the tax period:
 - (a) intra-Community distance sales of goods and supplies of goods in accordance with paragraph 2 of Article 14a where the dispatch or transport of those goods begins and ends in the same Member State;
 - (b) supplies of services.

The VAT return shall also include amendments relating to previous tax periods as provided in paragraph 4 of this Article.

2. Where goods are dispatched or transported from Member States other than the Member State of identification, the VAT return shall also include the total value of the following supplies covered by this special scheme, for each Member State where goods are dispatched or transported from:

- (a) intra-Community distance sales of goods other than those made by an electronic interface in accordance with paragraph 2 of Article 14a;
- (b) intra-Community distance sales of goods and supplies of goods where the dispatch or transport of those goods begins and ends in the same Member State, made by a taxable person in accordance with paragraph 2 of Article 14a.

In relation to the supplies referred to in point (a), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each such Member State.

In relation to the supplies referred to in point (b), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each such Member State, if available.

The VAT return shall include the information referred to in this paragraph broken down by Member State of consumption.’;

(12) in Article 369zb, paragraph 2 is replaced by the following:

‘2. Member States shall require that the VAT referred to in paragraph 1 is payable monthly. The deadline for payment is that applicable to the payment of the import duty in similar situations.’.

Article 2

1. Member States shall adopt and publish, by 31 December 2020 at the latest, 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 measures from 1 January 2021.

When Member States adopt those measures, 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 Brussels,

For the Council
The President