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**NOTE**

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From: Presidency

To: Council

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No. Cion doc.: 12882/17 FISC 213 ECOFIN 788 IA 151 - COM(2017) 569 final  
12881/17 FISC 212 ECOFIN 787 IA 150 - COM(2017) 568 final  
12880/17 FISC 211 ECOFIN 786 IA 149 - COM(2017) 567 final

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Subject: – Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States

– Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions

– Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person

= General approach

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**I. INTRODUCTION**

1. On 4 October 2017, in accordance with the Commission Communication of 7 April 2016 on an Action Plan on VAT "Towards a single EU VAT Area – Time to decide" (the VAT Action Plan)<sup>1</sup>, the Commission issued the following three legislative proposals:

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<sup>1</sup> COM (2016) 148 final. See also:  
[http://ec.europa.eu/taxation\\_customs/taxation/vat/action\\_plan/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm)

- (i) a proposal for a Council Directive amending Directive 2006/112/EC (the "VAT Directive") as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between the Member States<sup>2</sup>;
- (ii) a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra community transactions<sup>3</sup> and
- (iii) a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person.<sup>4</sup>

2. These three legislative proposals, issued in reply to the Council conclusions of 8 November 2016 "On improvements to the current EU VAT rules for cross border transactions", contain the following short-term improvements (i.e. a "quick-fixes") to the current system:

- (i) simplification and harmonisation of rules regarding call-off stock arrangement;
- (ii) the VAT identification number of the customer becomes a substantive condition for exempting the intra-Community supply of goods;
- (iii) simplification of chain transactions in order to enhance legal certainty; and
- (iv) harmonisation and simplification of the rules for proving the intra-Community transport of goods for the purposes of applying the VAT exemption.

Notably, the Commission proposed that the simplifications referred to in points (i), (iii) and (iv) above would only apply where certified taxable persons (a new notion defined in the Commission proposal) are involved.

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<sup>2</sup> Doc. 12882/17.

<sup>3</sup> Doc. 12881/17.

<sup>4</sup> Doc. 12880/17 (which was later amended by a legislative proposal set out in doc. 14893/17, by incorporating the provisions on "certified taxable person" into that new proposal to amend Regulation No. 904/2010).

3. The Council in point 7 of its conclusions of 8 November 2016 noted "that any legislative initiatives in these areas should be addressed within the work on the definitive VAT system and, in the first legislative step phased-in as appropriate; and should not prevent the Commission from keeping to the expected timeline for work in this area."
4. Therefore, in these legislative proposals, in addition to the "quick-fix" of the current rules, the idea to gradually introduce the definitive system was developed further by the Commission. As a first step, the so-called "cornerstones" of the definitive system were proposed (see Art. 402 of the legislative proposal to amend the VAT Directive), under which cross-border supplies would be taxed in the Member State of destination with the supplier being liable as a rule.
5. Article 402 of the VAT Directive which is now in force foresees that the current temporary system of VAT will be replaced by definitive arrangements based on the principle of taxation in the Member State of origin of the supply of goods or services. Essentially, the new wording of this Article, as proposed by the Commission, would replace the temporary VAT system applicable to trade between Member States by definitive arrangements based on the principle of taxation in the Member State of destination of the supply of goods or services.
6. The opinions of the European Economic and Social Committee and of the European Parliament on these legislative proposals are pending.

## **II. STATE OF PLAY**

7. In the course of the negotiations on the "VAT quick-fix" dossier, Member States deemed appropriate and necessary, that the provisions of these Commission proposals relating to the certified taxable person are discussed in the context of the legislative proposals on technical details of the definitive VAT system, which were tabled by the Commission on 25 May 2018. In this context, it was therefore appropriate and necessary, in order to allow for early progress and to solve important issues in the VAT area, to advance the work on the core of the Commission proposals on the VAT "quick-fix", while noting that the remaining parts of the proposals relating to the certified taxable person will require further discussion, in the context of the legislative proposals on the details of the definitive system of VAT.

8. Moreover, following the meeting of the Committee of Permanent Representatives of 14 June 2018<sup>5</sup>, and of 20 June 2018<sup>6</sup> the Presidency noted that all delegations, as well as the Commission, could agree, in the spirit of a compromise, that Article 402 of the VAT Directive is deleted from the compromise text and discussed in the context of the legislative proposals on the details of the definitive system of VAT. The Presidency noted that therefore most Member States could support the four "quick-fixes" with this change.
9. However, it also appeared It was also noted, that all delegations, including the Commission, could accept the Presidency compromise text, with the exception of provisions related to the cost-sharing mechanism (Article 137a and recital 7a of the amending VAT Directive), which is the only key open issue, as described in Part III of this note, was not acceptable to a number of Member States and could not be supported by the Commission.
10. Against this background, as well as on the basis of bilateral contacts with delegations after the meeting of the Committee of Permanent Representatives of 14 June 2018 and 20 June 2018, the Presidency makes a further attempt to reach a general approach of the Council on this dossier. The latest compromise text on the "VAT quick-fix" legislative package is set out in the Annex to this note. In essence, Article 137a and recital 7a have been left in brackets, in the light of the discussions at the Committee of Permanent Representatives.

### **III. KEY ISSUE - DETAILED EXPLANATION**

**Cost-sharing mechanism - VAT exemption to independent groups of persons established in one Member State (*Art. 137a of the VAT Directive; recital 7a of the amending Directive*)**

11. The key open issue which still remains is whether the "5th quick-fix" (cost-sharing mechanism) should be included in the text.

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<sup>5</sup> Doc. 9822/18 FISC 253 ECOFIN 580 LIMITE.

<sup>6</sup> Doc. 10204/18 FISC 263 ECOFIN 628 LIMITE.

12. Some delegations have repeatedly requested that the Presidency compromise text is supplemented with an additional amendment to the VAT Directive and Article 137a is inserted, as part of an overall compromise on this dossier.
13. This new Article 137a of the VAT Directive would, essentially, contain a rule, with appropriate safeguards against distortion of competition, permitting an option for Member States to provide that independent groups of persons that pool their services and share costs between their members benefit from VAT exemption.
14. Some delegations indicated that such an optional rule would only be acceptable if it is accompanied by an appropriate "territoriality clause" (Art. 137a(2), limiting the scope of this optional cost-sharing mechanism only to independent groups of persons and its members established within the territory of the Member State that avails itself of that option.
15. These delegations are of the view that such a limitation would be justified by the need to ensure correct and straightforward application of these rules on cost-sharing by the taxable persons concerned and tax administrations, as well as guarantee the effectiveness of fiscal supervision against risks of tax evasion, avoidance or abuse. At the same time, this limitation would preserve the taxing rights of Member States that choose not to exercise this option.
16. Nevertheless, at the meeting of the Committee of Permanent Representatives on 14 June and 20 June 2018, some delegations could not accept that Article 137a is inserted into the VAT Directive, while indicating that this provision was not subject to an impact assessment by the Commission, since Article 137a and recital 7a were not part of the initial legislative proposal.
17. Moreover, at the meeting of the Committee of Permanent Representatives on 20 June 2018, the Commission indicated that it opposes the inclusion of Article 137a into the Presidency compromise text.

#### **IV. WAY FORWARD**

18. Against this background, the Presidency hopes that the key issue set out in Part III of this note could be resolved by the Council, in the spirit of a compromise.
  
  19. The Council is invited to:
    - resolve the key issue set out in Part III of this note;
    - reach agreement on a general approach on these legislative proposals, on the basis of the compromise text set out in Annex to this note, with a view to adopting draft legislative acts, subject to receiving the opinion of the European Parliament and legal-linguistic revision.
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COUNCIL DIRECTIVE

amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system [and introducing the definitive 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 Parliament<sup>7</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>8</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

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<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ C , , p. .

- (1) In 1967, when the Council adopted the common system of value added tax (VAT) by means of Council Directives 67/227/EEC<sup>9</sup> and 67/228/EEC<sup>10</sup>, 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/EC<sup>11</sup>, which is currently in force, provides that these transitional rules have to be replaced by definitive arrangements.
- (2) In accordance with its VAT Action Plan<sup>12</sup>, 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.
- (3) [...]

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<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</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>12</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT - Towards a single EU VAT area - Time to decide (COM(2016)148 final of 7.4.2016).



- (4) The Council, in its conclusions of 8 November 2016<sup>13</sup>, invited the Commission to make certain improvements to the Union VAT rules for cross-border transactions, regarding 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.
- (5) Given this demand and the fact that it will take several years for the definitive VAT system for intra-Union trade to be implemented, these specific measures, intended to harmonise and simplify certain arrangements for businesses, are appropriate.
- (6) Call-off stock refers to the situation where at the time of transport of goods to another Member State, the supplier already knows the identity of the person acquiring the goods to whom they will be supplied at a later stage and after arrival of the goods 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, these transactions, where they take place between two taxable persons should be, under certain conditions, considered as giving rise to one exempt supply in the Member State of departure and one intra-Community acquisition in the Member State of arrival.
- (7) 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 may 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 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.

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<sup>13</sup> Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (No. 14257/16 FISC 190 ECOFIN 1023 of 9 November 2016).

[(7a) In view of the proposed transition to the VAT definitive regime, and having regard to the fact that using the rules on VAT grouping may not sufficiently meet the economic needs of some sectors of the economy, Member States should have an option to provide that independent groups of persons that share costs between their respective members may benefit from VAT exemption. This would ensure tax neutrality on their relevant economic activities irrespective of the business or organisational choices made. Therefore Member States should be allowed to grant, under certain conditions, and without prejudice to the existing rules on VAT exemptions for independent groups of persons, such a cost sharing mechanism. Nevertheless, a safeguard clause should be provided to exclude the application of such a provision, given its optional nature, where it is likely to cause distortion of competition. Moreover, it would also be proportionate and appropriate that such option be limited to the exemption of supplies made under the cost sharing mechanism by independent groups of persons and its members established within the territory of the Member State that avails itself of that option. Such limitation is justified by the need to ensure correct and straightforward application of these rules by the taxable persons concerned and tax administrations, as well as guarantee the effectiveness of fiscal supervision against risks of tax evasion, avoidance or abuse. It is also important to note that this limitation would preserve the taxing rights of Member States that choose not to exercise this option. Since, under current circumstances, these objectives can not be achieved by other means that would be of equal effectiveness, such VAT rules on cost sharing mechanism, including the aforesaid limitation, are appropriate for attaining the objectives pursued and do not go beyond what is necessary to achieve them.]

- (8) 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 should 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. Further 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 when the supplier does not comply with his VIES listing obligations the exemption should not apply except when the supplier is acting in good faith, that is to say, when he can duly justify before the competent tax authorities any of his shortcomings relating to the recapitulative statement, that could also include at that time providing by the supplier the correct information required by article 264.
- (9) Since the objectives of this Directive – improved operation of the VAT arrangements in the context of cross -border B2B trade cannot be sufficiently achieved by the Member States and can therefore 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 the 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 those objectives.

- (10) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>14</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (11) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2006/112/EC shall be amended as follows:

- (1) The following Article 17a 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.

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

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 that those goods shall be supplied there, at a later stage and after arrival, to another taxable person who is entitled to take ownership of these 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 transported or dispatched 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 the 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 as 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 that paragraph, provided 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 arrival of the goods in the Member State to which they have been dispatched or transported, the goods have not been supplied to the taxable person for whom they were intended referred to in paragraph 2(c) and paragraph 6 and none of the circumstances 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 months 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 have been transported or dispatched, 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 paragraph 2(c) 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 paragraph 2(b) in the register provided for in Article 243(3).
7. Where within the time limit referred to in paragraph 4, any of the conditions determined 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 this condition is no longer fulfilled.

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

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

In case of destruction, loss or theft of the goods it shall be deemed that the conditions determined in paragraphs 2 and 6 cease to be fulfilled on the day that the goods were actually removed or destroyed, and if it is impossible to determine such a day, on the day on which the goods were found to be destroyed or missing.

(2) The following Article 36a 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’ shall mean a supplier in the chain other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf.
4. The provisions in this Article shall not apply to the situations covered by Article 14a.

[(3) The following Article 137a is inserted:]

[Article 137a

1. Each Member State may exempt the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition.



2. Paragraph 1 shall only apply to services rendered by independent groups of persons established in the territory of the Member State granting the exemption to its members established in the territory of that same Member State.↓

(4) In Article 138, 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 dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier ;
- 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."

(5) In Article 243, the following paragraph 3 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.

(6) 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 (2)(c);
  - (b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions 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 are intended and which are dispatched or transported under call-off stock arrangements in accordance with the conditions set out in Article 17a and about any change in the submitted information.

(7) [...]

(8) [...]

(9) Articles 403 and 404 are deleted.

*Article 2*

1. Member States shall adopt and publish, by 31 December 2019 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 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 Brussels,

*For the Council*

*The President*

DRAFT

COUNCIL IMPLEMENTING REGULATION

amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions

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>15</sup>, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In its VAT Action Plan<sup>16</sup>, the Commission announced its intention to put forward a proposal for a definitive value added tax (VAT) system in relation to cross-border business-to-business trade between Member States. The Council, in its conclusions of 8 November 2016<sup>17</sup>, invited the Commission to propose in the meantime certain improvements to the Union VAT rules for cross-border transactions, inter alia for the purposes of exemptions in respect of intra-Community transactions.
- (2) Directive 2006/112/EC sets out a number of conditions to exempt from VAT supplies of goods in the context of certain intra-Community transactions. One of those conditions is that the goods have to be transported or dispatched from one Member State to another.

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<sup>15</sup> OJ L 347, 11.12.2006, p. 1.

<sup>16</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT - Towards a single EU VAT area – Time to decide (COM(2016) 148 final of 7.4.2016).

<sup>17</sup> Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (No. 14257/16 FISC 190 ECOFIN 1023 of 9 November 2016).

- (3) However, the divergent approach amongst Member States in the application of these exemptions for cross-border transactions has created difficulties and legal uncertainty for businesses. This is contrary to the objective of enhancing intra-Union trade and to the abolition of the fiscal borders. It is therefore important to specify and harmonise the conditions under which the exemptions can apply.
- (4) As cross-border VAT fraud is primarily linked to the exemption for intra-Community supplies, it is necessary to specify certain circumstances in which goods should be considered as having been transported or dispatched from the territory of the Member State of supply.
- (5) In order to provide a practical solution for businesses and also assurance for tax administrations, two rebuttable presumptions are introduced in Implementing Regulation (EU) No 282/2011.<sup>18</sup>
- (6) The call-off stock simplification arrangements should be accompanied by appropriate recording obligations in order to ensure their correct application.
- (7) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

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<sup>18</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).

*Article 1*

In Chapter VIII of Implementing Regulation (EU) No 282/2011, the following SECTION 2a is inserted:

'SECTION 2a

Exemptions for intra-Community transactions

(Articles 138 to 142 of Directive 2006/112/EEC)

*Article 45a*

1. For the purposes of applying the exemptions laid down in Article 138 of Directive 2006/112/EC, it shall be presumed that goods have been dispatched or transported from a Member State to a destination outside its territory but within the Community in either of the following circumstances:
  - (a) the vendor indicates that the goods have been transported or dispatched by him or by a third party on his behalf, and he is in possession of at least two items of non-contradictory evidence referred to in paragraph 3 point (a), issued by two parties independent of each other, of the vendor and the acquirer, or any single item referred to in paragraph 3 point (a) in combination with any single item of non-contradictory evidence referred to in paragraph 3 point (b) confirming the transport or dispatch, issued by two parties independent of each other, of the vendor and the acquirer;

- (b) the vendor is in possession of the following:
- (i) a written statement from the person acquiring the goods stating that the goods have been transported or dispatched by him, or by a third party on his behalf, and referring to the Member State of destination of the goods. This document shall state the date of issue, the name and address of the acquirer, the quantity and nature of the goods, the date and place of the arrival of the goods and in the case of supply of means of transport its identification number, the identification of the individual accepting the goods on behalf of the acquirer ;
  - (ii) at least two items of non-contradictory evidence referred to in paragraph 3 point (a), issued by two parties independent of each other, of the vendor and the acquirer or any single item referred to paragraph 3, point (a) in combination with any single item of non-contradictory evidence referred to in paragraph 3, point (b) confirming the transport or dispatch, issued by two parties independent of each other, of the vendor and the acquirer .

The person acquiring the goods must furnish the written statement, referred to in point (b)(i), to the vendor by no later than the tenth day of the month following the supply.

2. A tax authority may rebut a presumption that has been made under paragraph 1.
3. For the purposes of paragraph 1, the following shall be accepted as evidence of the transport or dispatch:



- (a) documents relating to the transport or dispatch of the goods such as a signed CMR document or note, a bill of lading, an airfreight invoice, an invoice from the carrier of the goods ;
- (b) other documents:
  - i. an insurance policy with regard to the transport or dispatch of the goods or bank documents proving payment of the transport or dispatch of the goods;
  - ii. official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
  - iii. a receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State;

## *CHAPTER X*

### OBLIGATIONS OF TAXABLE PERSONS AND CERTAIN NON-TAXABLE PERSONS

#### (TITLE XI OF DIRECTIVE 2006/112/EC)

#### SECTION 1a

#### General obligations

#### (Article 242 to 243)

#### Article 54a

1. The register referred to in Article 243(3) of Directive 2006/112/EC kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:
  - (a) the Member State from which the goods were dispatched or transported and date of dispatch or transport of the goods;

- (b) the VAT identification number of the taxable person for whom the goods are intended, issued by the Member State to which the goods are dispatched or transported;
  - (c) the Member State to which the goods are dispatched or transported, the VAT identification number of the warehouse keeper, the address of the warehouse where they are stored upon arrival and the date of arrival of the goods in the warehouse;
  - (d) the value, description and quantity of the goods arrived in the warehouse;
  - (e) the VAT identification number of the taxable person substituting the person referred to in point b) under the conditions referred to in article 17a (6) of Directive 2006/112/EC;
  - (f) the taxable amount, description and quantity of the goods supplied and the date when the supply of the goods referred to in Article 17a(3)(a) of Directive 2006/112/EC is made and the VAT identification number of the buyer;
  - (h) the taxable amount, description, quantity of the goods, the date of occurrence of any of the conditions and the respective ground in accordance with Article 17a (7);
  - (i) the value, description and quantity of the returned goods and the date of the return of the goods referred to in article 17a (5) of Directive 2006/112/EC.
2. The register referred to in Article 243(3) of Directive 2006/112/EC kept by every taxable person to whom the goods are supplied under call-off stock arrangements shall contain the following information:
- (a) the VAT identification number of the taxable person who transfers goods under call-off stock arrangements;

- (b) description and quantity of the goods intended for him;
- (c) the date when the goods intended for him arrive in the warehouse;
- (d) the taxable amount, description and quantity of the goods supplied to him and the date when the intra-Community acquisition of the goods referred to in Article 17a(3)(b) of Directive 2006/112/EC is made ;
- (e) description and quantity of the goods and the date when the goods are removed from the warehouse by order of the person referred to in point (a);
- (f) description and quantity of the goods destroyed or missing and the date of destruction, loss or theft of the goods previously arrived in the warehouse or the date on which the goods were found to be destroyed or missing;

In case the goods are transported or dispatched under the call-off stock arrangements to a warehouse keeper different from the taxable person for whom the goods are intended to be supplied, the register of that taxable person does not need to contain the information referred to in points (c), (e), and (f).

## *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 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President

DRAFT

COUNCIL REGULATION

amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of the call-off stock arrangements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>19</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>20</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

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<sup>19</sup> OJ C , , p. .

<sup>20</sup> OJ C , , p. .

- (1) In order to ensure that the simplification introduced in Directive 2006/112/EC as regards call-off stock arrangements can be monitored properly, it is necessary that the relevant competent authorities of the Member States have an automated access to the data collected from the taxable person as regards such transactions.
- (2) Taking into account that the provisions included in this Regulation result from the amendments introduced by Council Directive [...] <sup>21</sup>/EU, this Regulation should apply from the date of the application of those amendments.
- (3) Regulation (EU) No 904/2010 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) No 904/2010 is amended as follows:

- (1) Article 21, paragraph 2 is amended as follows:

(a) point (c) is replaced by the following:

‘(c) the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point (b) and the VAT identification numbers of the persons who submitted information in accordance with Article 262(2) of Directive 2006/112/EC about the persons holding a VAT identification number referred to in point (a);’

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<sup>21</sup> Council Directive [...] /EU of [...] amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States (OJ L [...])

(b) in point (e), the introductory words are replaced by the following:

‘(e) the total value of the supplies of goods and services referred to in point (b) from each person referred to in point (c) to each person holding a VAT identification number issued by another Member State and for each person who submitted information in accordance with Article 262(2) of Directive 2006/112/EC, his VAT identification number and the information he submitted about each person holding a VAT identification number issued by another Member State, under the following conditions:’

*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 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*

*The President*

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