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COM(2018) 329 final

2018/0164 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2006/112/EC as regards the introduction of the detailed technical
measures for the operation of the definitive VAT system for the taxation of trade
between Member States**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

As the date of 1st January 1993 for the launch of the single market approached, it became obvious that a definitive system for taxing transactions of goods could not be put in place in time to allow for the free movement of goods. Nevertheless, as of 1 January 1993 all tax controls on the internal borders of the European Community disappeared. Traders no longer became liable for value added tax (VAT) when their goods crossed between Member States. To achieve this ending of tax controls at borders, agreement had been necessary on major changes to the system for applying VAT to intra-Community transactions. The Commission's original proposals – outlined in the Single Market White Paper of 1985 - were the subject of inconclusive debate until October 1989, when it was realised that the time was then too short for their implementation by January 1993. Instead, a less ambitious alternative was devised, making possible the ending of border tax controls whilst retaining key features of then existing arrangements.

It is this alternative, transitional VAT system that was put in place and still remains more than 25 years later. Those arrangements, as far as Business-to-Business (B2B) transactions on goods are concerned, split the cross-border movement of goods into two different transactions: an exempt supply in the Member State of departure of the goods and an intra-Community acquisition taxed in the Member State of destination. These rules were regarded as temporary and are not without drawbacks since allowing goods to be bought free of VAT increases the opportunity for fraud, while the inherent complexity of the system is not favourable to cross-border trade.

Following broad consultation, the Commission adopted its *Action Plan on VAT – Towards a single EU VAT area – Time to decide*¹ (VAT Action Plan). The Commission announced, *inter alia*, its intention to adopt a definitive VAT system for intra-Union cross-border trade based on the principle of taxation in the Member State of destination in order to create a robust single European VAT area. The implementation of the VAT Action Plan was also part of the Fair Taxation package announced in President Juncker's letter of intent accompanying the State of the Union 2017².

The Commission subsequently adopted a Communication on the follow-up to the VAT Action Plan *Towards a single EU VAT area – Time to act*³ in which it spelled out the gradual steps to be taken in the move towards that single European VAT area.

Besides the change to the definitive VAT system for cross-border trade, this move includes two other proposals to modify the VAT Directive: one as regards VAT rates⁴ and one as

¹ COM(2016) 148 final.

² State of the Union 2017. Letter of intent to President Antonio Tajani and to Prime Minister Jüri Ratas, 13 September 2017, accessible at https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure_en.pdf. See also Annex I to the Commission Work Programme 2017, COM(2016) 710 final, Strasbourg, 25.10.2016, p. 3, accessible at https://ec.europa.eu/info/sites/info/files/cwp_2017_annex_i_en.pdf.

³ COM(2017) 566 final.

⁴ COM(2018) 20 final.

regards the special scheme for small enterprises⁵. In addition, it includes a proposal for a Council Regulation on combating fraud in the field of VAT⁶.

As regards the change towards a definitive VAT system based on the principle of taxation in the Member State of destination a gradual two-step approach was announced: a first step settling intra-Union B2B supplies of goods and a second step covering supplies of services.

The first step was further divided into two sub-steps. The first sub-step, presented simultaneously with the Communication, was a legislative proposal which outlined the cornerstones for a simpler and fraud-proof definitive VAT system for intra-Union trade⁷.

The current proposal represents the second sub-step. It contains the detailed arrangements to put these cornerstones in place for intra-Union B2B supplies of goods.

The present proposal will need to be complemented by a proposal for amending Regulation (EU) 904/2010 on Administrative Cooperation in the field of value added tax. The latter proposal is of a technical nature as it would consist in aligning the cooperation between Member States to the proposed changes to the VAT system for cross-border supplies of goods. This proposal will be made sufficiently in time for allowing its adoption and implementation at the date of entry into force of the present proposal.

- **Consistency with existing policy provisions in the policy area**

The introduction of a definitive system for intra-Union supplies of goods is one of the main elements of the VAT Action Plan. This proposal replaces the transitional arrangements, applicable since 1 January 1993, by a definitive VAT system for intra-Union B2B trade under which domestic and cross-border transactions of goods will be treated in the same way. Furthermore, the definitive VAT system will create a robust single European VAT area which can support a deeper and fairer single market that helps to boost jobs, growth, investment and competitiveness.

- **Consistency with other Union policies**

The creation of a simple, modern and fraud-proof VAT system is one of the fiscal priorities set out by the Commission⁸.

Reducing regulatory burden, particularly for Small and Medium Enterprises (SMEs), is also an important objective highlighted in the Union's growth strategy⁹.

The proposed initiative and its objectives are consistent with the Union SME policy as set out by the Small Business Act (SBA)¹⁰, in particular principle VII on helping SMEs to benefit more from the opportunities offered by the Single Market. In addition, it is consistent with the

⁵ COM(2018) 21 final.

⁶ Amended proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax (COM(2017) 706 final).

⁷ COM(2017) 569 final.

⁸ Annual Growth Survey 2017; see: https://ec.europa.eu/info/publications/2017-european-semester-annual-growth-survey_en

⁹ Europe 2020 – A strategy for smart, sustainable and inclusive growth; see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

¹⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - “Think Small First” – A “Small Business Act” for Europe (COM(2008) 394 final).

Single market strategy (SMS)¹¹ and the objectives of the Regulatory Fitness and Performance programme (REFIT).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The Directive amends the VAT Directive on the basis of Article 113 of the Treaty on the Functioning of the European Union. This Article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the 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)

According to the principle of subsidiarity, as set out in Article 5(3) of the Treaty on European Union, action at Union level may only be taken if the envisaged aims cannot be achieved sufficiently by the Member States alone and can therefore, by reason of the scale or effects of the proposed actions, be better achieved by the Union.

VAT rules for cross-border Union trade can, by their nature, not be decided by individual Member States since, inevitably, businesses located in more than one Member State are involved. Moreover, VAT is a tax harmonised at Union level and therefore any initiative to introduce the definitive VAT system for cross-border supplies of goods requires a proposal by the Commission to amend the VAT Directive¹².

• 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 Treaties, in particular the smooth functioning of the single market. As with the subsidiarity test, it is not possible for Member States to address problems such as fraud or complexity without a proposal to amend the VAT Directive.

• Choice of the instrument

A Directive is proposed in view of amending the VAT Directive.

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

Ex-post evaluations/fitness checks of existing legislation

A retrospective evaluation of elements of the Union VAT system was conducted by an external consultant in 2011 and its findings have been used as a starting point to the examination of the current VAT system¹³.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions – "Upgrading the Single Market: more opportunities for people and business" (COM(2015) 550 final).

¹² 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).

¹³ Institute for Fiscal Studies (project leader), 2011, A retrospective evaluation of elements of the EU VAT system:
http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/publications/studies/report_evaluation_vat.pdf

- **Stakeholder consultations**

An extensive stakeholders consultation process took place in the context of the preparation of the legislative proposal COM(2017) 569 final which outlines the cornerstones of the definitive VAT arrangements. Since that proposal was adopted, a small amount of feedback, supporting the overall objective of creating a robust single European VAT area, has been received *via* the "Better Regulation" portal and from events held with trade and business associations.

- **Collection and use of expertise**

The expertise collected by way of several studies referred to in COM(2017)569 final of 4 October 2017 for setting the cornerstones of the definitive VAT system covered the needs for the present proposal.

From these studies, the study on Implementing the ‘destination principle’ to intra-EU B2B supplies of goods¹⁴ was particularly relevant for this proposal.

- **Impact assessment**

A back to back impact assessment and evaluation was carried out which covered both the setting of the cornerstones of the definitive VAT system and the detailed arrangements for putting these cornerstones into place; see SWD(2017) 325 final and SWD(2017) 326 final of 4 October 2017. The preferred option, chosen in that impact assessment, would reduce cross-border VAT fraud by up to EUR 41 billion per annum and reduce compliance costs for businesses by EUR 938 million per annum.

The impact assessment was considered by the Regulatory Scrutiny Board on 14 July 2017. The Board gave a positive opinion to the Impact Assessment with some recommendations, in particular on the link of the proposal to other elements of the VAT Action Plan, the need for a staged approach and the concept of certified taxable person, that have been taken on board. The opinion of the Board and the recommendations are mentioned in Annex 1 to SWD(2017) 325 final.

The fundamental nature of the proposed changes means that all businesses will be impacted. They address the problems of fraud and complexity of the current transitional VAT system and the related compliance costs for all businesses. Simplifications such as the use of the One Stop Shop are also available to SMEs but they are not specifically targeted to that category of taxable persons.

The difficulties of SMEs, in particular when trading cross-border, are already addressed through a specific proposal which was presented on 18 January 2018¹⁵. That proposal is together with the present proposal an integral part of the VAT Action plan.

- **Regulatory fitness and simplification**

As is indicated in the Impact Assessment, the compliance costs per euro of turnover for businesses doing intra-Union cross border trade have been established to be 11% higher compared with the corresponding VAT compliance costs per euro of turnover for businesses engaged solely in domestic trade.

¹⁴ EY, 2015; see:

https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/ey_study_destination_principle.pdf

¹⁵ COM(2018)21 final.

In view of assessing the impact on smaller businesses, a distinction has been made between SMEs that are engaged predominantly in domestic trade and SMEs that are already engaged in both domestic and intra-EU trade.

For this second category of SMEs, the proposed changes, and in particular the broadening of the scope of the one stop shop mechanism, could result in an average annual reduction of up to 17% compared to their current VAT compliance costs.

For all businesses, the monetary impact of the implementation is estimated to increase business costs, such as costs for updating the accounting and invoicing software and for professional training, by EUR 457 million in the year of implementation because of the need for business to adapt their internal procedures to the new rules, but results in a net business decrease of VAT compliance costs by EUR 938 million annually after the year of implementation.

However, the Impact Assessment accompanying the specific proposal on SMEs¹⁶, which as indicated above complements the present proposal, should result in a reduction in VAT compliance costs of up to 18% (or EUR 11.9 billion) for SMEs and an increase in SMEs' cross-border trading activity of about 13%.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implications for the Union budget. Since the proposal would reduce cross-border VAT fraud by up to EUR 41 billion per annum, the total annual VAT revenue collected by each Member State, which is the starting point for the calculation of the VAT-based own resource, should increase.

5. OTHER ELEMENTS

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

In its Communication of October 2017 on the follow-up to the VAT Action Plan, the Commission indicated that the implementation of the second step (covering cross-border services) in the gradual move to the definitive VAT system would be proposed by the Commission after due monitoring of the implementation of the first step (completed by the current proposal), the functioning of which in terms of robustness against fraud, of compliance costs for businesses and of effectiveness in the management of the system by the tax authorities, would be evaluated by the Commission 5 years after its entry into force.

To that purpose, the Commission will seek to obtain from Member States any relevant information as regards the level and the evolution of the administrative costs and of fraud. The Commission will also seek to collect input from all relevant business stakeholders as regards the level and the evolution of their compliance costs.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on the transposition.

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

The main substantial changes proposed to the VAT Directive are explained hereafter by topic. These substantial changes do result in a number of subsequent amendments of a technical nature in the VAT Directive.

¹⁶ SWD(2018)9 final and SWD(2018)11 final.

Certain changes concern provisions for which amendments are already proposed in the proposal COM(2017)569 final of 4 October 2017. That proposal provides, in response to a request from the Council, for improvements to the current VAT system to be made whilst the work on the definitive VAT arrangements for intra-Union trade is ongoing. The proposed changes for the so-called "quick fixes" remain entirely valid since they should enter into force well ahead of the present proposal.

Nevertheless, the subsequent introduction of the definitive arrangements for B2B supplies of goods as foreseen in the present proposal does require the adaptation to these new arrangements of the provisions contained in the previous proposal regarding the concept of certified taxable person, call-off stocks or chain transactions.

In addition, since the objective of the present proposal is to introduce the definitive arrangements for B2B supplies of goods, the proposed Article 402 which sets out the cornerstones for the taxation of trade between Member States, covering goods and services, needs to be adapted to the fact that these cornerstones are partially put into effect by this proposal.

In addition, this proposal provides the opportunity for replacing the outdated notions of "Intra-Community" or "Community" by the notions of "Intra-Union" and "Union" in a range of provisions of the VAT Directive.

The recent Commission proposal as regards the special scheme for small enterprises (COM(2018) 21 final, of 18 January 2018) also requires a few technical updates such as the abovementioned replacement in the light of the present proposal. To avoid ambiguity, these changes are not included in the present proposal but shall be handled during the negotiations in Council.

Subject matter and scope of the tax: Articles 2 to 4

As indicated above, the current VAT system splits cross-border B2B supply of goods into two different transactions for VAT purposes: an exempt supply in the Member State of departure of the goods and an intra-Community acquisition taxed in the Member State of destination.

It is proposed that a cross-border B2B supply of goods within the Union will give rise to a single transaction for VAT purposes: an intra-Union supply of goods. Consequently, the concept of an intra-Community acquisition of goods as a transaction subject to VAT is to be removed from Articles 2 to 4.

Since an intra-Community acquisition of goods would no longer exist as a transaction subject to VAT, all subsequent provisions within the VAT Directive related to that concept need to be deleted and to be reviewed in the light of the proposed mechanism for taxing the cross-border B2B trade in goods within the Union.

The concept of intra-Union supplies of goods: Article 14

It is proposed to add a point (3) to paragraph 4 of Article 14 which contains a definition of intra-Union supplies of goods. 'Intra-Union supply of goods' shall mean a supply of goods carried out by a taxable person for a taxable person or for a non-taxable legal person whereby the goods are dispatched or transported, by or on behalf of the supplier or the person acquiring the goods within the Union, from one Member State to another Member State.

Certain supplies enumerated in paragraph 5 of Article 14 shall not be regarded as intra-Union supplies, even when the two conditions for qualifying, namely as regards the status of the

customer and as regards the transport of the goods, would be fulfilled. This is the case for supplies of goods with assembly or installation, with or without a trial run, supplies of goods that are exempt under Article 148 or 151 and supplies by a flat-rate farmer defined in Article 295.

The rules on the place of supply of goods: Article 35a

The rules on the place of supply of taxable transactions determine the Member State in which VAT is due.

The general rules for determining the place of supply of goods without transport (the place where the goods are located at the time the supply takes place) and the place of supply of goods with transport (the place where the goods are located when dispatch of the goods or transport begins) remain.

However, a new exception to the general rule is proposed in Article 35a according to which the place of supply of an intra-Union supply of goods shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.

The combination of the definition of intra-Union supplies of goods in Article 14(4)(3) and the new proposed place of supply rule in Article 35a ensures the taxation of a cross-border B2B supply of goods within the Union in the Member State of destination.

Under the current VAT rules, cross-border supplies to taxable persons who carry out only supplies of goods or services in respect of which VAT is not deductible, to taxable persons subject to the common flat-rate scheme for farmers and to non-taxable legal persons are, below a certain threshold and when the acquirer did not opt for taxation at destination, still taxed at the Member State of supply (origin).

This exception adds to the complexity of the current arrangements. It has also lost of its relevance since the threshold has never been reviewed since its implementation in 1993. This exception is therefore not retained also because, contrary to the current situation, under the proposed rules the supplier will take care of the reporting and payment obligations related to these supplies.

Taxation at destination is thereby ensured for all intra-Union B2B supplies of goods. The only exception are the supplies made under the margin scheme provided for in Articles 311 and onwards (Article 35c). Further taxation at destination will not apply either for the cross border supplies of goods that are exempt under Article 148 or 151 and for the cross border supplies of goods by a flat-rate farmer defined in Article 295 since, as indicated above, they are excluded from the notion of intra-Union supplies of goods.

Chargeability of the tax: Article 67

An amendment to Article 67 is proposed that determines a single rule for the chargeability of VAT on intra-Union supplies. According to this rule VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time (fifteenth day of the month following that in which the chargeable event occurs).

It is further specified that those provisions allowing Member States to determine, in certain cases, different moments of chargeability of VAT shall not apply with respect to intra-Union

supplies of goods. In absence of this specification the supplier making intra-Union supplies in several Member States would have to comply with the options taken by the different Member States of arrival of the goods, which would increase complexity.

Person liable for payment of VAT: Articles 193, 194a, 199a and 199b

The principle laid down in Article 193 remains that VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, unless in other provisions, enumerated in that same Article 193, it is stipulated that VAT is payable by another person.

As an exception to Article 193, a new Article 194a is proposed according to which VAT shall be payable by the person to whom the goods are supplied insofar he is a certified taxable person as defined in Article 13a if the goods are supplied by a taxable person not established within the territory of the Member State in which the VAT is due. The concept of certified taxable person was included in the Commission's proposal of 4 October 2017¹⁷.

As regards intra-Union supplies of goods, the combination of the rules of Articles 193 and 194a means that the supplier is in principle liable for the payment of the VAT in the Member State of arrival of the goods except where the supplier is not established in the Member State of taxation and the customer is a certified taxable person according to Article 13a. In the latter case, the customer will pay the VAT due by way of reverse charge in the Member State of arrival of the goods.

Article 199a allows Member States to provide until 31 December 2018, for certain supplies specified in this provision, that the person liable for payment of VAT shall be the taxable person to whom these supplies are made.

In the recently adopted report on the effects of Article 199a and 199b on combatting fraud¹⁸, the Commission indicated that it will present an appropriate legislative proposal for prolonging the existing measures. This will be a separate proposal that will cover the period from 1 January 2019 until 30 June 2022, given that the envisaged date of entry into force of the present proposal is 1 July 2022.

The amendments of Article 199a proposed hereafter relate to the period from 1 July 2022 onwards. They concern the timespan and the scope of the supplies covered.

As regards the timespan, it is proposed to extend the option to make use of this provision until 31 December 2028. The other dates laid down in this provision are adapted accordingly.

As regards the supplies to be included in this provision, it is obvious that the proposed content has to be assessed in the context of the overall change of the taxation of the cross-border movement of B2B supplies of goods. The proposed changes intend to provide a fundamental response to cross-border fraud relating to transactions in goods and should therefore make the existing patchwork of temporary reverse charge measures in Article 199a, to the extent to which they also aim to give a response to this kind of fraud, redundant. The transactions that remain covered by the temporary measures of Article 199a are therefore limited to those services previously covered in this provision.

¹⁷ COM(2017)569 final, 4.10.2017.

¹⁸ Report from the Commission to the Council and the European Parliament on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on combatting fraud (COM(2018) 118 final of 8.3.2018).

A comparable approach is suggested for the amendment of Article 199b. This provision lays down the rules governing the Quick Reaction Mechanism which allows Member States in very specific circumstances to designate the recipient of the goods and services as the person liable for VAT. For the same reason as in Article 199a, supplies of goods would no longer be covered by the Quick Reaction Mechanism.

Identification: Article 214

Intra-Union supplies of goods, defined in Article 14, paragraph 4, point 3 include, inter alia, supplies made by a taxable person to a non-taxable legal person.

An amendment to Article 214 is therefore proposed according to which Member States shall take the measures necessary to ensure that a non-taxable legal person who is the recipient of an intra-Union supply is identified by means of an individual number.

Recapitulative statements: Articles 262 to 271

Intra-Union supplies of goods should under the proposed system no longer be included in the recapitulative statements. The principle of VAT being charged by the supplier on the intra-Union supply re-installs the self-policing character of VAT. Consequently, ensuring an administrative follow-up to the physical flow of goods through the recapitulative statement within the Union is no longer justified.

When the recipient of an intra-Union supply is a certified taxable person, goods will continue to circulate VAT free within the Union. Nevertheless, it would be incoherent with the concept of a certified taxable person, which is considered to be a reliable taxable person, to maintain the obligation of submitting recapitulative statements for such transactions.

The obligation to submit recapitulative statements is therefore only maintained for services.

Member States may introduce, under certain conditions, special measures to simplify the obligation to submit recapitulative statements. It is proposed to simplify the procedure for taking up this option, by replacing the requirement of a unanimous decision from the Council by a consultation of the VAT Committee.

Special schemes for non-established taxable persons: Articles 358 to 369x

Chapter 6 of Title XII of the VAT Directive currently contains three schemes with a distinctive scope, namely:

- a special scheme for services supplied by taxable persons not established within the Union;
- a special scheme for intra-Union distance sales of goods and for services supplied by taxable persons within the Union but not in the Member State of consumption;
- a special scheme for distance sales of goods imported from third territories or third countries.

The first and third schemes are only marginally affected by this proposal.

In view of implementing the principle of a single registration scheme for declaration, payment and deduction of the tax, substantial changes to the second scheme are proposed.

Taking into account the adoption by the Council of Directive (EU) 2017/2455 of 5 December 2017¹⁹, this second scheme will as of 1 January 2021 allow the taxable person registered for the scheme in a Member State (the Member State of identification) to electronically submit quarterly mini One Stop Shop VAT returns detailing supplies of services and intra-Union distance sales to non-taxable persons in other Member States (the Member State(s) of consumption), along with the VAT due. These returns, along with the VAT paid, are then transmitted by the Member State of identification to the corresponding Member States of consumption via a secure communications network. This scheme avoids that these taxable persons need to be registered for VAT in each Member State of consumption. The current proposal provides for a further extension of this scheme.

As regards the definitions used for the purposes of this scheme, a definition of 'Member State of taxation' is added in Article 369a. Member State of taxation means the Member State in which the supply of goods or services is deemed to take place.

The scope of transactions covered by the scheme, set out in Article 369b, is amended. It is proposed that the option to make use of the scheme should be available to any taxable person not established in the Member State of taxation in relation with the supplies of goods and services made in that Member State for which he is liable to pay value added tax. It will thereby no longer be limited to Business-to-Consumer transactions but also include B2B transactions.

It is proposed to make the scheme also available to taxable persons not established within the Union under the condition that they appoint an intermediary which is established in the Union. Comparable to what is already foreseen in the special scheme for distance sales of goods imported from third territories or third countries, the intermediary is the person that becomes liable for the payment of the VAT and for fulfilling the obligations laid down in the scheme in the name and on behalf of the non-EU established taxable person he represents.

Considering the widening of the scope of transactions covered by the scheme, it is proposed to amend Article 369f by adding that taxable persons making use of the scheme shall submit monthly One Stop Shop VAT returns when their annual EU turnover is above EUR 2 500 000.

Article 369g, which defines the content of the VAT return to be submitted under the scheme also needs to be reviewed. Currently, the information to be provided only relates to the value and the VAT due on supplies made by the taxable persons.

Including the right for the taxable person to exercise the deduction of input VAT in the One-Stop-Shop VAT return is only possible when some additional information is provided in that return and in particular:

- the total amount of VAT that has become chargeable on supplies of goods and services for which the taxable person as recipient is liable to pay the tax and on the importation of goods where the Member State exercises the option under the second paragraph of Article 211;
- the VAT for which deduction is made;
- amendments relating to previous tax periods;
- the net amount of the VAT to pay or to be refunded or credited.

¹⁹ 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).

Since deduction will be made on the VAT returns submitted through the scheme, an amendment to Article 369i is proposed which stipulates that the taxable person shall pay the sum of the net amounts of VAT (VAT due minus VAT deductible) due in each Member State of taxation.

A new Article 369ia is proposed defining the conditions under which a taxable person in a credit position in a given Member State of taxation can obtain a refund of the credit from that Member State. Moreover, a new Article 369ib is proposed which determines the conditions under which an amount to be refunded to the taxable person in the Member State of identification can be used for the payment of VAT due in the Member State(s) of taxation.

An amendment to Article 369j is proposed in order to determine the interaction between the right to deduct under the special scheme and the refund procedures laid down in Directive 86/560/EEC²⁰ for taxable persons not established in the Union and Directive 2008/9/EC²¹ for taxable persons established in the Union. This provision is necessary in order to avoid potential abuse by taxable persons that would exercise a right to deduct under the special scheme and would submit a request for refund for the same amount of input VAT.

In principle a taxable person has the right to make the deduction of the input VAT on the VAT returns submitted through the scheme. However, when a taxable person making use of this special scheme does not make any supplies of goods and services covered by this special scheme for which VAT has become chargeable in a Member State of taxation in a given tax period, nor in the three preceding tax periods when he is submitting quarterly returns or in the eleven preceding tax periods when he is submitting monthly returns, no deduction of VAT incurred may be made in that Member State of taxation in that VAT return. Instead of that, the taxable person should claim the input VAT back via the refund procedure in the Member State in which VAT was charged.

Derogations: Articles 370 to 390c

Chapter 1 of Title XIII of the VAT Directive contains a series of derogations which may be applied until the adoption of the definitive arrangements. For those States which were Member States on 1 January 1978, most of the derogations they may apply are spelled out in Annex X to the VAT Directive. As explained above, the present proposal is the first step in the process of putting the definitive system of taxation of intra-EU trade at destination into place. As part of this step, it is proposed to delete those derogations for which, if they were maintained, the proposed changes of the place of supply rules and of the designation of the person liable for payment of VAT would lead to complexity for the taxable persons and the tax administrations.

In particular, the option to apply a derogation would be suppressed for goods that could be the object of intra-Union supplies (movable goods). In that case, the supplier would have to know, for each Member State in which these intra-Union supplies take place, whether that Member State made use of the derogation or not and, if so, which are the conditions applied by those Member States.

²⁰ Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ L 326, 21.11.1986, p. 40).

²¹ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

Proposal for a

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amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) When the Council adopted in 1967 the common system of value added tax (VAT) by means of Council Directives 62/227/EEC³ and 67/228/EEC⁴, the commitment was made to establish a definitive VAT system for the taxation of trade between Member States operating in a similar 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/EC⁵, which is currently in force, provides that these transitional rules have to be replaced by definitive arrangements based in principle on the taxation in the Member State of origin of the supply of goods or services.
- (2) The Council, supported by the European Parliament⁶ and the Economic and Social Committee⁷, confirmed that an origin-based system was not achievable and invited the

¹ OJ C , , p. .

² OJ C , , p. .

³ 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).

⁴ 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).

⁵ 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).

⁶ European Parliament resolution of 13 October 2011 on the future of VAT (P7_TA(2011)0436) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0436>

⁷ European Economic and Social Committee Opinion of 14 July 2011 on the ‘Green Paper on the future of VAT - Towards a simpler, more robust and efficient VAT system’ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011AE1168>

Commission to proceed with in-depth technical work and a broadly based dialogue with Member States to examine in detail the different possible ways to implement the destination principle⁸.

- (3) The Commission, in its VAT Action Plan⁹, sets out the amendments to the VAT system that would be necessary in order to develop such a destination-based system for intra-Union trade by means of the taxation of cross-border supplies. The Council subsequently reaffirmed the conclusions of that Action Plan and stated, inter alia, that in its view the principle of taxation at origin as envisaged for the definitive VAT system should be replaced by the principle of taxation in the Member State of destination¹⁰.
- (4) In order to achieve the objectives set out in the Commission's VAT Action Plan, the rules for intra-Union Business-to-Business (B2B) supplies of goods should be amended, in compliance with the staggered approach proposed by the Commission in its Communication of 4 October 2017 on the follow-up to the VAT Action Plan¹¹.
- (5) With a view to providing a more effective system for the taxation of intra-Union B2B supplies of goods in the Member State of destination, it is necessary to abolish the current system whereby supplies in the Member State of departure of the goods are exempt and intra-Community acquisitions are taxed in the Member State of destination. Since the exemption for such supplies and the concept of intra-Community acquisition itself as a transaction subject to VAT are to be abolished, all related articles should be amended or deleted.
- (6) In order to ensure an equal treatment between domestic transactions and intra-Union transactions, the taxation for VAT purposes of intra-Union B2B transactions in goods should be premised on a single taxable event, namely an intra-Union supply of goods.
- (7) In view of ensuring that the principle of taxation at destination is applied as widely as possible, the definition of an intra-Union supply of goods should include, without any restriction by way of a threshold, a supply to a non-taxable legal person, a supply to an exempt taxable person, a supply to a taxable person under the special scheme for small enterprises and a supply to a farmer under the flat-rate scheme.
- (8) The concepts of intra-Union distance sales of goods and of distance sales of goods imported from third territories or third countries should be amended in order to avoid the situation whereby certain of these supplies would be covered by the new definition of intra-Union supply.
- (9) With a view of ensuring the smooth functioning of the VAT system within the internal market, certain supplies of goods need to be excluded from the definition of intra-Union supplies, in particular supplies of goods with assembly or installation; supplies of goods for the fuelling and provisioning of certain vessels and aircrafts; supplies of goods in the framework of diplomatic and consular arrangements and for certain

⁸ Council conclusions on the future of VAT - 3167th Economic and Financial affairs Council meeting, Brussels, 15 May 2012 (see in particular point B 4)

⁹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/130257.pdf

⁹ Action Plan on VAT – Towards a single EU VAT area - Time to decide (COM(2016) 148final of 7.4.2016.

¹⁰ See: <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/>

¹¹ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act (COM(2017) 566 final of 4.10.2017).

international organisations, and supplies of goods made by a taxable person covered by the common flat-rate scheme for farmers.

- (10) In order to ensure taxation at destination for B2B intra-Union supplies of goods, the place of supply of an intra-Union supply of goods should be situated in the Member State of arrival of the goods at the time when dispatch or transport of the goods to the customer ends. That rule should not apply to supplies of second-hand goods, works of art, collectors' items or antiques subject to the margin scheme, nor should it apply to supplies of goods on board ships, aircraft and trains and to supplies of goods through a natural gas system, of electricity, and of heat or cooling energy through heating and cooling networks which should remain covered by specific rules on the place of supply.
- (11) As a result of the abolition of the intra-Community acquisition as a taxable event for the purposes of VAT, the current special rules in relation to the supply of new means of transport and of excise products need to be reviewed.
- (12) In order to harmonise the application of this definitive system across the Union, it is necessary to determine a single rule for the chargeability of VAT on intra-Union supplies of goods.
- (13) The overall rule for supplies of goods, including intra-Union supplies of goods, and for supplies of services should be that the supplier is liable for the payment of the VAT.
- (14) In order to allow for a gradual transition to the definitive system for intra-Union trade, an exception to the rule that the supplier is liable for the payment of VAT should be made in case of a supply of goods, insofar as the person to whom the goods are supplied is a certified taxable person and the supplier is not established in the Member State of taxation. In that case, the acquirer should be the person liable for the payment of VAT and he should account for the VAT by means of the reverse charge mechanism. This exception should reduce the volume of transactions for which the person liable for the payment of VAT is not established in the Member State of taxation.
- (15) The rules on the temporary application of the reverse charge mechanism for movable goods should be reviewed in order to ensure their coherence with the introduction of the new rules regarding the person liable for the payment of VAT on intra-Union supplies of goods.
- (16) With a view to a straightforward application of the rules on taxation of intra-Union supplies of goods by businesses, Member States should take the necessary measures to ensure that every taxable person and non-taxable legal person who is the recipient of intra-Union supplies of goods is identified by way of an individual number.
- (17) To ensure the proper monitoring of the payment and deduction of VAT related to intra-Union supplies of goods, the issuing of an invoice should be mandatory for intra-Union supplies of goods and Member States should not allow the issuing of simplified invoices. The invoice should be issued in accordance with the rules of the Member State in which the supplier has established his business or has a fixed establishment from which the supply is made or, in the absence of such place of establishment or fixed establishment, the Member State where the supplier has his permanent address or usually resides.
- (18) With a view to reducing the administrative burden on trade within the Union, and since VAT on intra-Union supplies of goods would either effectively be charged by

the supplier or accounted for by an acquirer that is a certified taxable person, the obligation to submit a recapitulative statement for these supplies should be abolished.

- (19) It is necessary to adapt the special flat-rate scheme for farmers in view of the change of the system for the taxation of intra-Union supplies of goods in such way that the overall objective of that scheme remains achieved. By excluding the supplies made by farmers under the flat-rate scheme from the definition of intra-Union supplies, the place of supply of their cross-border B2B supplies of goods should remain to be the place of departure of the goods and the flat-rate compensation fixed by the Member State of departure should be applied on these supplies.
- (20) In order to reduce the administrative burden for businesses, the scope of the current special scheme for taxable persons established in the Union making supplies of services or certain supplies of goods to consumers (B2C supplies) should be extended by covering all supplies of goods and services for which the person liable for the payment of the VAT is not established in the Member State in which the supply takes place. The scheme should apply to supplies to both consumers and to businesses.
- (21) It is also appropriate to reduce the administrative burden for taxable persons not established in the Union making supplies of goods and services for which they are liable to pay VAT in one or more Member States by allowing them to make use of that special scheme when they appoint an intermediary. In order to ensure the proper collection of the tax, this intermediary should be established in the Union and become liable for the payment of VAT and for fulfilling the obligations laid down in the scheme on behalf of the taxable person not established in the Union.
- (22) In order for taxable persons to fully benefit from the internal market, that special scheme should not only allow for the declaration of transactions on which VAT is due in Member States other than those in which the supplier is established but also for the deduction to be made of the VAT charged to that supplier in those Member States.
- (23) In view of ensuring coherence in the VAT reporting obligations for large enterprises, the frequency of submitting VAT returns under this special scheme should be reviewed by adding that taxable persons making use of the scheme shall submit monthly VAT returns under the scheme when their annual Union turnover is above EUR 2 500 000.
- (24) In order to collect the appropriate information from the taxable person for ensuring a proper monitoring of this special scheme by the tax authorities, the content of the VAT return to be submitted under this special scheme should be reviewed to take the extension of the scheme into account and to allow the corresponding right of deduction to be exercised.
- (25) In order to ensure the smooth functioning of this special scheme and to avoid obstacles for taxable person making use of the opportunities of the internal market, common rules should be introduced for situations whereby the taxable person is in a credit position in the Member State of identification and/or the Member State(s) of taxation.
- (26) For reason of clarity and to reduce the possibilities for any abuse or fraud, the period during which a taxable person can still deduct input VAT in a given Member State on his return submitted under this special scheme where he no longer declares transactions for which he is liable to pay VAT in that same Member State should be laid down. Such a taxable person should, on the expiry of this period, use the appropriate refund procedures for claiming VAT back.

- (27) The derogations, set out in Title XIII, Chapter 1, which have potential cross-border effects should be deleted in order to avoid unnecessary complexity for taxable persons and tax administrations.
- (28) As a result of the introduction of intra-Union supply of goods as a new concept, it is appropriate to replace the term 'Community' with 'Union' to ensure an updated and coherent use of the term.
- (29) Since the objectives of this Directive, comprising the implementation of the definitive VAT system to improve the operation of VAT arrangements for cross-border B2B trade on goods, 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.
- (30) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹², 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.
- (31) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) Article 2 is amended as follows:
- (a) in paragraph 1, point (b) is deleted,
 - (b) paragraphs 2 and 3 are deleted;
- (2) Articles 3 and 4 are deleted;
- (3) in Article 5, points (1) and (2) are replaced by the following:
- '(1) 'Union' and 'territory of the Union' mean the territories of the Member States as defined in point (2);
 - (2) 'Member State' and 'territory of a Member State' mean the territory of each Member State of the Union to which the Treaty on the Functioning of the European Union is applicable, in accordance with Articles 349 and 355 of that Treaty, with the exception of any territory referred to in Article 6 of this Directive;';
- (4) Article 6 is amended as follows:
- (a) in paragraph 1, the introductory words are replaced by the following:

¹² OJ C 369, 17.12.2011, p. 14.

'1. This Directive shall not apply to the following territories forming part of the customs territory of the Union:',

(b) in paragraph 2, the introductory words are replaced by the following:

'2. This Directive shall not apply to the following territories not forming part of the customs territory of the Union:';

(5) Article 9 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. In addition to the persons referred to in paragraph 1, any person who, on an occasional basis, supplies a new means of transport, which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Member State but within the territory of the Union, shall be regarded as a taxable person.'

(b) the following paragraph 3 is added:

'3. For the purposes of paragraph 2, the following shall be regarded as 'means of transport', where they are intended for the transport of persons or goods:

- (a) motorised land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7.2 kilowatts;
- (b) vessels exceeding 7.5 metres in length, with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and of vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing;
- (c) aircraft the take off weight of which exceeds 1 550 kilograms, with the exception of aircraft used by airlines operating for reward chiefly on international routes.

These means of transport shall be regarded as 'new' in the cases:

- (a) of motorised land vehicles, where the supply takes place within six months of the date of first entry into service or where the vehicle has travelled for no more than 6 000 kilometres;
- (b) of vessels, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;
- (c) of aircraft, where the supply takes place within three months of the date of first entry into service or where the aircraft has flown for no more than 40 hours.

Member States shall lay down the conditions under which the facts referred to in the second subparagraph may be regarded as established.';

(6) in Article 12, the introductory words of paragraph 1 are replaced by the following:

'1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, any of the following transactions:';

(7) the following Article 13a is inserted:

'Article 13a

1. Any taxable person who has a place of business or a fixed establishment in the Union or in absence of place of business and fixed establishment has his permanent address or usual residence in the Union and who, in the course of his economic activity, carries out or intends to carry out, as a supplier or as a customer, any of the transactions referred to in point 3 of Article 14(4) and Articles 17a, 38 or 39 may apply to the tax authorities for the status of certified taxable person.

The tax authorities shall grant that status to an applicant where the criteria set out in paragraph 2 are met, unless the applicant is excluded from such certification by virtue of the terms of paragraph 3.

Where the applicant is a taxable person who has been granted the status of an authorised economic operator for customs purposes, the criteria in paragraph 2 shall be deemed to have been met.

2. All the following criteria shall be required to be met in order to grant the status of a certified taxable person:

- (a) the absence of any serious infringement or repeated infringements of taxation rules and customs legislation, as well as of any record of serious criminal offences relating to the economic activity of the applicant;
- (b) the demonstration by the applicant of a high level of control of his operations and of the flow of goods, either by means of a system managing commercial and, where appropriate, transport records, which allows appropriate tax controls, or by means of a reliable or certified internal audit trail;
- (c) evidence of financial solvency of the applicant, which shall be deemed to be proven either where the applicant has good financial standing, which enables him to fulfil his commitments, with due regard to the characteristics of the type of business activity concerned, or through the production of guarantees provided by insurance or other financial institutions or by other economically reliable third parties.

3. The following taxable persons may not be granted the status of a certified taxable person:

- (a) taxable persons covered by the common flat-rate scheme for farmers;
- (b) taxable persons covered by the exemption for small enterprises provided for in Section 2 of Chapter 1 of Title XII.;
- (c) taxable persons carrying out supplies of goods or services in respect of which VAT is not deductible;
- (d) taxable persons carrying out an occasional supply of a new means of transport within the meaning of Article 9(2) or carrying out an occasional activity within the meaning of Article 12.

However, the taxable persons referred to in points (a) to (d) may be granted the status of a certified taxable person in respect of other economic activities that they carry out.

4. A taxable person who applies for the status of a certified taxable person shall supply all the information required by the tax authorities in order to enable them to take a decision.

For the purposes of granting this tax status, tax authorities shall mean:

- (a) those of the Member State where the applicant has established his business;
- (b) those of the Member State with the fixed establishment of the applicant in which his main accounts within the Union for tax purposes are held or accessible, where the applicant has established his business outside the Union but has one or more fixed establishments within the Union;
- (c) those of the Member State where the applicant has his permanent address or where he usually resides, where he has neither a place of business nor a fixed establishment.

5. Where the application is refused, the grounds for refusal shall be notified by the tax authorities to the applicant together with the decision. Member States shall ensure that the applicant is granted a right of appeal against any decision to refuse an application.

6. The taxable person who has been granted the status of certified taxable person shall inform the tax authorities without delay of any factor arising after the decision was taken, which may affect or influence the continuation of that status. The tax status shall be withdrawn by the tax authorities where the criteria set out in paragraph 2 are no longer met.

7. The status of a certified taxable person in one Member State shall be recognised by the tax authorities of all the Member States.';

(8) Article 14 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. For the purposes of this Directive, the following definitions shall apply:

(1) 'intra-Union distance sales of goods' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:

- (a) the supply of goods is carried out for a non-taxable person other than a non-taxable legal person;
- (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;

(2) 'distance sales of goods imported from third territories or third countries' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:

- (a) the supply of goods is carried out for a non-taxable person other than a non-taxable legal person;
- (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;

- (3) 'intra-Union supply of goods' means a supply of goods where the following conditions are met:
- (a) the supply of goods is carried out by a taxable person for a taxable person or for a non-taxable legal person;
 - (b) the goods are dispatched or transported, by or on behalf of the supplier or the person acquiring the goods within the Union, from one Member State to another.'
- (b) the following paragraph 5 is added:
- '5. The following shall not be regarded as an intra-Union supply of goods:
- (a) the supply of goods with assembly or installation, with or without a trial run, pursuant to Article 36;
 - (b) the supply of goods that are exempt pursuant to Articles 148 or 151;
 - (c) the supply of goods by a taxable person covered by the common flat-rate scheme for farmers.'
- (9) in Article 14a, paragraph 2 is replaced by the following:
- '2. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Union by a taxable person not established within the Union to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself.'
- (10) Article 17 is amended as follows:
- (a) paragraph 1 is replaced by the following:

'1. The transfer by a taxable person of goods forming part of his business assets to another Member State shall be treated as an intra-Union supply of goods for consideration.

'Transfer to another Member State' shall mean the dispatch or transport of movable tangible property by or on behalf of the taxable person, for the purposes of his business, to a destination outside the territory of the Member State in which the property is located, but within the Union.'
 - (b) in paragraph 2, point (a) is replaced by the following:

'(a) the supply of the goods by the taxable person within the territory of the Member State in which the dispatch or transport ends, in accordance with the conditions laid down in Articles 33, 35a or 35b;'
 - (c) in paragraph 2, points (d) and (e) are replaced by the following:

'(d) the supply of gas through a natural gas system situated within the territory of the Union or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks, in accordance with the conditions laid down in Articles 38 and 39;

(e) the supply of the goods by the taxable person within the territory of the Member State, in accordance with the conditions laid down in Articles 146 147, 148, 151 or 152;'

- (11) 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 a call-off stock situation shall not be treated as an intra-Union supply of goods for consideration.
2. For the purposes of this Article a call-off stock situation shall be deemed to exist where the following conditions are met:
 - (a) a certified taxable person dispatches or transports the goods to another Member State in order to supply them at a later stage and after their arrival to another certified taxable person whose identity and VAT identification number are already known at the time the transport begins;
 - (b) the certified taxable person dispatching or transporting the goods is not established in the Member State to which the goods are dispatched or transported;
 - (c) the certified taxable person acquiring the goods at a later stage and after their arrival is identified for VAT purposes in the Member State to which the goods are transferred;
 - (d) the certified taxable person dispatching or transporting the goods has mentioned that dispatch or transport in the register provided for in Article 243(3).
3. Where the conditions in paragraph 2 are met, at the time of the transfer of the right to dispose of the goods to the certified taxable person referred to in point c) of that paragraph an intra-Union supply of goods shall be deemed to be made in the Member State to which the goods were dispatched or transported.';

- (12) the following Article 18a is inserted:

'Article 18a

The application by the armed forces of a State which is a party to the North Atlantic Treaty, for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic market of a Member State shall be treated as a supply of goods for consideration, where the importation of those goods would not be eligible for the exemption provided for in point (h) of Article 143(1).';

- (13) Article 19 is replaced by the following:

'Article 19

'In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States shall consider that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor.

Member States shall, in cases where the recipient is not wholly liable to tax, take the measures necessary to prevent distortion of competition. They shall also adopt any measures needed to prevent tax evasion or avoidance through the use of this Article.';

- (14) in Title IV, Chapter 2 is deleted;
- (15) Article 30 is replaced by the following:

'Article 30

'Importation of goods' shall mean the entry into the Union of goods which are not in free circulation within the meaning of Article 29 of the Treaty on the Functioning of the European Union.

In addition to the transaction referred to in the first paragraph, the entry into the Union of goods which are in free circulation, coming from a third territory forming part of the customs territory of the Union, shall be regarded as importation of goods.';

- (16) in Title V, Chapter 1, Section 2, the following heading of Subsection 1 is inserted before Article 32:

**'Subsection 1
General rule'**

- (17) in Title V, Chapter 1, Section 2, the following heading of Subsection 2 is inserted before Article 33:

**'Subsection 2
Particular provisions'**

- (18) Article 33 is replaced by the following:

'Article 33

1. The place of supply of intra-Union distance sales of goods shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.

2. The place of supply of distance sales of goods imported from third territories or third countries into a Member State other than that in which dispatch or transport of the goods to the customer ends, shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.

3. The place of supply of distance sales of goods imported from third territories or third countries into the Member State in which dispatch or transport of the goods ends shall be deemed to be in that Member State, provided that VAT on those goods is to be declared under the special scheme of Section 4 of Chapter 6 of Title XII.';

- (19) Article 35 is deleted;
- (20) the following Articles 35a, 35b, 35c and 35d are inserted:

'Article 35a

The place of supply of an intra-Union supply of goods shall be deemed to be the place where the goods are located at the time when the dispatch or transport of those goods to the customer ends.

Article 35b

The place of supply of a new means of transport carried out for a non-taxable person other than a non-taxable legal person, where the goods are dispatched or transported from one Member State to another, shall be deemed to be the place where those goods are located at the time when dispatch or transport of the goods ends.

Article 35c

By way of derogation, Articles 33 and 35a shall not apply to the supply of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1) subject to VAT in accordance with that special arrangement.

Article 35d

For the purposes of Articles 35a and 35b if dispatch or transport of the goods begins in a third territory or third country and the supply by the importer designated or recognised in accordance with Article 201 as liable for payment of VAT or a subsequent supply involves the transport or dispatch of the goods that ends in a Member State other than the Member State of importation, the goods shall be considered as transported or dispatched from the Member State of importation.';

(21) in Section 2 of Chapter 1 of Title V, the following Article 36a is inserted:

'Article 36a

1. Where goods are supplied in the context of a chain transaction situation, the transport or dispatch from one Member State to another referred to in point (b) of Article 14(4)(3) shall be ascribed to the supply made by the provider to the intermediary operator, where the following conditions are met:

- (a) the intermediary operator communicates the name of the Member State of arrival of the goods to the provider;
- (b) the intermediary operator is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins.

2. Where any of the conditions laid down in paragraph 1 is not met, in a chain transaction situation the transport or dispatch from one Member State to another referred to in point (b) of Article 14(4)(3) shall be ascribed to the supply made by the intermediary operator to the customer.

3. For the purposes of this Article, the following definitions shall apply:

- (a) 'chain transaction situation' shall mean a situation where successive supplies of the same goods by taxable persons give rise to a single transport or dispatch of those goods from one Member State to another and where both the intermediary operator and the provider are certified taxable persons;
- (b) '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;
- (c) 'provider' shall mean the taxable person in the chain who supplies the goods to the intermediary operator;

(d) 'customer' shall mean the taxable person to whom the intermediary operator supplies the goods in the chain.');

(22) Article 37 is replaced by the following:

Article 37

1. Where goods are supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within the Union, the place of supply shall be deemed to be at the point of departure of the passenger transport operation.

2. For the purposes of paragraph 1, 'section of a passenger transport operation effected within the Union' shall mean the section of the operation effected, without a stopover outside the Union, between the point of departure and the point of arrival of the passenger transport operation.

'Point of departure of a passenger transport operation' shall mean the first scheduled point of passenger embarkation within the Union, where applicable after a stopover outside the Union.

'Point of arrival of a passenger transport operation' shall mean the last scheduled point of disembarkation within the Union of passengers who embarked in the Union, where applicable before a stopover outside the Union.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.

3. Member States may exempt or continue to exempt, with deductibility of the VAT paid at the preceding stage, the supply of goods for consumption on board in respect of which the place of taxation is determined in accordance with paragraph 1.;

(23) in Article 38, paragraph 1 is replaced by the following:

'1. In the case of the supply of gas through a natural gas system situated within the territory of the Union or any network connected to such a system, the supply of electricity, or the supply of heat or cooling energy through heating or cooling networks to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.');

(24) in Article 39, the first paragraph is replaced by the following:

'In the case of the supply of gas through a natural gas system situated within the territory of the Union or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks, where such a supply is not covered by Article 38, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.');

(25) in Title V, Chapter 2 is deleted;

(26) Articles 49 and 50 are replaced by the following:

'Article 49

The place of supply of the transport of goods, other than the intra-Union transport of goods, to non-taxable persons shall be the place where the transport takes place, proportionate to the distances covered.

Article 50

The place of supply of the intra-Union transport of goods to non-taxable persons shall be the place of departure.';

(27) in Article 51, the first paragraph is replaced by the following:

'Intra-Union transport of goods' shall mean any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.';

(28) Article 52 is replaced by the following:

'Article 52

Member States need not apply VAT to that part of the intra-Union transport of goods to non-taxable persons taking place over waters which do not form part of the territory of the Union.';

(29) Article 55 is replaced by the following:

'Article 55

The place of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Union, shall be the place where the services are physically carried out.';

(30) Article 57 is replaced by the following:

'Article 57

1. The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Union, shall be at the point of departure of the passenger transport operation.

2. For the purposes of paragraph 1, 'section of a passenger transport operation effected within the Union' shall mean the section of the operation effected, without a stopover outside the Union, between the point of departure and the point of arrival of the passenger transport operation.

'Point of departure of a passenger transport operation' shall mean the first scheduled point of passenger embarkation within the Union, where applicable after a stopover outside the Union.

'Point of arrival of a passenger transport operation' shall mean the last scheduled point of disembarkation within the Union of passengers who embarked in the Union, where applicable before a stopover outside the Union.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.';

- (31) in Title V, Chapter 3, Section 3, the heading of Subsection 9 is replaced by the following:

**'Subsection 9
Supply of services to non-taxable persons outside the Union'**

- (32) in Article 59, the first paragraph is amended as follows:

- (a) the introductory words are replaced by the following:

'The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside the Union, shall be the place where that person is established, has his permanent address or usually resides:';

- (b) point (h) is replaced by the following:

'(h) the provision of access to a natural gas system situated within the territory of the Union or to any network connected to such a system, to the electricity system or to heating or cooling networks, or the transmission or distribution through these systems or networks, and the provision of other services directly linked thereto.';

- (33) in Article 59a, points (a) and (b) are replaced by the following:

'(a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Union if the effective use and enjoyment of the services takes place outside the Union;

(b) consider the place of supply of any or all of those services, if situated outside the Union, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.';

- (34) in Title V, the heading of Chapter 3a is replaced by the following:

**'THRESHOLD FOR TAXABLE PERSONS MAKING SUPPLIES OF
GOODS COVERED BY ARTICLE 33(1) AND SUPPLIES OF SERVICES
COVERED BY ARTICLE 58'**

- (35) Article 59c is amended as follows:

- (a) in paragraph 1, the introductory words are replaced by the following:

'1. Article 33(1) and Article 58 shall not apply, where the following conditions are met:';

- (b) paragraph 3 is replaced by the following:

'3. The Member State within the territory of which the goods are located at the time when their dispatch or transport begins or where the taxable persons supplying telecommunications, radio and television broadcasting services and electronically supplied services are established shall grant taxable persons carrying out supplies eligible under paragraph 1 the right to opt for the place of supply to be determined in accordance with Article 33(1) and Article 58, which shall in any event cover two calendar years.';

- (36) Articles 60 and 61 are replaced by the following:

Article 60

The place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Union.

Article 61

By way of derogation from Article 60, where, on entry into the Union, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

Similarly, where, on entry into the Union, goods which are in free circulation are placed under one of the arrangements or situations referred to in Articles 276 and 277, the place of importation shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.';

- (37) in Article 64, paragraph 2 is replaced by the following:

'2. Continuous intra-Union supplies of goods over a period of more than one calendar month shall be regarded as being completed on expiry of each calendar month until such time as the supply comes to an end.';

- (38) in Article 66, the second paragraph is replaced by the following:

'The derogation provided for in the first paragraph shall not, however, apply to supplies of services in respect of which VAT is payable by the customer pursuant to Article 196, to intra-Union supplies of goods and to supplies of new means of transport in accordance with Article 35b.';

- (39) Article 67 is replaced by the following:

Article 67

For intra-Union supplies of goods and for supplies of new means of transport in accordance with Article 35b VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.

However, Article 64(1), the third subparagraph of Article 64(2) and Article 65 shall not apply with respect to intra-Union supplies of goods and to supplies of new means of transport in accordance with Article 35b.';

- (40) in Title VI, Chapter 3 is deleted;

- (41) in Article 71(1), the first subparagraph is replaced by the following:

'1. Where, on entry into the Union, goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.';

- (42) Article 76 is replaced by the following:

Article 76

In respect of the intra-Union supply of goods consisting in transfer to another Member State, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time the transfer takes place.';

- (43) Article 78 is replaced by the following:

Article 78

1. The taxable amount shall include the following factors:

- (a) taxes, duties, levies and charges, excluding the VAT itself;
- (b) incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.

For the purposes of point (a) of the first subparagraph, duties shall include the excise duty due in the Member State in which the intra-Union supply of goods subject to excise duty takes place in accordance with Article 35a.

For the purposes of point (b) of the first subparagraph, Member States may regard expenses covered by a separate agreement as incidental expenses.

2. Where, after the intra-Union supply of goods has been made, the supplier obtains a refund of the excise duty paid in the Member State in which dispatch or transport of the goods began, the taxable amount shall be reduced accordingly in the Member State in which the intra-Union supply of goods subject to excise duty takes place in accordance with Article 35a.

3. For the purposes of this Directive, 'products subject to excise duty' shall mean energy products, alcohol and alcoholic beverages and manufactured tobacco, as referred to in Article 1(1) of Council Directive 2008/118/EC (*) but not gas supplied through a natural gas system situated within the territory of the Union or any network connected to such a system.';

(*) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

- (44) in Title VII, Chapter 3 is deleted;

- (45) Article 85 is replaced by the following:

Article 85

In respect of the importation of goods, the taxable amount shall be the value for customs purposes, determined in accordance with the Union provisions in force.';

- (46) in Article 86(1), point (b) is replaced by the following:

- '(b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the Member State of importation as well as those resulting from transport to

another place of destination within the Union, if that other place is known when the chargeable event occurs.';

(47) Article 88 is replaced by the following:

'Article 88

Where goods temporarily exported from the Union are re-imported after having undergone, outside the Union, repair, processing, adaptation, making up or re-working, Member States shall take steps to ensure that the tax treatment of the goods for VAT purposes is the same as that which would have been applied had the repair, processing, adaptation, making up or re-working been carried out within their territory.';

(48) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where the factors used to determine the taxable amount on importation are expressed in a currency other than that of the Member State in which assessment takes place, the exchange rate shall be determined in accordance with the Union provisions governing the calculation of the value for customs purposes.';

(b) the third subparagraph of paragraph 2 is replaced by the following:

'However, for some of the transactions referred to in the first subparagraph or for certain categories of taxable persons, Member States may use the exchange rate determined in accordance with the Union provisions in force governing the calculation of the value for customs purposes.';

(49) in Article 93, point (b) is replaced by the following:

'(b) in the case of an intra-Union supply of goods;';

(50) Article 94 is deleted;

(51) Article 131 is replaced by the following:

'Article 131

The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Union provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.';

(52) in Title IX, the heading of Chapter 4 is replaced by the following:

**'EXEMPTIONS FOR CERTAIN
INTRA-UNION TRANSPORTS OF GOODS'**

(53) in Chapter 4 of Title IX, the Sections 1 and 2 are deleted;

(54) in Chapter 4 of Title IX, the heading of Section 3 is deleted;

(55) Article 142 is replaced by the following:

'Article 142

Member States shall exempt the supply of intra-Union transport of goods to and from the islands making up the autonomous regions of the Azores and Madeira, as well as the supply of transport of goods between those islands.';

(56) Article 143 is amended as follows:

(a) in paragraph 1, points (b) and (c) are replaced by the following:

'(b) the final importation of goods governed by Council Directives 2007/74/EC (*), 2009/132/EC (**) and 2006/79/EC (***)';

(c) the final importation of goods, in free circulation from a third territory forming part of the Union customs territory, which would be entitled to exemption under point (b) if they had been imported within the meaning of the first paragraph of Article 30;'

(b) in paragraph 1, point (d) is replaced by the following:

'(d) the importation of goods dispatched or transported from a third territory or a third country into a Member State other than that in which the dispatch or transport of the goods ends, where the supply of such goods by the importer designated or recognised under Article 201 as liable for payment of VAT is an intra-Union supply of goods;'

(c) in paragraph 1, point (fa) is replaced by the following:

'(fa) the importation of goods by the Union institutions, the European Atomic Energy Community, the European Investment Bank, or by the bodies set up by the European Union to which Protocol (No 7) on the privileges and immunities of the Union applies, within the limits and under the conditions of that Protocol and the agreements for its implementation or the headquarters agreements, in so far as it does not lead to distortion of competition;'

(d) the introductory words of paragraph 2 are replaced by the following:

'2. The exemption provided for in paragraph 1(d) shall apply in cases when the importation of goods is followed by the intra-Union supply of goods only if at the time of importation the importer has provided to the competent authorities of the Member State of importation at least the following information:';

(e) in paragraph 2, point (b) is replaced by the following:

'(b) the VAT identification number of the customer to whom the goods are supplied, issued in another Member State, or his own VAT identification number in case of a transfer according to Article 17(1);'

(*) Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries(OJ L 346, 29.12.2007, p. 6).

(**) Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards the exemption from value added tax on the final importation of certain goods (codified version) (OJ L 292, 10.11.2009, p. 5).

(***) Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (codified version) (OJ L 286, 17.10.2006, p. 15).

(57) in Article 145(2), the second subparagraph is replaced by the following:

'Member States may adapt their national provisions so as to minimise distortion of competition and, in particular, to prevent non-taxation or double taxation within the Union.';

(58) in Article 146(1), points (a) to (d) are replaced by the following:

'(a) the supply of goods dispatched or transported to a destination outside the Union by or on behalf of the vendor;

(b) the supply of goods dispatched or transported to a destination outside the Union by or on behalf of a customer not established within their respective territory, with the exception of goods transported by the customer himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use;

(c) the supply of goods to approved bodies which export them out of the Union as part of their humanitarian, charitable or teaching activities outside the Union;

(d) the supply of services consisting in work on movable property acquired or imported for the purpose of undergoing such work within the Union, and dispatched or transported out of the Union by the supplier, by the customer if not established within their respective territory or on behalf of either of them;';

(59) Article 147 is amended as follows:

(a) in paragraph 1, points (a) and (b) are replaced by the following:

'(a) the traveller is not established within the Union;

(b) the goods are transported out of the Union before the end of the third month following that in which the supply takes place;';

(b) in paragraph 2, the first and second subparagraphs are replaced by the following:

'2. For the purposes of paragraph 1, 'a traveller who is not established within the Union' shall mean a traveller whose permanent address or habitual residence is not located within the Union. In that case 'permanent address or habitual residence' means the place entered as such in a passport, identity card or other document recognised as an identity document by the Member State within whose territory the supply takes place.

Proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office of exit from the Union.';

(60) in Article 151(1), point (aa) is replaced by the following:

'(aa) the supply of goods or services to the Union institutions, the European Atomic Energy Community, the European Investment Bank, or to the bodies set up by the Communities to which Protocol (No 7) on the privileges and immunities of the European Union applies, within the limits and under the conditions of that Protocol and the agreements for its implementation or the headquarters agreements, in so far as it does not lead to distortion of competition;';

- (61) in Article 153, the first paragraph is replaced by the following:
'Member States shall exempt the supply of services by intermediaries, acting in the name and on behalf of another person, where they take part in the transactions referred to in Chapters 6, 7 and 8, or of transactions carried out outside the Union.';
- (62) Articles 154 and 155 are replaced by the following:

'Article 154

For the purposes of this Section, 'warehouses other than customs warehouses' shall, in the case of goods subject to excise duty, mean the places defined as tax warehouses by Article 4(11) of Directive 2008/118/EC and, in the case of goods not subject to excise duty, the places defined as such by the Member States.

Article 155

Without prejudice to other Union tax provisions, Member States may, after consulting the VAT Committee, take special measures designed to exempt all or some of the transactions referred to in this Section, provided that those measures are not aimed at final use or consumption and that the amount of VAT due on cessation of the arrangements or situations referred to in this Section corresponds to the amount of tax which would have been due had each of those transactions been taxed within their territory.';

- (63) in Article 156, paragraph 2 is replaced by the following:
'2. The places referred to in paragraph 1 shall be those defined as such by the Union customs provisions in force.';
- (64) in Article 158(1), point (b) is replaced by the following:
'(b) where the goods are intended for taxable persons, for the purposes of carrying out supplies to travellers on board an aircraft or a ship in the course of a flight or sea crossing where the place of arrival is situated outside the Union;';
- (65) in Article 161, point (b) is replaced by the following:
'(b) the supply of goods referred to in the second paragraph of Article 30 while they remain covered by the internal Union transit procedure referred to in Article 276.';
- (66) Article 162 is deleted;
- (67) Article 164 is amended as follows:
(a) in paragraph 1, point (a) is replaced by the following:
'(a) imports for and supplies of goods to the taxable person, with a view to their exportation from the Union as they are or after processing';
(b) paragraph 2 is replaced by the following:
'2. The exemption shall not apply to intra-Union supplies of goods where the supplier, who is liable for payment of VAT, makes use of the special scheme provided for in Section 3 of Chapter 6 of Title XII for the declaration and payment of the tax on these supplies.';
- (68) Article 165 is deleted.

- (69) Article 168 is amended as follows:
- (a) point (b) is replaced by the following:
 - '(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 17(1), point (a) of Article 18 and Article 27;'
 - (b) points (c) and (d) are deleted;
- (70) in Article 169, points (b) and (c) are replaced by the following:
- '(b) transactions which are exempt pursuant to Articles 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, point (b) of Article 157(1), Articles 158 to 161 or Article 164;
 - (c) transactions which are exempt pursuant to points (a) to (f) of Article 135(1), where the customer is established outside the Union or where those transactions relate directly to goods to be exported out of the Union.'
- (71) in Article 170, point (b) is replaced by the following:
- '(b) transactions for which the tax is solely payable by the customer in accordance with Articles 194, 196 or 199.'
- (72) Article 171 is amended as follows:
- (a) paragraph 2 is replaced by the following:

'2. VAT shall be refunded to taxable persons who are not established within the territory of the Union in accordance with the detailed implementing rules laid down in Directive 86/560/EEC.

The taxable persons referred to in Article 1 of Directive 86/560/EEC shall also, for the purposes of applying that Directive, be regarded as taxable persons who are not established in the Union where, in the Member State in which they purchase goods and services or import goods subject to VAT, they have only carried out the supply of goods or services to a person designated in accordance with Articles 194, 196 or 199 as liable for payment of VAT.'
 - (b) in paragraph 3, point (b) is replaced by the following:
 - '(b) invoiced amounts of VAT in respect of supplies of goods the supply of which is, or may be, exempt pursuant to point (b) of Article 146(1).'
- (73) the first paragraph of Article 171a is replaced by the following:
- 'Member States may, instead of granting a refund of VAT pursuant to Directives 86/560/EEC or 2008/9/EC on those supplies of goods or services to a taxable person in respect of which the taxable person is liable to pay the tax in accordance with Articles 194, 196 or 199, allow deduction of this tax pursuant to the procedure laid down in Article 168. The existing restrictions pursuant to Article 2(2) and Article 4(2) of Directive 86/560/EEC may be retained.'
- (74) in Article 172(1), the first subparagraph is replaced by the following:
- '1. Any person who is regarded as a taxable person by reason of the fact that he supplies, on an occasional basis, a new means of transport in accordance with Article 9(2) shall, in the Member State in which the dispatch or transport of the new means of transport to the customer begins, be entitled to deduct the VAT due or paid in respect of the acquisition or importation of the new means of transport, up to an amount not exceeding the amount of VAT for which he would be liable if the supply

were subject to VAT in the Member State in which the dispatch or transport of the new means of transport to the customer begins.';

(75) in Article 175(2), the second subparagraph is replaced by the following:

'However, Member States may retain the rules in force at 1 January 1979 or, in the case of the Member States which acceded to the Union after that date, on the date of their accession.';

(76) in Article 176, the second paragraph is replaced by the following:

'Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws at 1 January 1979 or, in the case of the Member States which acceded to the Union after that date, on the date of their accession.';

(77) in Article 177, the second paragraph is replaced by the following:

'In order to maintain identical conditions of competition, Member States may, instead of refusing deduction, tax goods manufactured by the taxable person himself or goods which he has purchased within the Union, or imported, in such a way that the tax does not exceed the amount of VAT which would be charged on the acquisition of similar goods.';

(78) Article 178 is amended as follows:

(a) points (c) and (d) are deleted,

(b) point (f) is replaced by the following:

'(f) when required to pay VAT as a customer where Articles 194, 196 or 199 apply, he must comply with the formalities as laid down by each Member State.';

(79) Article 181 is deleted;

(80) Article 182 is replaced by the following:

'Article 182

Member States shall determine the conditions and detailed rules for applying Article 180.';

(81) Article 193 is replaced by the following:

'Article 193

VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 200 and Article 202.';

(82) in Article 194, paragraph 1 is replaced by the following:

'1. Where the taxable supply of services is carried out by a taxable person who is not established in the Member State in which the VAT is due, Member States may provide that the person liable for payment of VAT is the person to whom the services are supplied.';

(83) the following Article 194a is inserted:

'Article 194a

VAT shall be payable by the person to whom the goods are supplied insofar he is granted the status of certified taxable person pursuant to Article 13a if the goods are supplied by a taxable person not established within the territory of the Member State in which the VAT is due.';

(84) Article 195 is deleted;

(85) Article 197 is deleted;

(86) Article 199a is amended as follows:

(a) in paragraph 1, the introductory words are replaced by the following:

'1. Member States may, until 31 December 2028 provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:';

(b) in paragraph 1, points (c), (d), (e), (h), (i) and (j) are deleted,

(c) paragraph 1b is replaced by the following:

'1b. The application of the mechanism provided for in paragraph 1 to the supply of any of the services listed in points (f) and (g) of that paragraph is subject to the introduction of appropriate and effective reporting obligations on taxable persons who supply the services to which the mechanism provided for in paragraph 1 applies.';

(d) paragraphs 3 to 5 are replaced by the following:

'3. Member States applying the mechanism provided for in paragraph 1 shall, on the basis of the evaluation criteria provided for under point (c) of paragraph 2, submit a report to the Commission no later than 30 June 2027. The report shall clearly indicate the information to be treated as confidential and the information which may be published.

The report shall provide a detailed assessment of the measure's overall effectiveness and efficiency, in particular as regards:

(a) the impact on fraudulent activities in relation to supplies of services covered by the measure;

(b) the possible shift of fraudulent activities to other services;

(c) the compliance costs for taxable persons resulting from the measure.

4. Each Member State that has detected a shift in trends of fraudulent activities in its territory in relation to the services listed in paragraph 1 from the date of entry into force of this Article with respect to such services, shall submit a report to the Commission in that respect no later than 30 June 2027.

5. Before 1 January 2028, the Commission shall present to the European Parliament and to the Council an overall assessment report on the effects of the mechanism provided for in paragraph 1 on combatting fraud.';

(87) in Article 199b, paragraph 1 is replaced by the following:

'1. A Member State may, in cases of imperative urgency and in accordance with paragraphs 2 and 3, designate the recipient as the person liable to pay VAT on specific supplies of services by derogation from Article 193 as a Quick Reaction

Mechanism ('QRM') special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.

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

- (88) Article 200 is replaced by the following:

'Article 200

VAT shall be payable by the person to whom a new means of transport is supplied in accordance with Articles 35a or 35b, where the supplier is a taxable person in accordance with Article 9(2).

For the purposes of this provision, a taxable person who is subject to the common flat-rate scheme for farmers for the purposes of his agricultural, forestry or fisheries business and a taxable person who carries out only supplies of goods and services in respect of which VAT is not deductible shall be considered as a taxable person in accordance with Article 9(2).';

- (89) in Article 204, paragraph 1 is replaced by the following:

'1. Where, pursuant to Articles 193 to 196 and Articles 199 and 200, the person liable for payment of VAT is a taxable person who is not established in the Member State in which the VAT is due, Member States may allow that person to appoint a tax representative as the person liable for payment of the VAT.

Furthermore, where the taxable transaction is carried out by a taxable person who is not established in the Member State in which the VAT is due and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU (*) and Regulation (EC) No 904/2010, Member States may take measures to provide that the person liable for payment of VAT is to be a tax representative appointed by the non-established taxable person.

However, Member States may not apply the option referred to in the second subparagraph to a taxable person not established within the Union who has opted for the special scheme provided for in Section 2 of Chapter 6 of Title XII.';

(*) Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures(OJ L 84, 31.3.2010, p. 1).

- (90) Article 205 is replaced by the following:

'Article 205

In the situations referred to in Articles 193 to 199b and Articles 202, 203 and 204, Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.';

- (91) in Article 207, the first paragraph is replaced by the following:

'Member States shall take the measures necessary to ensure that persons who are regarded as liable for payment of VAT in the stead of a taxable person not

established in their respective territory, in accordance with Articles 194, 196, 199 and 204, comply with the payment obligations set out in this Section.';

(92) Articles 209 and 210 are deleted;

(93) in Article 213, paragraph 2 is deleted;

(94) Article 214(1) is amended as follows:

(a) points (a) and (b) are replaced by the following:

'(a) every taxable person, with the exception of those referred to in Article 9(2), who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, other than supplies of goods or services in respect of which VAT is payable solely by the customer or the person for whom the goods or services are intended, in accordance with Articles 194 to 196 and Article 199;

(b) every taxable person, or non-taxable legal person, who is the recipient of an intra-Union supply of goods;'

(b) point (c) is deleted;

(c) the following point (f) is added:

'(f) every taxable person, with the exception of those referred to in Article 9(2), established within their respective territory who carries out only intra-Union supplies of goods.';

(95) Article 216 is replaced by the following:

'Article 216

Member States shall take the measures necessary to ensure that their identification systems enable the taxable persons referred to in Article 214 to be identified.';

(96) point (a) of Article 219a(2) is amended as follows:

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

'(ii) the supply of goods or services is deemed not to be made within the Union, in accordance with the provisions of Title V;'

(b) the following point (iii) is added:

'(iii) the supplier is not established in the Member State in which he carries out an intra-Union supply of goods for which he is liable for the payment of VAT and is not making use of the special scheme referred to in Section 3 of Chapter 6 of Title XII;'

(97) in Article 220(1), points (3) and (4) are replaced by the following:

'(3) supplies of new means of transport in accordance with Article 35b;

(4) any payment on account made to him before one of the supplies of goods referred to in points (1) and (2) was carried out except for intra-Union supplies of goods;'

(98) in Article 220a, paragraph 2 is replaced by the following:

'2. Member States shall not allow taxable persons to issue a simplified invoice in respect of the following:

- (a) for intra-Union supplies of goods;
 - (b) where invoices are required to be issued pursuant to point (2) of Article 220(1);
 - (c) where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due, or whose establishment in that Member State does not intervene in the supply within the meaning of Article 192a, and the person liable for the payment of VAT is the person to whom the goods or services are supplied.';
- (99) in Article 221, paragraph 3 is replaced by the following:
- '3. Member States may release taxable persons from the obligation laid down in Article 220(1) or in Article 220a to issue an invoice in respect of supplies of goods or services which they have made in their territory and which are exempt, with or without deductibility of the VAT paid in the preceding stage, pursuant to Article 132, points (h) to (l) of Article 135(1), Articles 136, 371, 375, 376 and 377, Articles 378(2) and 379(2) and Articles 380 to 390c.';
- (100) in Article 222, the first paragraph is replaced by the following:
- 'For intra-Union supplies of goods, for supplies of new means of transport in accordance with Article 35b or for supplies of services for which VAT is payable by the customer pursuant to Article 196, an invoice shall be issued no later than on the fifteenth day of the month following that in which the chargeable event occurs.';
- (101) Article 225 is replaced by the following:

'Article 225

Member States may impose specific conditions on taxable persons in cases where the third party, or the customer, who issues invoices is established in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU and Regulation (EC) No 904/2010.';

- (102) Article 226 is amended as follows:
- (a) point (4) is replaced by the following:
 - '(4) the customer's VAT identification number, as referred to in Article 214, under which the customer received an intra-Union supply of goods or a supply of goods and services in respect of which he is liable for payment of VAT.';
 - (b) point (12) is replaced by the following:
 - '(12) in the case of an intra-Union supply of a new means of transport or of a supply of a new means of transport as referred to in Article 35b, the characteristics as identified in Article 9(3).';
- (103) Article 230 is replaced by the following:

'Article 230

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of VAT payable or to be adjusted is expressed in the national currency of the Member State in which that amount of VAT is payable or is to be adjusted, using the conversion rate mechanism provided for in Article 91.';

- (104) Article 235 is replaced by the following:

'Article 235

Member States may lay down specific conditions for electronic invoices issued in respect of goods or services supplied in their territory from a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU and Regulation (EC) No 904/2010.';

- (105) in Article 238, paragraph 3 is replaced by the following:

'3. The simplified arrangements provided for in paragraph 1 shall not be applied where invoices are required to be issued in respect of the following:

- (a) intra-Union supplies of goods;
- (b) pursuant to point (2) of Article 220(1);
- (c) where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due or whose establishment in that Member State does not intervene in the supply within the meaning of Article 192a and the person liable for the payment of VAT is the person to whom the goods or services are supplied.';

- (106) Article 239 is replaced by the following:

'Article 239

In cases where Member States make use of the option under point (b) of the first subparagraph of Article 272(1) of not allocating a VAT identification number to taxable persons who do not carry out any of the transactions referred to in Articles 14(4), 17(1) and 36, and where the supplier or the customer has not been allocated an identification number of that type, another number called the tax reference number, as defined by the Member States concerned, shall be entered on the invoice instead.';

- (107) in Article 240, point (1) is replaced by the following:

'(1) in respect of the supply of services, as referred to in Articles 44, 47, 50, 53, 54 and 55, the VAT identification number and the tax reference number of the supplier.';

- (108) in Article 242a, paragraph 1 is replaced by the following:

'1. Where a taxable person facilitates, through the use of an electronic interface such as a market place, platform, portal or similar means, the supply of goods or services to a non-taxable persons within the Union in accordance with the provisions of Title V, the taxable person who facilitates the supply shall be obliged to keep records of those supplies. These records shall be sufficiently detailed to enable the tax authorities of the Member States where those supplies are taxable to verify that VAT has been accounted for correctly.';

- (109) in Article 243, paragraph 1 is replaced by the following:

'1. Every taxable person shall keep a register of the goods dispatched or transported by him, or on his behalf, to a destination outside the territory of the Member State of departure but within the Union for the purposes of transactions

consisting in valuations of those goods or work on them or their temporary use as referred to in points (f), (g) and (h) of Article 17(2).';

(110) in Article 247, paragraph 3 is replaced by the following:

'3. The Member State referred to in paragraph 1 may lay down specific conditions prohibiting or restricting the storage of invoices in a country with which no legal instrument exists relating to mutual assistance similar in scope to that provided for in Directive 2010/24/EU and Regulation (EC) No 904/2010 or to the right referred to in Article 249 to access by electronic means, to download and to use.';

(111) Article 251 is deleted;

(112) Article 254 is replaced by the following:

'Article 254

In the case new means of transport are supplied in accordance with Articles 35a or 35b and the person to whom the supply is made is liable for VAT in accordance with Article 200, Member States shall take the measures necessary to ensure that the vendor communicates all the information needed for VAT to be applied and its application checked by the tax authorities.';

(113) Article 257 is deleted;

(114) Articles 258 and 259 are replaced by the following:

'Article 258

1. Member States shall lay down detailed rules for the submission of VAT returns by the person liable for VAT in accordance with Article 200 in respect of supplies of new means of transport made in accordance with Articles 35a or 35b.

2. Paragraph 1 shall not apply to taxable persons that submit VAT returns in accordance with Article 250.

Article 259

Member States may require persons to whom new means of transport are supplied, to provide, when submitting the VAT return referred to in Article 258(1), all the information needed for VAT to be applied and its application checked by the tax authorities.';

(115) in Article 261, paragraph 1 is replaced by the following:

'1. Member States may require the taxable person to submit a return showing all the particulars specified in Article 250 in respect of all transactions carried out in the preceding year. That return shall provide all the information necessary for any adjustments.';

(116) Article 262 is replaced by the following:

'Article 262

Every taxable person identified for VAT purposes shall submit a recapitulative statement of 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.';

(117) Article 263 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

'Member States may, in accordance with the conditions and limits which they may lay down, allow taxable persons to submit the recapitulative statement for each calendar quarter within a time limit not exceeding one month from the end of the quarter.';

(b) paragraphs 1a, 1b and 1c are deleted;

(118) Article 264 is amended as follows:

(a) in paragraph 1, points (a) and (b) are replaced by the following:

'(a) the VAT identification number of the taxable person in the Member State in which the recapitulative statement must be submitted and under which he effected taxable supplies of services in accordance with the conditions laid down in Article 44;

(b) the VAT identification number of the person receiving the services in a Member State other than that in which the recapitulative statement must be submitted and under which the services were supplied to him;';

(b) in paragraph 1, point (c) is deleted,

(c) in paragraph 1, point (d) is replaced by the following:

'(d) for each person who received services, the total value of the supplies of services carried out by the taxable person;';

(d) in paragraph 1, point (e) is deleted,

(e) paragraph 2 is replaced by the following:

'2. The value referred to in paragraph 1(d) shall be declared for the period of submission established in accordance with Article 263(1) during which VAT became chargeable.

The amounts referred to in paragraph 1(f) shall be declared for the period of submission established in accordance with Article 263(1) during which the person acquiring the goods was notified of the adjustment.';

(119) Articles 265, 268, 269 and 270 are deleted;

(120) Article 271 is replaced by the following:

Article 271

After consulting the VAT Committee, Member States which set at over three months the tax period in respect of which taxable persons must submit the VAT return provided for in Article 250 may permit such persons to submit recapitulative statements in respect of the same period where the total annual value, exclusive of VAT, of the supplies of goods and services of those taxable persons does not exceed EUR 200 000 or the equivalent in national currency.';

(121) Article 272 is amended as follows:

(a) in paragraph 1, point (a) is deleted,

(b) in paragraph 1, point (b) is replaced by the following:

'(b) taxable persons carrying out none of the transactions referred to in Articles 14(4), 17(1) and 36;'

(c) paragraph 2 is replaced by the following:

'2. If Member States exercise the option under point (e) of the first subparagraph of paragraph 1, they shall take the measures necessary to ensure the correct application of the arrangements for the taxation of intra-Union transactions.'

(122) Articles 274 to 280 are replaced by the following:

Article 274

Articles 275, 276 and 277 shall apply to the importation of goods in free circulation which enter the Union from a third territory forming part of the customs territory of the Union.

Article 275

The formalities relating to the importation of the goods referred to in Article 274 shall be the same as those laid down by the Union customs provisions in force for the importation of goods into the customs territory of the Union.

Article 276

Where dispatch or transport of the goods referred to in Article 274 ends at a place situated outside the Member State of their entry into the Union, they shall circulate within the Union under the Union transit procedure laid down by the Union customs provisions in force, in so far as they have been the subject of a declaration placing them under that procedure on their entry into the Union.

Article 277

Where, on their entry into the Union, the goods referred to in Article 274 are in one of the situations which would entitle them, if they were imported within the meaning of the first paragraph of Article 30, to be covered by one of the arrangements or situations referred to in Article 156, or by a temporary importation arrangement with full exemption from import duties, Member States shall take the measures necessary to ensure that the goods may remain in the Union under the same conditions as those laid down for the application of those arrangements or situations.

Article 278

Articles 279 and 280 shall apply to the exportation of goods in free circulation which are dispatched or transported from a Member State to a third territory forming part of the customs territory of the Union.

Article 279

The formalities relating to the exportation of the goods referred to in Article 278 from the territory of the Union shall be the same as those laid down by the Union

customs provisions in force for the exportation of goods from the customs territory of the Union.

Article 280

In the case of goods which are temporarily exported from the Union, in order to be reimported, Member States shall take the measures necessary to ensure that, on reimportation into the Union, such goods may be covered by the same provisions as would have applied if they had been temporarily exported from the customs territory of the Union.';

(123) in Article 283(1), point (b) is replaced by the following:

'(b) supplies of new means of transport carried out in accordance with Articles 35a or 35b;';

(124) in Article 300, point (2) is deleted;

(125) Article 303 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Member States shall refund to the customer the amount of the flat-rate compensation he has paid in respect of any of the following transactions:

(a) the supply of agricultural products dispatched or transported outside the territory of the Member State of supply to a taxable customer established within the Union but in another Member State in so far as the products are used by that customer for the purposes of the transactions referred to in Article 169(a) and (b);

(b) the supply of agricultural products, carried out in accordance with the conditions specified in Articles 146, 147, 148 and 156, Article 157(1)(b) and Articles 158, 160 and 161, to a taxable customer established outside the Union, in so far as the products are used by that customer for the purposes of the transactions referred to in Article 169(a) and (b) or for the purposes of supplies of services which are deemed to take place within the territory of the Member State in which the customer is established and in respect of which VAT is payable solely by the customer pursuant to Article 196;

(c) the supply of agricultural services to a taxable customer established within the Union but in another Member State or to a taxable customer established outside the Union, in so far as the services are used by the customer for the purposes of the transactions referred to in Article 169(a) and (b) or for the purposes of supplies of services which are deemed to take place within the territory of the Member State in which the customer is established and in respect of which VAT is payable solely by the customer pursuant to Article 196.';

(b) paragraph 3 is replaced by the following:

'3. Member States shall determine the method by which the refunds provided for in paragraph 2 are to be made. In particular, they may apply the provisions of Directives 2008/9/EC and 86/560/EEC.';

(126) Article 305 is replaced by the following:

'Article 305

'Whenever Member States apply this flat-rate scheme, they shall take all measures necessary to ensure that the supply of agricultural products between Member States, carried out in accordance with Article 33(1), is always taxed in the same way, whether the supply is effected by a flat-rate farmer or by another taxable person.';

- (127) Article 309 is replaced by the following:

'Article 309

If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Union, the supply of services carried out by the travel agent shall be treated as an intermediary activity exempted pursuant to Article 153.

If the transactions are performed both inside and outside the Union, only that part of the travel agent's service relating to transactions outside the Union may be exempted.';

- (128) in Article 311, the introductory words of paragraph 1 are replaced by the following:

'1. For the purposes of this Chapter, and without prejudice to other Union provisions, the following definitions shall apply:';

- (129) in Article 313, paragraph 2 is replaced by the following:

'2. The scheme referred to in paragraph 1 of this Article shall not apply to the supply of new means of transport, carried out in accordance with Articles 35a and 35b.';

- (130) in Article 314, the introductory words are replaced by the following:

'The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where those goods have been supplied to him within the Union by one of the following persons:';

- (131) in Title XII, Chapter 4, Section 2, Subsection 2 is deleted;

- (132) in Article 333, paragraph 2 is replaced by the following:

'2. The arrangements referred to in paragraph 1 shall not apply to the supply of new means of transport, carried out in accordance with the conditions specified in Articles 35a or 35b.';

- (133) Article 341 is deleted;

- (134) in Article 344, the introductory words of paragraph 1 are replaced by the following:

'1. For the purposes of this Directive, and without prejudice to other Union provisions, 'investment gold' shall mean:';

- (135) Article 346 is replaced by the following:

'Article 346

Member States shall exempt from VAT the supply and the importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claim in respect of investment gold, as well as transactions concerning investment gold involving futures and forward

contracts leading to a transfer of right of ownership or claim in respect of investment gold.';

- (136) Article 352 is replaced by the following:

'Article 352

Each Member State may, after consulting the VAT Committee, apply VAT to specific transactions relating to investment gold which take place in that Member State between taxable persons who are members of a gold bullion market regulated by the Member State concerned or between such a taxable person and another taxable person who is not a member of that market. However, the Member State may not apply VAT to exports of investment gold.';

- (137) in Article 354, point (b) is replaced by the following:

'(b) the VAT due or paid in respect of a supply to him or importation carried out by him, of gold other than investment gold which is subsequently transformed by him or on his behalf into investment gold.';

- (138) Article 355 is replaced by the following:

'Article 355

Taxable persons who produce investment gold or transform gold into investment gold shall be entitled to deduct the VAT due or paid by them in respect of the supply or importation of goods or services linked to the production or transformation of that gold, as if the subsequent supply of the gold exempted pursuant to Article 346 were taxed.';

- (139) in Article 356, paragraph 2 is replaced by the following:

'2. Member States may accept equivalent obligations under measures adopted pursuant to other Union legislation, such as Directive (EU) 2015/849 of the European Parliament and of the Council (*) to comply with the requirements under paragraph 1.'

(*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (140) in Title XII, the heading of Chapter 6 is replaced by the following:

'Special schemes for non-established taxable persons'

- (141) in Article 358, the introductory words are replaced by the following:

'For the purposes of this Chapter, and without prejudice to other Union provisions, the following definitions shall apply:';

- (142) in Title XII, Chapter 6, the heading of Section 2 is replaced by the following:

'Special scheme for services supplied by taxable persons not established within the Union';

(143) Articles 358a to 362 are replaced by the following:

Article 358a

For the purposes of this Section, and without prejudice to other Union provisions, the following definitions shall apply:

- (1) 'taxable person not established within the Union' means a taxable person who has not established his business in the territory of the Union and who has no fixed establishment there;
- (2) 'Member State of identification' means the Member State which the taxable person not established within the Union chooses to contact to state when his activity as a taxable person within the territory of the Union commences in accordance with the provisions of this Section.
- (3) 'Member State of consumption' means the Member State in which the supply of services is deemed to take place in accordance with Chapter 3 of Title V.

Article 359

Member States shall permit any taxable person not established within the Union supplying services to a non-taxable person who is established in a Member State or has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all those services supplied within the Union.

Article 360

The taxable person not established within the Union shall state to the Member State of identification when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

Article 361

1. The information which the taxable person not established within the Union must provide to the Member State of identification when he commences a taxable activity shall contain the following details:
 - (a) name;
 - (b) postal address;
 - (c) electronic addresses, including websites;
 - (d) national tax number, if any;
 - (e) a statement that the person has not established his business in the territory of the Union and has no fixed establishment there.
2. The taxable person not established within the Union shall notify the Member State of identification of any changes in the information provided.

Article 362

The Member State of identification shall allocate to the taxable person not established within the Union an individual VAT identification number for the application of this special scheme and shall notify him of that number by electronic means. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.';

(144) in Article 363, the introductory words are replaced by the following:

'The Member State of identification shall delete the taxable person not established within the Union from the identification register in the following cases:';

(145) Article 364 is replaced by the following:

'Article 364

The taxable person not established within the Union 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 services covered by this special scheme have been supplied. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.';

(146) in Article 366(1), the second subparagraph is replaced by the following:

'Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the taxable person not established within the Union shall, for the purposes of completing the VAT return, use the exchange rate applying on the last day of the tax period.';

(147) in Article 367, the first paragraph is replaced by the following:

'The taxable person not established within the Union shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.';

(148) in Article 368, the first paragraph is replaced by the following:

'The taxable person not established within the Union making use of this special scheme may not deduct VAT pursuant to Article 168 of this Directive. Notwithstanding Article 1(1) of Directive 86/560/EEC, the taxable person in question shall be refunded in accordance with that Directive. Article 2(2) and (3) and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to services covered by this special scheme.';

(149) in Article 369, paragraph 1 is replaced by the following:

'1. The taxable person not established within the Union shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.';

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

'Special scheme for goods and services supplied by taxable persons not established in the Member State of taxation'

(151) Articles 369a, 369b and 369c are replaced by the following:

Article 369a

For the purposes of this Section, and without prejudice to other Union provisions, the following definitions shall apply:

- (1) 'taxable person not established in the Member State of taxation' means a taxable person who has established his business in the territory of the Union or has a fixed establishment there but has not established his business and has no fixed establishment within the territory of the Member State of taxation;'
- (2) 'Member State of taxation' means the Member State in which the supply of goods or services is deemed to take place according to Chapters 1 and 3 of Title V;
- (3) 'taxable person not established within the Union' means a taxable person who has not established his business in the territory of the Union and who has no fixed establishment there;
- (4) 'intermediary' means a person established in the Union appointed by the taxable person not established within the Union as the person liable for payment of the VAT and to fulfil the obligations laid down in this special scheme in the name and on behalf of that taxable person.
- (5) 'Member State of identification' means the following:
 - (a) the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Union, where he has a fixed establishment;
 - (b) where a taxable person has not established his business in the Union, but has more than one fixed establishment therein, the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme;
 - (c) where a taxable person is not established within the Union but has appointed an intermediary, the Member State in which that intermediary has established his business or if he has not established his business in the Union, where he has a fixed establishment;
 - (d) where a taxable person is not established within the Union but has appointed an intermediary who has established his business outside the Union but has one or more fixed establishments therein, the Member State with a fixed establishment where the intermediary indicates he will make use of this special scheme.

For the purposes of points (b) and (d), where a taxable person or an intermediary, as appropriate, has more than one fixed establishment in the Union he shall be bound by the decision to indicate the Member State of establishment for the calendar year concerned and the two calendar years following.

Article 369b

1. Member States shall permit the use of this special scheme for supplies of goods and services for which the person liable to pay the value added tax is either:
 - (a) a taxable person not established in the Member State of taxation;

- (b) a taxable person not established within the Union who has appointed and mandated an intermediary.

This special scheme applies to all those goods or services supplied in the Union except for the distance sales of goods imported from third territories or third countries covered by the special scheme in Section 4 of this Chapter.

2. Taxable persons not established within the Union who are only supplying services to non-taxable persons who are either established or have their permanent address or usually reside in a Member State and therefore can make use of the special scheme of Section 2 of this Chapter shall be excluded from the use of this scheme.
3. A taxable person not established within the Union cannot apply simultaneously this special scheme and the special scheme of Section 2 of this Chapter.
4. For the purposes of letter (b) of paragraph 1, a taxable person not established within the Union cannot appoint more than one intermediary at the same time.

Article 369c

A taxable person or the intermediary acting on his behalf shall state to the Member State of identification when he commences and ceases his taxable activities covered by this special scheme, or changes those activities in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.;

- (152) the following Article 369ca is inserted:

'Article 369ca

1. The information which the intermediary must provide to the Member State of identification before he commences the use of this special scheme on behalf of a taxable person shall contain the following details:
 - (a) name;
 - (b) postal address;
 - (c) electronic address;
 - (d) VAT identification number.
2. The information which the intermediary must provide to the Member State of identification in respect of each taxable person which he represents before that taxable person commences the use of this special scheme shall contain the following details:
 - (a) name;
 - (b) postal address;
 - (c) electronic address and websites;
 - (d) VAT identification number or national tax number;
 - (e) his individual identification number allocated in accordance with Article 369d(3).

3. Any taxable person making use of this special scheme or where applicable his intermediary shall notify the Member State of identification of any changes in the information provided.';

(153) Article 369d to 369g are replaced by the following:

Article 369d

1. A taxable person not established in the Member State of taxation making use of this special scheme shall, for the taxable transactions carried out under this scheme, be identified for VAT purposes in the Member State of identification only. For that purpose the Member State shall use the individual VAT identification number already allocated to the taxable person in respect of his obligations under the internal system.

2. On the basis of the information used for that identification, Member States of taxation may have recourse to their own identification systems.

3. The Member State of identification shall allocate to an intermediary an individual identification number and shall notify him of that number by electronic means.

4. The Member State of identification shall allocate an individual VAT identification number for the application of this special scheme to the intermediary in respect of each taxable person for which he is appointed.

Article 369e

The Member State of identification shall exclude a taxable person from the special scheme in any of the following cases:

- (a) if the taxable person notifies that he no longer carries out supplies of goods or services covered by this special scheme or if the intermediary notifies that the taxable person on behalf of whom he acts no longer carries out supplies of goods or services covered by this special scheme;
- (b) if it may otherwise be assumed that the taxable activities of a taxable person covered by this special scheme have ceased;
- (c) if a taxable person or his intermediary no longer meet the conditions necessary for use of this special scheme;
- (d) if a taxable person or his intermediary persistently fail to comply with the rules relating to this special scheme;
- (e) if the intermediary notifies the Member State of identification that he no longer represents this taxable person.

Article 369f

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

2. Where the Union annual turnover of a taxable person making use of this special scheme is above EUR 2 500 000, that taxable person or his intermediary shall submit to the Member State of identification a VAT return for each month by electronic means, whether or not goods or services covered by this special scheme have been supplied. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.

3. For the purposes of paragraph 2 'Union annual turnover' means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within the territory of the Union.

4. When during a calendar year the threshold referred to in paragraph 2 is attained, the obligations set out in paragraph 2 shall apply from the subsequent calendar quarter.

Article 369g

1. The VAT return shall show the identification number referred to in Article 369d and, for each Member State of taxation in which VAT has become chargeable the following information:

- (a) the total value of the goods and services supplied, exclusive of VAT;
- (b) the relevant tax period;
- (c) the applicable rates of VAT;
- (d) the total amount per rate of the VAT that has become chargeable;
- (e) the total amount of VAT that has become chargeable on the supplies of goods and services;
- (f) the total amount of VAT that has become chargeable on supplies of goods and services for which the taxable person as recipient is liable to pay the tax or on the importation of goods where the Member State exercises the option under the second paragraph of Article 211;
- (g) the VAT for which deduction is made;
- (h) any amendments relating to previous tax periods as provided in paragraph 4 of this Article;
- (i) the net amount of the VAT to be paid or credited as appropriate.

2. Where, in the case of supplies of goods covered by this special scheme, 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 such supplies for each Member State where the goods are dispatched or transported from, together with the individual VAT identification number or the tax reference number allocated by each such Member State. The VAT return shall include this information for each Member State other than the Member State of identification, broken down by Member State of taxation.

3. Where the taxable person supplying services covered by this special scheme has one or more fixed establishments, other than that in the Member State of identification, from which the services are supplied, the VAT return shall also include the total value of such supplies, for each Member State in which he has an

establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of taxation.

4. Where any amendments to the VAT return are required after its submission, such amendments shall be included in a subsequent return at the latest within three years of the date on which the initial return was required to be submitted pursuant to Article 369f. That subsequent VAT return shall identify the relevant Member State of taxation, the tax period and the amount of VAT for which any amendments are required.';

(154) the following Article 369ga is inserted:

'Article 369ga

In case a taxable person carries out both transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170 and transactions in respect of which VAT is not deductible, the deductible proportion of VAT shall be determined by the Member State of identification, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

In case a taxable person has several establishments in the Union from which he carries out both transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170 and transactions in respect of which VAT is not deductible, the deductible proportion of VAT shall be determined by each Member State of establishment, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person from that establishment.';

(155) Article 369i is replaced by the following:

'Article 369i

The taxable person making use of this special scheme or his intermediary shall pay the sum of the net amounts of VAT due in each Member State of taxation, making reference to the relevant VAT return, at the latest at the expiry of the deadline by which the return must be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.';

(156) the following Articles 369ia and 369ib are inserted:

'Article 369ia

1. Where, for a given tax period, the amount of deductions exceeds the amount of VAT due in a Member State of taxation, the excess shall be carried forward to the following period.

2. The taxable person or his intermediary may request on the VAT return to the Member State of taxation a refund of excess VAT where either:

(a) the taxable person is in a credit position in the Member State of taxation during two consecutive tax periods of a calendar quarter for which VAT returns were submitted;

- (b) the taxable person is in a credit position in the Member State of taxation during three consecutive tax periods of a month for which VAT returns were submitted.

Article 369ib

Where a taxable person not established in the Member State of taxation is in a credit position in the VAT return submitted in accordance with Article 250 in the Member State of identification, that Member State shall consider the amount of VAT to be refunded in accordance with Article 183, as a payment made in accordance with Article 369i on the basis of a request from the taxable person.';

- (157) Articles 369j and 369k are replaced by the following:

'Article 369j

When a taxable person making use of this special scheme does not make any supplies of goods and services covered by this special scheme for which VAT has become chargeable in a Member State of taxation in a given tax period, nor in the three preceding tax periods when he is submitting quarterly returns pursuant to Article 369f(1) or in the eleven preceding tax periods when he is submitting monthly returns pursuant to Article 369f(2), he may not deduct VAT incurred in that Member State of taxation in the VAT return submitted for that tax period. Notwithstanding Article 1(1) of Directive 86/560/EEC and Article 2(1) and Article 3 of Directive 2008/9/EC, VAT shall be refunded to the taxable person in question in accordance with those Directives.

Article 369k

1. The taxable person making use of this special scheme or his intermediary shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of taxation to verify that the VAT return is correct.

2. The records referred to in paragraph 1 must be made available electronically on request to the Member State of taxation and to the Member State of identification.

Those records must be kept for a period of 10 years from 31 December of the year during which the transaction was carried out.';

- (158) in Article 369l, the second paragraph is replaced by the following:

'For the purposes of this Section, and without prejudice to other Union provisions, the following definitions shall apply:

(1) 'taxable person not established within the Union' means a taxable person who has not established his business in the territory of the Union and who has no fixed establishment there;

(2) 'intermediary' means a person established in the Union appointed by the taxable person carrying out distance sales of goods imported from third territories or third countries as the person liable for payment of the VAT and to fulfil the obligations laid down in this special scheme in the name and on behalf of the taxable person;

(3) 'Member State of identification' means the following:

- (a) where the taxable person is not established in the Union, the Member State in which he chooses to register;
- (b) where the taxable person has established his business outside the Union but has one or more fixed establishments therein, the Member State with a fixed establishment where the taxable person indicates he will make use of this special scheme;
- (c) where the taxable person has established his business in a Member State, that Member State;
- (d) where the intermediary has established his business in a Member State, that Member State;
- (e) where the intermediary has established his business outside the Union but has one or more fixed establishments therein, the Member State with a fixed establishment where the intermediary indicates he will make use of this special scheme.

For the purposes of points (b) and (e), where the taxable person or the intermediary has more than one fixed establishment in the Union he shall be bound by the decision to indicate the Member State of establishment for the calendar year concerned and the two calendar years following.

- (4) 'Member State of consumption' means the Member State where the dispatch or transport of the goods to the customer ends.';

(159) in Article 369m(1), points (a) and (b) are replaced by the following:

- '(a) any taxable person established in the Union carrying out distance sales of goods imported from third territories or third countries;
- (b) any taxable person whether or not established in the Union carrying out distance sales of goods imported from third territories or third countries and who is represented by an intermediary established in the Union;';

(160) Articles 369y, 369z and 369za are replaced by the following:

Article 369y

Where, for the importation of goods, except products subject to excise duties, in consignments of an intrinsic value not exceeding EUR 150, the special scheme in Section 4 of Chapter 6 is not used, the Member State of importation shall permit the person presenting the goods to customs on behalf of the person for whom the goods are destined within the territory of the Union to make use of special arrangements for declaration and payment of import VAT in respect of goods for which the dispatch or transport ends in that Member State.

Article 369z

1. For the purpose of this special arrangement, the following shall apply:
 - (a) the person for whom the goods are destined shall be liable for the payment of the VAT;

(b) the person presenting the goods to customs within the territory of the Union shall collect the VAT from the person for whom the goods are destined and effect the payment of such VAT.

2. Member States shall provide that the person presenting the goods to customs within the territory of the Union takes appropriate measures to ensure that the correct tax is paid by the person for whom the goods are destined.

Article 369za

Member States may provide that the standard rate of VAT applicable in the Member State of importation is applicable when using this special arrangement.';

(161) in Title XIII, the heading of Chapter 1 is replaced by the following:

'Derogations applying until the adoption of definitive arrangements regarding supplies of services'

(162) Article 372 is deleted;

(163) Article 373 is replaced by the following:

'Article 373

Member States which, at 1 January 1978, applied provisions derogating from Article 28 may continue to apply those provisions.';

(164) Article 375 is replaced by the following:

'Article 375

Greece may continue to exempt the transactions listed in points (2), (9), (11) and (12) of Annex X, Part B, in accordance with the conditions applying in that Member State on 1 January 1987.';

(165) in Article 387, point (a) is deleted;

(166) Article 393 is deleted;

(167) in Article 398, paragraph 4 is replaced by the following:

'4. In addition to the points forming the subject of consultation pursuant to this Directive, the VAT Committee shall examine questions raised by its chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of Union provisions on VAT.';

(168) Article 401 is replaced by the following:

'Article 401

Without prejudice to other provisions of Union law, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties or, more generally, any taxes, duties or charges which cannot be characterised as turnover taxes, provided that the collecting of those taxes, duties or charges does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.';

(169) Article 402 is replaced by the following:

'Article 402

The arrangements provided for in this Directive for the taxation of services between Member States are transitional and shall be replaced by definitive arrangements based on the principle of taxation of services in the Member State of destination of the supply; of liability for VAT of the supplier, and of a single registration scheme for the declaration, payment and deduction of the tax.'

- (170) Article 405 is replaced by the following:

'Article 405

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

- (1) 'Union' means the territory of the Union as defined in point (1) of Article 5 before the accession of new Member States;
- (2) 'new Member States' means the territory of the Member States which acceded to the Union after 1 January 1995, as defined for each of those Member States in point (2) of Article 5;
- (3) 'enlarged Union' means the territory of the Union as defined in point (1) of Article 5 after the accession of new Member States.'

- (171) in Article 406, points (a) and (b) are replaced by the following:

- '(a) the goods entered the Union or one of the new Member States before the date of accession;
- (b) the goods were placed, on entry into the Union or one of the new Member States, under these arrangements or situations';

- (172) Article 408 is amended as follows:

- (a) in paragraph 1, the introductory words are replaced by the following:

'1. The following shall be treated as an importation of goods where it is shown that the goods were in free circulation in one of the new Member States or in the Union:'
- (b) in paragraph 2, the introductory words are replaced by the following:

'2. In addition to the cases referred to in paragraph 1, the use after the date of accession within the territory of a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the territory of the Union or one of the new Member States shall be treated as an importation of goods where the following conditions are met:'
- (c) in paragraph 2, point (b) is replaced by the following:

'(b) the goods were not imported into one of the new Member States or into the Union before the date of accession.'

- (173) Article 410(1) is amended as follows:

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

'(a) the imported goods are dispatched or transported outside the enlarged Union;',
- (b) point (c) is replaced by the following:

'(c) the imported goods within the meaning of Article 408(1)(a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Union or which have not been subject, by reason of their exportation, to any exemption from, or refund of, VAT.';

(174) Annex X is amended as follows:

(a) in Part A, points (1) and (4) are replaced by the following:

'(1) the supply of services by dental technicians;

(4) the supply of the services of travel agents, as referred to in Article 306, and those of travel agents acting in the name and on behalf of the traveller, in relation to journeys outside the Union.';

(b) in Part B, points (5) and (6) are replaced by the following:

'(5) the supply of services carried out by blind persons or by workshops for the blind, provided that those exemptions do not cause significant distortion of competition;

(6) the supply of services to official bodies responsible for the construction, setting out and maintenance of cemeteries, graves and monuments commemorating the war dead;';

(c) in Part B, point (8) is deleted,

(d) in Part B, points (11) and (12) are replaced by the following:

'(11) the supply of services that consist in the modification, repair, maintenance, chartering and hiring of aircraft used by State institutions, including equipment incorporated or used in such aircraft;

(12) the supply of services that consist in the modification, repair, maintenance, chartering and hiring of fighting ships;'.

Article 2

1. Member States shall adopt and publish, by 30 June 2022 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 July 2022.

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*