

Council Directive 2013/43/EU of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud

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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,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC<sup>(3)</sup> specifies that value added tax (VAT) shall be payable by any taxable person carrying out transactions involving the taxable supply of goods or services. For cross-border transactions and for certain domestic high risk sectors, however, it provides for a shift of the obligation to pay VAT to the person to whom the supply is made (the reverse charge mechanism).
- (2) Given the seriousness of VAT fraud, Member States should be allowed to apply, on a temporary basis, a mechanism whereby the obligation to pay VAT with regard to supplies of certain categories of goods and services shifts onto the person to whom the taxable supply of goods or services is made, including where those categories are neither listed in Article 199 of Directive 2006/112/EC nor subject to specific derogations granted to Member States.
- (3) To that end, the Commission came forward with a proposal in 2009, listing a number of goods and services to which, for a limited period, the reverse charge mechanism could be applied. The Council opted for splitting the proposal and adopted Council Directive 2010/23/EU<sup>(4)</sup>, which was however limited to greenhouse gas emission allowances only, given that the fraud situation in that sector required an immediate reaction. At the same time, the Council took the political commitment to continue negotiations on the remaining part of the Commission proposal.

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- (4) Since then, fraud has occurred in other sectors and, therefore, new goods and services should be added to the remaining part of the Commission proposal as regards the pre-defined list of goods and services to which the reverse charge could apply. In particular, fraud has occurred in relation to supplies of gas and electricity, telecommunication services, game consoles, tablet PC's and laptops, cereals, industrial crops including oil seeds and sugar beets, and raw and semi-finished metals including precious metals.
- (5) The introduction of the reverse charge mechanism targeting those goods and services, which according to recent experience are particularly susceptible to fraud, as opposed to its general application, should not adversely affect the fundamental principles of the VAT system, such as fractionated payments.
- (6) The pre-defined list, from which Member States may choose, should be restricted to supplies of goods and services which, according to recent experience, are particularly susceptible to fraud.
- (7) In applying the reverse charge mechanism, Member States have the discretion to lay down the conditions for the application of the mechanism including the setting of thresholds, the categories of suppliers or recipients to whom this mechanism may apply and the partial application of the mechanism within categories.
- (8) Since a reverse charge mechanism is a temporary measure pending longer term legislative solutions with a view to making the VAT system more resilient to instances of VAT fraud, the reverse charge mechanism set out under Article 199a of Directive 2006/112/EC ought to apply only for a limited period of time.
- (9) In order to ensure that the reverse charge mechanism can be applied for a sufficiently long time so as to be effective and to allow for a subsequent evaluation, it is necessary that the current time-limit of 30 June 2015 is extended. In the same way, the date for the evaluation period and the end date for the period, during which a shift in fraudulent activities has to be reported, should be postponed.
- (10) In order to provide all Member States with the option of applying the reverse charge mechanism as set out above, a specific amendment to Directive 2006/112/EC is necessary.
- (11) Since the objective of the proposed action, namely to address VAT fraud through temporary measures which derogate from existing Union rules, 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 European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (12) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 341E, 16.12.2010, p. 81.](#)
- (2) [OJ C 339, 14.12.2010, p. 41.](#)
- (3) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ L 347, 11.12.2006, p. 1](#)).
- (4) Council Directive 2010/23/EU of 16 March 2010 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain services susceptible to fraud ([OJ L 72, 20.3.2010, p. 1](#))