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

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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,

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

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2006/112/EC[(3)] provides for special schemes for charging value added tax (VAT) for non-established taxable persons providing telecommunications, broadcasting or electronically supplied services to non-taxable persons.

(2) Council Directive 2009/132/EC[(4)] provides for an exemption from VAT of imports of small consignments of negligible value.

(3) The assessment of those special schemes as introduced on 1 January 2015 has identified a number of areas for improvement. First, the burden for micro-businesses established in a Member State occasionally supplying such services to other Member States of having to comply with VAT obligations in Member States other than their Member State of establishment should be reduced. A Community-wide threshold should therefore be introduced up to which those supplies remain subject to VAT in their Member State of establishment. Second, the requirement of having to comply with the invoicing requirements of all Member States to which supplies are made is very burdensome. Hence, to minimise burdens on business, the rules concerning invoicing should be those applicable in the Member State of identification of the supplier making use of the special schemes. Third, taxable persons not established in the Community but having a VAT registration in a Member State, for example because they carry out occasional transactions subject to VAT in that Member State, can use neither the special scheme for taxable persons not established in the Community, nor the special scheme for taxable persons established in the Community. As a consequence, such taxable persons should

be permitted to use the special scheme for taxable persons not established within the Community.

(4) Furthermore, the assessment of the special schemes for the taxation of telecommunications, broadcasting or electronically supplied services introduced on 1 January 2015 has shown that the requirement to submit the VAT return within 20 days following the end of the tax period covered by the return is too short a time limit, in particular for supplies through a telecommunications network, an interface or a portal, where the services supplied through that network, interface or portal are presumed to be supplied by the operator of the network, interface or portal, who has to collect the information to complete the VAT return from each single service supplier. The assessment has also shown that the requirement to make corrections in the VAT return of the tax period concerned is very burdensome for taxable persons, as it may require them to re-submit several VAT returns every quarter. As a consequence, the deadline to submit the VAT return should be extended from 20 days to the end of the month following the end of the tax period and taxable persons should be allowed to correct previous VAT returns in a subsequent return instead of in the returns of the tax periods to which the corrections relate.

(5) To avoid that taxable persons supplying services other than telecommunications, broadcasting or electronically supplied services to non-taxable persons have to be identified for VAT purposes in each and every Member State where those services are subject to VAT, Member States should permit taxable persons supplying such services to make use of the IT system for registration and for declaration and payment of the VAT allowing them to declare and pay VAT on those services in a single Member State.

(6) The realisation of the internal market, globalisation, and technological change have resulted in an explosive growth of electronic commerce and, hence, of distance sales of goods, both supplied from one Member State to another and from third territories or third countries to the Community. The relevant provisions of Directives 2006/112/EC and 2009/132/EC should be adapted to this evolution, taking into account the principle of taxation at destination, the need to protect Member States' tax revenue, to create a level playing field for the businesses concerned and to minimise burdens on them. The special scheme for telecommunications, broadcasting or electronically supplied services supplied by taxable persons established within the Community but not in the Member State of consumption should therefore be extended to intra-Community distance sales of goods and a similar special scheme should be introduced for distance sales of goods imported from third territories or third countries. To clearly determine the scope of the measures applying to intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries, those concepts should be defined.

(7) A major share of distance sales of goods, both supplied from one Member State to another and from third territories or third countries to the Community are facilitated through the use of an electronic interface such as a marketplace, platform, portal or similar means, often resorting to fulfilment warehousing arrangements. Whilst Member States may provide that a person other than the person liable for the payment of VAT

is to be held jointly and severally liable for payment of VAT in such cases, this has proved insufficient to ensure effective and efficient collection of VAT. To achieve that objective and reduce the administrative burden for vendors, tax administrations and consumers, it is, therefore, necessary to involve taxable persons who facilitate distance sales of goods through the use of such an electronic interface in the collection of VAT on those sales by providing that they are the persons who are deemed to make those sales. For distance sales of goods imported from third territories or third countries to the Community, this should be restricted to sales of goods which are dispatched or transported in consignments of an intrinsic value not exceeding EUR 150, as of which a full customs declaration upon importation is required for customs purposes.

(8) The keeping of records for a period of at least 10 years in respect of supplies by taxable persons facilitated by an electronic interface such as a marketplace, platform, portal or similar means is necessary to assist Member States to verify that VAT has been accounted for correctly on those supplies. The period of 10 years is consistent with existing record keeping provisions. Where the records consist of personal data, they should comply with Union law on data protection.

(9) To reduce the burden for businesses making use of the special scheme for intra-Community distance sales of goods, the obligation to issue an invoice for such sales should be removed. To provide legal certainty to such businesses, the definition of those supplies of goods should clearly state that it applies also where the goods are transported or dispatched on behalf of the supplier including where the supplier intervenes indirectly in the transport or dispatch of the goods.

(10) The scope of the special scheme for distance sales of goods imported from third territories or third countries should be restricted to sales of goods of an intrinsic value not exceeding EUR 150 that are dispatched directly from a third territory or third country to a customer in the Community, as of which a full customs declaration is required for customs purposes upon importation. Goods subject to excise duty should be excluded from its scope as excise duty is part of the taxable amount for VAT upon importation. In order to avoid double taxation, an exemption from value added tax upon importation of the goods declared under that special scheme should be introduced.

(11) In addition, in order to avoid distortion of competition between suppliers inside and outside the Community and to avoid losses of tax revenue, it is necessary to remove the exemption for imports of goods in small consignments of negligible value provided for in Directive 2009/132/EC.

(12) A taxable person making use of the special scheme for distance sales of goods imported from third territories or third countries should be allowed to appoint an intermediary established in the Community as the person liable for payment of the VAT and to fulfil the obligations laid down in that special scheme in his name and on his behalf.

(13) In order to protect Member States' tax revenue, a taxable person not established in the Community making use of this special scheme should be obliged to designate an intermediary. However, that obligation should not apply if he is established in a country with which the Union has concluded an agreement on mutual assistance.

(14) In order to ensure uniform conditions for the implementation of this Directive concerning the establishment of the list of third countries with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU[(5)] and Council Regulation (EU) No 904/2010[(6)], implementing powers should be conferred on the Commission. Those powers should be *exercised* in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(7)]. Since the establishment of the list of third countries is directly linked with the administrative cooperation in the field of value added tax, it is appropriate that the Commission be assisted by the Standing Committee on Administrative Cooperation set up by Article 58 of Regulation (EU) No 904/2010.

(15) Following the explosive growth of electronic commerce and the resulting increase in the number of small consignments of an intrinsic value not exceeding EUR 150 imported in the Community, Member States should systematically permit the use of special arrangements for declaration and payment of import VAT. Those arrangements can be applied where the special scheme for distance sales of goods imported from third territories or third countries is not used. Where the Member State of importation does not provide for the systematic application of reduced VAT rates under this special arrangement, the final customer should be able to opt for the standard import procedure in order to avail himself of a potential reduced VAT rate.

(16) The date of application of the provisions of this Directive shall, where relevant, take account of the time needed to put in place the measures necessary to implement this Directive and for the Member States to adapt their IT system for registration and for declaration and payment of the VAT.

(17) Since the objective of this Directive, namely the simplification of VAT obligations, 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.

(18) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents[(8)], 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.

(19) Directives 2006/112/EC and 2009/132/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

(**1**) Opinion of 30 November 2017 (not yet published in the Official Journal).

(**2**) OJ C 345, 13.10.2017, p. 79.

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

(**5**) 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).

(**6**) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

(**7**) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(**8**) OJ C 369, 17.12.2011, p. 14.