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2016/0370 (CNS)

Modernising VAT for cross-border B2C e-commerce

Proposal for a

COUNCIL DIRECTIVE

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

{SWD(2016) 379 final}

{SWD(2016) 382 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The European Commission is committed to ensuring the free movement of goods and services and to ensuring that “individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition”. In terms of the current VAT rules, the May 2015 Communication 'A Digital Single Market Strategy for Europe'¹ and the April 2016 Communication on an action plan on VAT: 'Towards a single EU VAT area - Time to decide'² have placed a high priority to overcoming barriers to cross-border e-commerce arising from onerous VAT obligations as well as an inherent lack of neutrality which harms EU business. The proposals will modernise the current VAT rules that apply to e-commerce activities and help making VAT future-proof.

There are in essence three reasons to act:

- First, the complexity of VAT obligations has consistently been identified as one of the key reasons why a business will not engage in cross-border e-commerce, and therefore it means that the single market cannot be accessed by many businesses. It has been estimated that the costs of complying with VAT obligations are on average EUR 8 000 annually for each Member State which a business supplies to. This is a significant cost for business, in particular SMEs.
- Second, the current system is not neutral as EU businesses are at a clear disadvantage to non-EU businesses which can legitimately and through high levels of non-compliance make VAT-free supplies into the EU. Given that VAT rates can be as high as 27%, there is a substantial distortion in favour of non-EU business if VAT is not applied.
- Third, the complexity of the existing system as well as the current exemption for the importation of small consignments means that Member States lose valuable tax revenues. It is estimated that between VAT foregone and non-compliance from cross-border e-commerce such losses are currently as high as EUR 5 billion annually.

In preparing this proposal the Commission as part of the Better Regulation agenda carried out a regulatory fitness check of the existing Mini One Stop Shop (MOSS) which applies to B2C supplies of electronic services as well as the 2015 changes to the place of supply rules for such services. The proposal takes due account of this assessment. In particular, the proposal will address shortcomings and barriers faced by SMEs and micro-businesses. In quantitative terms, the introduction of an intra-EU cross-border threshold in 2018 will take 6 500 businesses out of the current MOSS system leading to a potential cost saving for these businesses of EUR 13 million. The introduction in 2018 of simplified evidence requirements will benefit an additional 1 000 businesses. The threshold which will also apply to goods when the MOSS is extended in 2021 will benefit 430 000 businesses with potential savings to these businesses of up to EUR 860 million.

The REFIT aspect of the initiative also relates to the main objectives of the new initiative, which is "minimising burdens attached to cross-border e-commerce arising from different VAT regimes". In terms of deliverables, the proposal is expected to reduce VAT compliance costs for businesses by EUR 2.3 billion a year from 2021 while at the same time increasing

¹ COM(2015) 192 final

² COM(2016) 148 final

VAT revenues for Member States by EUR 7 billion. Further, the extension of the MOSS in 2021 also takes on board certain shortcomings identified under the REFIT assessment of the 2015 initiative such as the need for home country rules in terms of invoicing requirements, coordination of audits, communications with taxpayers and indeed including a threshold for suppliers of goods as well as services.

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

The general objectives of the proposal are the smooth functioning of the internal market, the competitiveness of EU business and the need to ensure effective taxation of the digital economy. The proposal is consistent with the future application of the destination principle for VAT as set out in the recent VAT Action plan supported by Council³.

In addition to the VAT Action Plan, the proposal has been identified as a key initiative in the Digital Single Market Strategy⁴ ('DSM Strategy') as well as the Single Market strategy⁵ and the E-Government Action Plan⁶.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

- **Subsidiarity**

The proposal is consistent with the principle of subsidiarity as the main problems which have been identified (distorting effects, high administrative costs, etc.) are triggered by the rules of the existing VAT Directive and associated acts. Given that VAT is a tax harmonised at EU level, Member States cannot by themselves set different rules and therefore any initiative to modernise VAT for cross-border e-commerce requires a proposal by the Commission to amend the VAT Directive. The proposal will clearly offer value over and above what can be achieved at Member State level given that the principle simplification is the MOSS system applying in all Member States and available to business to simply and efficiently account for tax due to all Member States. A soft law approach, such as Member States voluntarily applying a MOSS is not feasible as it is an exception to the normal rules and thus requires a coordinated approach underpinned by IT infrastructure.

- **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 the problems and problem drivers without a proposal to amend the VAT Directive. The proportionality of the proposal has a number of important aspects. Firstly, the two stage implementation of the proposal recognises that certain measures such as the threshold and simplified obligations can be introduced in 2018 without the need for any IT development. However, the implementation date of 2021 for the main elements of the proposal recognises

³ <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/>

⁴ COM(2015) 192 final.

⁵ COM(2015) 550 final.

⁶ COM(2016) 179 final.

that Member States will require a suitable period of time to ensure that the IT systems can be developed and tested. This also enables further consultation with business. Secondly, it is recognised that while there will be challenges for customs administrations given that the removal of the VAT exemption for the importation of small increases will lead to a significant increase in the number of parcels where VAT must be collected, this will be mitigated by the simplification offered through the MOSS import scheme for all parcels up to EUR 150 in value, the increase in VAT revenues for Member States of EUR 7 billion annually and the level playing field for EU business who are currently at a disadvantage.

- **Choice of the instrument**

The proposal requires amending four legal acts. The primary amendments will be made to Directive 2006/112/EC on the common system of value added tax⁷ (the 'VAT Directive') and Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of value added tax⁸. Relatively minor amendments will be made to Directive 2009/132/EC 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 goods⁹ and Regulation (EU) 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax¹⁰.

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

- **Stakeholder consultations**

The consultation strategy had two main purposes. The first was to assist with the analysis under REFIT of the implementation of the 2015 changes to the place of supply rules and the MOSS, and the second was to get the views of stakeholders on the Commission's commitment in the Digital Single Market Strategy to modernise the VAT framework for cross-border e-commerce.

There were four main aspects to the consultation process:

- (1) Consultations and stakeholder workshops undertaken by Deloitte as part of the Study on 'Options for the modernisation of cross-border e-commerce' (February 2015 – July 2016);
- (2) Fiscalis seminar (September 2015, Dublin) with Member States and business;
- (3) Targeted consultation with key stakeholders;
- (4) Open public consultation¹¹.

The impact of the various options on SMEs has been a central objective of this impact assessment. Specific measures have been undertaken to understand and address the issues faced by SMEs which have informed this assessment both in quantitative and qualitative terms. In this respect, an online survey was specifically directed at small and micro-business

⁷ OJ L 347, 11.12.2006, p. 1.

⁸ OJ L 268, 12.10.2010, p. 1.

⁹ OJ L 292, 10.11.2009, p. 5.

¹⁰ OJ L 77, 23.3.2011, p. 1.

¹¹

http://ec.europa.eu/taxation_customs/common/consultations/tax/2015_vat_cross_border_ecommerce_en.htm.

The Commission received approximately 370 submissions. All public submissions are available on the DG TAXUD website: http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/public-consultation-results_en.xlsx

and their representative groups and the Commission ensured that SMEs were represented at the stakeholder conference.

Further details can be found in Annex 2 'Synopsis report stakeholder consultation' of the Impact Assessment.

The concerns raised during the consultation process by businesses and business associations, including small and medium enterprises, mainly relate to the 2015 place of supply rules and application of the MOSS for the services concerned (need of a threshold, use home country rules for certain specific VAT obligations like invoicing and record keeping, audit coordination, etc.) and are largely reflected by this proposal.

- **Collection and use of expertise**

The Commission used the analysis carried out by Deloitte for the Study 'VAT Aspects of cross-border e-commerce – Options for modernising' (February 2015 – July 2016), Lot 1, Lot 2 and Lot 3. The Study is published on the Commission's website at the following page: http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/reports_published/index_en.htm.

The aim of the study was threefold. Firstly, to provide an economic analysis of the VAT aspects of e-commerce under the current VAT rules (Lot 1). Secondly, to assess the impact of options under consideration for the modernisation of VAT aspects of cross-border e-commerce (Lot 2). Thirdly, to assess the implementation of the changes to the place of supply rules for telecommunications, broadcasting and electronic services (hereafter 'electronic services') and the associated MOSS which came into effect in January 2015 (Lot 3).

In addition, two meetings were organised with experts. A Fiscalis 2020 seminar was organised in September 2015 in Ireland where both VAT experts from Member States' and business participated. The main purpose of the Seminar was to assess the 2015 place of supply rules and the MOSS, as well as the options for modernisation of the VAT for cross-border e-commerce which were included in the inception impact assessment for the proposal. A second Fiscalis 2020 and Customs 2020 workshop was organised in April 2016 in Sweden where tax and customs experts of the Member States participated mainly to look into the import side of the proposal (removal of the VAT exemption for the importation of small consignments and extension of MOSS to importation of small consignments up to EUR 150).

Both meetings had a good outcome and the recommendations received during these meetings were further considered in this proposal.

- **Impact assessment**

The Impact Assessment for the proposal was considered by the Regulatory Scrutiny Board on 22 June 2016. The Board gave a positive opinion to the proposal with some recommendations that have been taken on board. The opinion of the Board and the recommendations are included in Annex 1 to the Staff Working Document for the impact assessment accompanying this proposal. The executive summary sheet is available at the following page: https://ec.europa.eu/taxation_customs/business/vat/digital-single-market-modernising-vat-cross-border-ecommerce_en.

- **Regulatory fitness and simplification**

This proposal is included under the REFIT programme, and in this respect an assessment of the implementation of the 2015 changes to the place of supply rules for electronic services and the implementation of the MOSS system for these services was carried out. This

assessment shows that the MOSS has saved businesses EUR 500 million compared to the alternative of direct registration and payment – on average EUR 41 000 per business. This represents a 95% reduction in costs compared to the alternative of direct registration.

The assessment of the MOSS has also been very useful in ensuring that the new initiative recognises the positives and addresses any shortcomings of the 2015 changes. For instance, this proposal includes the introduction in 2018 of a cross-border threshold applying to services covered by the 2015 changes as well as a relaxation on the need for two pieces of evidence for suppliers of electronics service who have less than EUR 100 000 turnover (the so called soft-landing).

4. BUDGETARY IMPLICATIONS

The proposal is estimated to increase VAT revenues for Member States by 2021 by EUR 7 billion annually. It is estimated that the proposal will reduce administration burdens for business by EUR 2.3 billion annually.

The cost implications for Member States should be limited given that the extension of the MOSS is an evolution of an existing IT system.

5. OTHER ELEMENTS

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

Implementation will be overseen by the Standing Committee on Administrative Cooperation (SCAC). As with the 2015 changes, the SCAC will be supported by the Standing Committee on Information Technology (SCIT).

- **Overview of the main provisions in the proposal**

The main provisions of the proposal are:

- (1) the extension of the existing MOSS to intra-Community distance sales of tangible goods and services other than electronic services as well as to distance sales of goods from third countries;
- (2) the introduction of a simplified arrangements for global declaration and payment of import VAT for importers of goods destined for final consumer where VAT has not been paid through the MOSS system;
- (3) the removal of the existing intra-Community distance sales thresholds which are a cause of distortions in the single market;
- (4) the removal of the existing VAT exemption for the importation of small consignments from suppliers in third countries which disadvantages EU sellers;
- (5) the introduction of common Community-wide simplification measure including a VAT threshold for intra-Community distance sales of goods and electronic services to help small start-up e-commerce businesses as well as simplified rules for the identification of customers;
- (6) allowing for EU sellers to apply home country rules in areas such as invoicing and record keeping; and
- (7) greater coordination between Member States when auditing of cross-border businesses who use the VAT system to ensure high compliance rates.

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

Article 1 – amendments to the VAT Directive – provisions with effect from 1 January 2018

Point 1 of Article 1 proposes a clarification to Article 28 of the VAT Directive, reflecting discussions in the VAT Committee. The words 'including cases where a telecommunications network, an interface or a portal is used for that purpose' are added to the provision, so as to clarify that this Article also applies where an electronic service is provided through an intermediary or a third party who is acting in his own name but on behalf of another person and who is using an electronic interface to make the supply.

Points 2 to 7 of Article 1 propose a number of improvements to the current special schemes for the taxation of electronic services supplied by non-established taxable persons to non-taxable persons laid down in Chapter 6 of Title XII of the VAT Directive. Those improvements, which do not require any changes to the electronic registration and payment system (the MOSS) allowing businesses supplying such services to register and to declare and pay VAT in a single Member State on all supplies to customers established in the Community (the 'Mini-One-Stop-Shop' or 'MOSS') and which result from the evaluation of the MOSS including trade consultation, are the following:

- (1) Point 2: paragraphs 2 to 5 are added to Article 58 of the VAT Directive so as to introduce a threshold of EUR 10 000 below which the place of supply of services that may be covered by the intra-Community special scheme for electronic services remains in the Member State of the supplier. This should however be optional for taxable persons so as to allow them to use the MOSS anyhow, e.g. if during a calendar year their turnover is exceptionally below the threshold.
- (2) Point 3: Article 219a of the VAT Directive is amended to provide that the invoicing rules of the Member State of identification apply. As a consequence, suppliers should respect the invoicing rules of a single Member State instead of, as is the case today, of each Member State of destination to which supplies are made.
- (3) Points 4 and 5: taxable persons not established in the Community but having a VAT registration in a Member State (e.g. 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 (the 'non-Union scheme'), nor the special scheme for taxable persons established in the Community (the 'Union scheme'). Hence, they cannot currently benefit from the simplifications offered by the MOSS and have to register for VAT in each Member State to which they supply electronic services. To allow such taxable persons to use the non-Union scheme, the proposal deletes the words 'and who is not otherwise required to be identified for VAT purposes' in the definition of 'taxable person not established within the Community' in Article 358a of the VAT Directive and adapts Article 361(1)(e) of the VAT Directive accordingly.
- (4) Points 6 and 7: Articles 369(2) and 369k(2) of the VAT Directive are amended to provide that the period for keeping records in the non-Union scheme and Union scheme respectively, is the period defined by the Member State of identification of the taxable person instead of the current period of 10 years, which largely exceeds the record keeping requirements of most Member States.

Article 2 – amendments to the VAT Directive – provisions with effect from 1 January 2021 – Extension of the MOSS

This Article contains the provisions required to extend the application of the current special schemes for the taxation of 'electronic services' laid down in Chapter 6 of Title XII of the

VAT Directive to other services as well as to distance sales of goods, both intra-Community and from outside the Community. Consequently, the definitions of electronic services in Article 358 of the VAT Directive can be removed but a definition of distance sales needs to be added (point 11). This Article also proposes a number of further improvements to the current special schemes. The proposed date of entry into application is 1 January 2021 as these changes also require laying down detailed implementing provisions and adaptations to the IT system for registration and declaration and payment of the VAT (the MOSS).

1. *Special scheme for taxable persons not established in the Community supplying services to non-taxable persons in the Community (non-Union scheme)*

The proposal extends the special scheme for non-established taxable persons supplying electronic services to non-taxable persons in the Community (Chapter 6, Section 2 of Title XII of the VAT Directive) to other services. This requires the following changes to the VAT Directive:

- Adding a definition of 'Member State of consumption' in Article 358a, providing that this is the Member State in which the supply of services is deemed to take place according to Chapter 3 of Title V of the VAT Directive (point 13).
- Replacing the reference to 'telecommunication services, broadcasting services or electronic services' by 'services' in the title of Section 2 (point 12) as well as in Articles 359, 363, 364 and 365 of the VAT Directive (points 14, 16 and 17);

In addition, two further improvements to this scheme resulting from the evaluation of the MOSS are proposed (point 17):

- An amendment to Article 364 of the VAT Directive extending the deadline to submit the VAT return from 20 to 30 days following the end of the tax period;
- An amendment to Article 365 of the VAT Directive (points 14, 16 and 17) providing that corrections to previous VAT returns can be made in a subsequent return instead of in the returns of the tax periods to which the corrections relate.

2. *Special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption (Union scheme)*

The proposal extends the special scheme for electronic services supplied by taxable persons established within the Community but not in the Member State of consumption (Chapter 6, Section 3 of Title XII of the VAT Directive) to other services supplied to non-taxable persons as well as to intra-Community distance sales of goods. This requires the following changes to the VAT Directive:

- Adding a definition of 'intra-Community distance sales of goods' to Article 369a of the VAT Directive (point 20(a)). The concept is defined by reference to Article 33(1) of the VAT Directive. The proposal also clarifies Article 33(1) in line with the guidelines of the VAT Committee. Furthermore, as the suppliers making intra-Community distance sales of goods will have the possibility to use the MOSS and declare and pay VAT on all their distance sales in a single Member State, the proposal removes the current thresholds laid down in Article 34 of the VAT Directive below which distance sales remain subject to VAT in the Member State where the transport or dispatch begins (points 3 and 4). These thresholds are replaced by a threshold of EUR 10 000 for micro-businesses below which the place of the supplies covered by this special scheme remains in the Member State where the supplier is established (points 5 and 6). In accordance with Article 1, point 2 of the

proposal, this threshold should apply as of 1 January 2018, for supplies of electronic services only. As of 2021, this threshold should become a global threshold applying to electronic services and intra-Community distance sales of goods. Hence, it should be removed from Article 58 and inserted in a new Chapter 3a (new Article 59c) in Title V of the VAT Directive. Finally, the obligation to issue an invoice for intra-Community distance sales laid down in Article 220(1), point (2) should be removed where this special scheme is used (point 9), as this obligation is linked to the current intra-Community distance sales regime requiring the monitoring of the national thresholds.

- Adding a definition of 'Member State of consumption' to Article 369a of the VAT Directive (point 20(b)). This is the Member State in which the supply of services is deemed to take place according to Chapter 3 of Title V of the VAT Directive or, in the case of distance sales, the Member State where the dispatch or the transport of the goods to the customer ends;
- Amending the heading of Section 3 as well as Articles 369b, 369c, 369e, 369f, 369h and 369i, 369j and 369k of the VAT Directive following the extension of the scope of this Section (points 19, 21 and 23 to 28). In particular, references to 'the taxable person not established in the Member State of consumption' are replaced by 'the taxable person making use of this scheme', as the requirement not to be established in the Member State of consumption does not apply to intra-Community distance sales of goods;
- Extending the content of the VAT return in Article 369g(1) of the VAT Directive, so as to include also data concerning distance sales of goods (points 24). Taxable persons carrying out both supplies of services and distance sales of goods under this special scheme should be able to declare both types of supplies in the same VAT return. The new Article 369g(2) of the VAT Directive provides that where a single taxable person supplies goods from different Member States under this special scheme, the VAT return shall provide a breakdown of these supplies per Member State of consumption for each Member State of dispatch. This provision is similar to the existing provision for electronic services in the second paragraph of the current Article 369g of the VAT Directive, which now becomes paragraph 3 of Article 369g.

In addition, as for the non-Union scheme, the proposal extends the deadline to submit the VAT return from 20 to 30 days following the end of the tax period in Article 369f of the VAT Directive and, in Article 369g(4) of the VAT Directive, provides that corrections to previous VAT returns can be made in a subsequent return instead of in the returns of the tax periods to which the corrections relate (points 24).

Finally, a clarification to Article 14(2)(c) of the VAT Directive is proposed (point 1), similar to the clarification proposed to Article 28 of the VAT Directive (point 1 of Article 1), so as to clarify that this Article also applies where online sales of goods are made through an intermediary or a third party who is acting in his own name but on behalf of another person and who is using an electronic interface to make the supply (e.g. an electronic platform).

3. *Special scheme for distance sales of goods imported from third countries or third territories of an intrinsic value not exceeding EUR 150 (the import scheme)*

A new Section 4 is added to Chapter 6 of Title XII of the VAT Directive creating a special scheme for distance sales of goods imported from third countries or third territories (point 29). This Section has the same structure and is based on the same principles as the special schemes of Sections 2 and 3 of Chapter 6.

Article 369l lays down the definitions applying to this Section. The definition of 'distance sales of goods imported from third countries' lays down the scope of this special scheme, which covers sales of goods in consignments of an intrinsic value¹² not exceeding EUR 150, the place of supply of which is governed by Article 33(2) of the VAT Directive. It currently provides that where goods sold 'on distance' are imported into a Member State other than the Member State in which the transport to the customer ends, a supply of goods is deemed to take place in the latter Member State. To allow the use of the special scheme also in situations where the Member State where the customer is located and the Member State of importation are the same, a second subparagraph is added in Article 33(2) creating a taxable event in that Member State where the special scheme is used (point 2(b)). A definition of what is an 'intermediary' is necessary, as it should be possible for vendors not established within the Community to designate a person established within the Community to fulfil their VAT obligations under this special scheme in their name and on their behalf. Which Member State can be the 'Member State of identification' depends on whether or not the vendor is established or has a fixed establishment in the Community and whether or not an intermediary has been designated by the vendor. Finally, the 'Member State of consumption' refers to the Member State where the transport to the customer ends.

Article 369m provides who is eligible to use this special scheme. According to the proposal, a vendor not established in the Community should designate an intermediary except if he is duly authorised by the Member State of identification or if he is established in a country with which the EU has concluded an agreement on mutual assistance. The list of countries concerned should be established subsequently in a Commission Implementing Regulation.

Article 369n provides that VAT shall become chargeable at the time when the payment has been accepted. This provision is needed to determine which supplies should be included in the periodic VAT return.

Articles 369o to 369x replicate the provisions of the two other special schemes concerning identification, VAT returns, VAT payments and record keeping. To be noted that Article 369s contains a provision specific to the import scheme stipulating that Member States should not impose any further declarative obligations on top of the periodic VAT return.

Where VAT is declared under this special scheme, no VAT should be payable anymore upon importation of the goods. It is therefore necessary to provide for an exemption for such imports. This exemption is inserted in Article 143(1) of the VAT Directive. To allow customs to identify these consignments upon importation a valid VAT identification number proving that VAT is declared under the special scheme should be provided to customs at the latest upon lodging of the import declaration (point 7).

Even though this scheme primarily targets distance sales to final consumers, it cannot be excluded that taxable persons purchase goods online for business purposes outside the Community from a vendor using this special scheme. To allow these taxable persons to exercise the right of deduction of VAT paid on such purchases, a new point (g) is added to Article 178 laying down the conditions for exercising the right of deduction (point 8).

4. *Special arrangements for declaration and payment of import VAT for distance sales of goods from third countries or third territories where the import scheme is not used*

Simplification measures are introduced for goods in consignments of a value for which VAT is not accounted for via the import scheme set out in section 3 above (point 30). For such imports, Member States should allow the person presenting the goods to customs in the Community (typically the postal operators or express couriers) to report and pay import VAT

¹² Intrinsic value is the value of the goods alone, and does not include insurance and freight.

due on these consignments electronically on the basis of a monthly declaration, on behalf of the person for whom the goods are destined. To further simplify the declaration, these goods should systematically be subjected to the standard VAT rate, unless the person for whom the goods are destined specifically request the application of a reduced rate. In this case however, a standard customs declaration would be required.

Article 3 – amendment to Directive 2009/132/EC

Title IV (Articles 23 and 24) of Directive 2009/132/EC provides for an exemption for imported goods of negligible value not exceeding a total value of EUR 10 up to EUR 22 (amount to be decided by each Member State). As the use of the special scheme (and thus of the MOSS) will allow for VAT to be declared and paid on imported goods ordered online and thus will drastically simplify VAT collection, there is no need to maintain this VAT exemption. The proposal therefore removes this exemption as from 1 January 2021, which is the proposed date of entry into force of the import scheme.

Proposal for a

COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament¹,

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

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC³ 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/EC⁴ 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 these supplies remain subject to VAT in their Member State of establishment. Second, the requirement of having to comply with the invoicing and record keeping requirements of all Member States to which supplies are made is very burdensome. Hence, to minimise burdens on business, the rules concerning invoicing and record keeping 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 (e.g. because they carry out occasional transactions subject to VAT in that Member State) can use neither the special scheme for taxable

¹ OJ C , , p. .

² OJ C , , p. .

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁴ Council Directive 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).

persons not established in the Community, nor the special scheme for taxable persons established in the Community. As a consequence, it is proposed that 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, 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 to 30 days 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 these 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 these services in a single Member State.
- (6) In order to clarify the scope of provisions dealing with the situations where goods or services are purchased and supplied further down to the subsequent buyer reference to new means of electronic interaction via which transactions are concluded should be made with a view of taking into account technological developments.
- (7) 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.
- (8) 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 rules determining the place of those supplies of goods should clearly state that they apply also where the goods are transported or dispatched indirectly on behalf of the supplier.

- (9) 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, as of which a full customs declaration is required for customs purposes upon importation. In order to avoid double taxation, an exemption from value added tax upon importation of the goods declared under this special scheme should be introduced. 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.
- (10) 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 the special scheme in his name and on his behalf.
- (11) 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, this obligation should not apply if he is duly authorised by the Member State of identification or if he is established in a country with which the Union has concluded an agreement on mutual assistance. Such authorisations should be subject to a strict list of clearly established criteria.
- (12) 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 2008/55/EC⁵ and Council Regulation (EU) No 904/2010⁶, 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 Council⁷. 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 is assisted by the Standing Committee on Administrative Cooperation set up by Article 58 of Regulation (EU) No 904/2010.
- (13) 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. This arrangement can be applied where the special scheme for distance sales of goods imported from third territories or third countries is not used and where the final customer did not opt for the standard import procedure in order to avail himself of a potential reduced VAT rate.
- (14) 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.

⁵ Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ L 150, 10.6.2008, p. 28).

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. 10).

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).

- (15) Since the objectives 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 those objectives.
- (16) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁸, 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.
- (17) Directives 2006/112/EC and 2009/132/EC should therefore be amended accordingly,
- HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/112/EC with effect from 1 January 2018

With effect from 1 January 2018, Directive 2006/112/EC is amended as follows:

- (1) Article 28 is replaced by the following:

'Article 28

Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, including cases where a telecommunications network, an interface or a portal is used for that purpose, he shall be deemed to have received and supplied those services himself.'

- (2) Article 58 is replaced by the following:

'Article 58

1. The place of supply of the following services to a non-taxable person shall be the place where that person is established or, in the absence of an establishment, has his permanent address or usually resides:

- (a) telecommunications services;
- (b) radio and television broadcasting services;
- (c) electronically supplied services, in particular those referred to in Annex II.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

2. Paragraph 1 shall not apply, where the following conditions are met:

- (a) the supplier is established or, in the absence of an establishment, has his permanent address or usually resides in only one Member State;

⁸ OJ C 369, 17.12.2011, p. 14.

- (b) services are provided to customers located in any Member State other than the Member State referred to in point (a);
 - (c) the total value, exclusive of VAT, of such supplies does not in the current calendar year exceed EUR 10 000, or the equivalent in national currency, and did not do so in the course of the preceding calendar year.
3. Where, during a calendar year, the threshold referred to in point (c) of paragraph 2 is exceeded, paragraph 1 shall apply as of that time.
4. The Member State within the territory of which the suppliers referred to in paragraph 2 are established or, in the absence of an establishment, have their permanent address or usually reside, shall grant those suppliers the right to opt for the place of supply to be determined in accordance with paragraph 1.
5. Member States shall take all appropriate measures to monitor the fulfilment by the taxable person of the conditions referred to in paragraph 2.’
- (3) Article 219a is replaced by the following:

‘Article 219a

1. Invoicing shall be subject to the rules applying in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of Title V.
2. By way of derogation from paragraph 1, invoicing shall be subject to the following rules:
- (a) the rules applying in 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, where:
 - (i) the supplier is not established in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of Title V, or his establishment in that Member State does not intervene in the supply within the meaning of Article 192a(b), and the person liable for the payment of the VAT is the person to whom the goods or services are supplied.
 - (ii) the supply of goods or services is deemed not to be made within the Community, in accordance with the provisions of Title V;
 - (b) the rules applying in the Member State where the supplier making use of one of the special schemes referred to in Chapter 6 of Title XII is identified.

Where the supplier is not established in the Member State in which the supply of goods or services is deemed to be made and the customer issues the invoice (self-billing) or where no use is made of the special schemes referred to in Chapter 6 of Title XII, paragraph 1 shall apply.

3. Paragraphs 1 and 2 of this Article shall apply without prejudice to Articles 244 to 248.’
- (4) in Article 358a, point (1) is replaced by the following:
- ‘(1) ‘taxable person not established within the Community’ means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there;’

- (5) in Article 361(1), point (e) is replaced by the following:
- ‘(e) a statement that the person has not established his business in the territory of the Community and has no fixed establishment there.’
- (6) in Article 369(2), the second subparagraph is replaced by the following:
- ‘The Member State of identification shall determine the period throughout which those records shall be kept by the taxable person not established within the Community.’
- (7) in Article 369k(2), the second subparagraph is replaced by the following:
- ‘The Member State of identification shall determine the period throughout which those records shall be kept by the taxable person not established within the Community.’

Article 2

Amendments to Directive 2006/112/EC with effect from 1 January 2021

With effect from 1 January 2021, Directive 2006/112/EC is amended as follows:

- (1) in Article 14(2) point (c) is replaced by the following:
- ‘(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale, including cases where a telecommunications network, an interface or a portal is used for that purpose.’
- (2) Article 33 is amended as follows:
- (a) in paragraph 1, the introductory words are replaced by the following:
- ‘By way of derogation from Article 32, the place of supply of goods dispatched or transported by the supplier, or directly or indirectly on his behalf, from a Member State other than that in which dispatch or transport of the goods 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, where the following conditions are met:’
- (b) in paragraph 2, the following subparagraph is added:
- ‘Where the goods are dispatched or transported from a third territory or a third country and imported by the supplier into the Member State in which dispatch or transport of the goods ends, the goods shall be deemed as having been supplied in that Member State provided that VAT on those goods is declared under the special scheme of Section 4 of Chapter 6 of Title XII.’
- (3) Article 34 is deleted.
- (4) Article 35 is replaced by the following:

‘Article 35

Article 33 shall not apply to supplies of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), nor to supplies of second-hand means of transport, as defined in Article 327(3), subject to VAT in accordance with the relevant special arrangements.’

- (5) in Article 58, paragraphs 2 to 5 are deleted.
- (6) in Title V, the following Chapter 3a is inserted:

‘CHAPTER 3a

Threshold for taxable persons making supplies of goods covered by Article 33(1) and supplies of services covered by Article 58

Article 59c

1. Article 33(1) and Article 58 shall not apply, where the following conditions are met:
 - (a) the supplier is established or, in the absence of an establishment, has his permanent address or usually resides only in one Member State;
 - (b) services are provided or goods are dispatched or transported to customers located in any Member State other than the Member State referred to in point (a);
 - (c) the total value, exclusive of VAT, of the supplies covered by these provisions does not in the current calendar year exceed EUR 10 000, or the equivalent in national currency, nor did it do so in the course of the preceding calendar year.
2. Where, during a calendar year, the threshold referred to in point (c) of paragraph 1 is exceeded, Articles 33(1) and 58 shall apply as of that time.
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.
4. Member States shall take all appropriate measures to monitor the fulfilment by the taxable person of the conditions referred to in paragraph 1.’
 - (7) in Article 143(1), the following point (ca) is inserted:

‘(ca) the importation of goods where the VAT is declared under the special scheme in Chapter 6, Section 4, of Title XII and where, at the latest upon lodging of the import declaration, the VAT identification number of the supplier or of the intermediary acting on his behalf allocated under Article 369q has been provided to the competent customs office in the Member State of importation;’
 - (8) in Article 178, the following point (g) is added:

‘(g) when required to pay VAT as a customer where Section 4 of Chapter 6 of Title XII applies, he must hold an invoice or a document in lieu thereof issued by the taxable person making use of the special scheme or, if applicable, his intermediary clearly identifying the VAT paid and the VAT identification number allocated under Article 369q.’
 - (9) in Article 220(1), point (2) is replaced by the following:

‘(2) supplies of goods as referred to in Article 33 except where a taxable person is making use of the special scheme in Section 2 of Chapter 6 of Title XII;’.
 - (10) the heading of Chapter 6 of Title XII is replaced by the following:

‘Special schemes for non-established taxable persons supplying services or making distance sales of goods to non-taxable persons in the Community’

- (11) Article 358 is amended as follows:
- (a) points 1, 2 and 3 are deleted;
 - (b) the following point 3a is inserted:
'(3a) 'distance sales of goods' means sales of goods the place of supply of which is governed by Article 33(1) and goods in consignments of an intrinsic value not exceeding EUR 150 the place of supply of which is governed by Article 33(2) or (3);'.
- (12) the heading of Section 2 is replaced by the following:

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

- (13) in Article 358a, the following point 3 is added:
- '(3) 'Member State of consumption' means the Member State in which the supply of services is deemed to take place according to Chapter 3 of Title V;'
- (14) Article 359 is replaced by the following:

'Article 359

Member States shall permit any taxable person not established within the Community 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 Community.'

- (15) in Article 362, the second sentence is deleted.
- (16) in Article 363, point (a) is replaced by the following:
- '(a) if he notifies that Member State that he no longer supplies services covered by this special scheme;'
- (17) Articles 364 and 365 are replaced by the following:

'Article 364

The taxable person not established within the Community 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 within 30 days following the end of the tax period covered by the return.

Article 365

The VAT return shall show the VAT identification number and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of services covered by this special scheme carried out during the tax period and total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.

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 364.'

(18) Article 368 is replaced by the following:

‘Article 368

The taxable person not established within the Community making use of this special scheme may not deduct VAT pursuant to Article 168 of this Directive. Notwithstanding point (1) of Article 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.

If the taxable person making use of this special scheme also carries out in the Member State of consumption activities not covered by this special scheme in respect of which he is obliged to be registered for VAT purposes, he shall deduct VAT in respect of his taxable activities which are covered by this special scheme in the VAT return to be submitted pursuant to Article 250.’

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

‘Special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption’

(20) Article 369a is amended as follows:

(a) the following point 1a is inserted:

‘(1a) ‘intra-Community distance sales of goods’ means sales of goods dispatched or transported by the supplier, or directly or indirectly on his behalf, from a Member State other than that in which dispatch or transport of the goods ends the place of supply of which is governed by Article 33(1);’

(b) the following point 3 is added:

‘(3) ‘Member State of consumption’ means the Member State in which the supply of services is deemed to take place according to Chapter 3 of Title V or, in the case of intra-Community distance sales of goods, the Member State where the dispatch or transport of the goods to the customer ends.’

(21) Articles 369b and 369c are replaced by the following:

‘Article 369b

Member States shall permit any taxable person carrying out intra-Community distance sales of goods and any taxable person not established in the Member State of consumption supplying services to a non-taxable person who is established or has his permanent address or usually resides in that Member State, to use this special scheme. This special scheme applies to all those goods or services supplied in the Community.

Article 369c

A taxable person 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.’

(22) in Article 369d, the second paragraph is deleted.

(23) Article 369e is amended as follows:

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

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

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

‘(a) if he notifies that he no longer carries out intra-Community distance sales of goods and supplies of services covered by this special scheme;’

(24) Articles 369f and 369g are replaced by the following:

Article 369f

The taxable person making use of this special scheme shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not intra-Community distance sales of goods have been carried out or services covered by this special scheme have been supplied. The VAT return shall be submitted within 30 days following the end of the tax period covered by the return.

Article 369g

1. The VAT return shall show the VAT identification number referred to in Article 369d and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of intra-Community distance sales of goods as well as of supplies of services covered by this special scheme carried out during the tax period and the total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return. The VAT return shall also include amendments relating to previous tax periods.

2. Where, in the case of intra-Community distance sales 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 sales 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 consumption.

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 consumption.

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.’

(25) in the second subparagraph of Article 369h(1), the second sentence is replaced by the following:

‘If the supplies have been made in other currencies, the taxable person making use of this special scheme shall, for the purposes of completing the VAT return, use the exchange rate applying on the last date of the tax period.’

(26) in Article 369i, the first paragraph is replaced by the following:

‘The taxable person making use of this special scheme shall pay the VAT, making reference to the relevant VAT return, at the latest at the expiry of the deadline by which the return must be submitted.’

(27) Article 369j is replaced by the following:

‘Article 369j

The taxable person making use of this special scheme may not, in respect of his taxable activities covered by this special scheme, deduct VAT incurred in the Member State of consumption pursuant to Article 168 of this Directive. Notwithstanding Article 2(1) and Article 3 of Directive 2008/9/EC, the taxable person in question shall be refunded in accordance with that Directive.

If the taxable person making use of this special scheme also carries out in the Member State of consumption activities not covered by this special scheme in respect of which he is obliged to be registered for VAT purposes, he shall deduct VAT in respect of his taxable activities which are covered by this special scheme in the VAT return to be submitted pursuant to Article 250.’

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

‘1. The taxable person making use of this special scheme 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.’

(29) in Chapter 6 of Title XII, the following Section 4 is added:

**‘Section 4
Special scheme for distance sales of goods imported from third countries or third territories**

Article 369l

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

- (1) ‘distance sales of goods imported from third territories or third countries’ means sales of goods in consignments of an intrinsic value not exceeding EUR 150 the place of supply of which is governed by Article 33(2);
- (2) ‘taxable person not established within the Community’ means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there;
- (3) ‘intermediary’ means a person established in the Community 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.
- (4) ‘Member State of identification’ means the following:

- (a) where the taxable person is not established in the Community, the Member State which he chooses to contact;
 - (b) where the taxable person has established his business outside the Community 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 Community 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;
- (5) 'Member State of consumption' means the Member State where the dispatch or transport of the goods to the customer ends;

Article 369m

1. Member States shall permit the following taxable persons carrying out distance sales of goods imported from third territories or third countries to use this special scheme:

- (a) any taxable person established in the Community carrying out distance sales of goods imported from third territories or third countries;
- (b) any taxable person whether or not established in the Community carrying out distance sales of goods imported from third territories or third countries and who is represented by an intermediary established in the Community;
- (c) any taxable person not established in the Community carrying out distance sales of goods imported from third territories or third countries and duly authorised by the Member State of identification where the following criteria are complied with:
 - (i) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the taxable person;
 - (ii) the demonstration by the taxable person of a high level of control of his or her operations and of the flow of goods, by means of a system managing commercial and, where appropriate, transport records, which allow appropriate customs and tax controls;
 - (iii) financial solvency, which shall be deemed to be proven where the taxable person has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned.
- (d) any taxable person established in a third country with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2008/55/EC* and Regulation (EU) No 904/2010 and who is carrying out distance sales of goods from that third country.

2. The Commission shall adopt an implementing act establishing the list of third countries referred to in point (d) of paragraph 1 of this Article. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 and for this purpose the committee shall be the committee established by Article 58 of Regulation (EU) No 904/2010.

Article 369n

For distances sales of goods imported from third territories or third countries on which VAT is declared under this special scheme, the chargeable event shall occur and VAT shall become chargeable at the time of supply. The goods shall be regarded as having been supplied at the time when the payment has been accepted.

Article 369o

The taxable person making use of this special scheme or an intermediary acting on his behalf, shall state to the Member State of identification when he commences or ceases his activity under this special scheme, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. That information shall be communicated electronically.

Article 369p

1 The information which the taxable person not making use of an intermediary must provide to the Member State of identification before he 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.

2. 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 one or several taxable persons shall contain the following details:

- (a) name;
- (b) postal address;
- (c) electronic address and websites;
- (d) VAT identification number;
- (e) a list of taxable persons which he represents, together with their postal address, electronic address and websites, VAT identification number or national tax number.

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.

Article 369q

1. The Member State of identification shall allocate to the taxable person making use of this special scheme an individual VAT identification number and shall notify him of that number by electronic means.
2. The Member State of identification shall allocate to an intermediary acting on behalf of a taxable person making use of this special scheme an individual VAT identification number and shall notify him of that number by electronic means. Where an intermediary acts on behalf of more than one taxable person that identification number shall apply for all his activities under this scheme.
3. The VAT identification number allocated under paragraphs 1 and 2 shall be used only for the purposes of this special scheme.

Article 369r

1. The Member State of identification shall exclude the taxable person from the identification register in the following cases:
 - (a) if he notifies the Member State of identification that he no longer carries out distance sales of goods imported from third territories or third countries;
 - (b) if it may otherwise be assumed that activities of distance sales of goods imported from third territories or third countries have ceased;
 - (c) if he no longer meets the conditions necessary for use of this special scheme;
 - (d) if he persistently fails to comply with the rules relating to this special scheme.
2. The Member State of identification shall exclude the intermediary from the identification register in the following cases:
 - (a) if for a period of two consecutive calendar quarters he has not acted as an intermediary on behalf of a taxable person making use of this special scheme;
 - (b) if he no longer meets the other conditions necessary for acting as an intermediary;
 - (c) if he persistently fails to comply with the rules relating to this special scheme.

Article 369s

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 distance sales of goods imported from third territories or third countries have been carried out. The VAT return shall be submitted within 30 days following the end of the tax period covered by the return.

Where a VAT return has been submitted in accordance with the first paragraph, Member States shall not impose, for VAT purposes, any additional obligation or other formality upon importation.

Article 369t

1. The VAT return shall show the VAT identification number referred to in Article 369q and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of distance sales of goods imported from third territories or third countries for which VAT has become chargeable during the tax period and total amount per rate of the

corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.

2. 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 369s.

3. An intermediary appointed by more than one taxable person making use of this special scheme shall not be required to specify in the VAT return the supplies made by each of the taxable persons for whose payment of the VAT he is liable for.

Article 369u

1. The VAT return shall be made out in euro.

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 making use of this special scheme or his intermediary shall, for the purposes of completing the VAT return, use the exchange rate applying on the last date of the tax period.

2. The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

Article 369v

The taxable person making use of this special scheme or his intermediary shall pay the VAT, 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.

Article 369w

The taxable person making use of this special scheme may not, in respect of his taxable activities covered by this special scheme, deduct VAT incurred in the Member States of consumption pursuant to Article 168 of this Directive. Notwithstanding point (1) of Article 1 of Directive 86/560/EEC and point (1) of Article 2 and Article 3 of Directive 2008/9/EC, the taxable person in question shall be refunded in accordance with those Directives. Article 2(2) and (3) and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to goods covered by this special scheme.

If the taxable person making use of this special scheme is registered for VAT purposes in the Member State of identification for other activities not covered by this special scheme, he shall deduct VAT in respect of his taxable activities which are covered by this special scheme in the VAT return to be submitted pursuant to Article 250.

Article 369x

1. The taxable person making use of this special scheme shall keep records of the transactions covered by this special scheme. An intermediary shall keep records for each of the taxable persons he represents. 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.

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

The Member State of identification shall determine the period throughout which those records shall be kept by the taxable person not established within the Community.

* Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ L 150, 10.6.2008, p. 28).'

(30) In Title XII, the following Chapter 7 is added:

'CHAPTER 7

Special arrangements for declaration and payment of import VAT

Article 369y

Where the person for whom the imported goods in consignments of an intrinsic value not exceeding EUR 150 are destined does not opt for the application of the standard arrangements for importation of goods, including for the application of a reduced VAT rate in accordance with Article 94(2), the Member State of importation shall permit the person presenting the goods to customs within the territory of the Community 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 Community shall be responsible for collecting the VAT from the person for whom the goods are destined.
2. Member States shall provide that the person presenting the goods to customs within the territory of the Community takes appropriate measures to ensure that the correct tax is paid by the person for whom the goods are destined.

Article 369za

By way of derogation from Article 94(2), the standard rate of VAT applicable in the Member State of importation shall be applicable when using this special arrangement.

Article 369zb

1. Member States shall allow that the VAT collected under this special arrangement be reported electronically in a monthly declaration. The declaration shall show the total VAT collected during the relevant calendar month.

2. Member States shall require that the VAT referred to in paragraph 1 is payable by the end of the month following the importation.

3. Member States shall ensure that the persons making use of this special arrangement shall keep records of the transactions covered by this special arrangement for a period of time to be determined by the Member State of importation. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT declared is correct and be made available electronically on request to the Member State of importation.'

Article 3

Amendment to Directive 2009/132/EC

With effect from 1 January 2021, Title IV of Directive 2009/132/EC is deleted.

Article 4

1. Member States shall adopt and publish, by 31 December 2017 at the latest, the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Member States shall adopt and publish, by 31 December 2020 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2 and 3 of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply the provisions necessary to comply with Article 1 of this Directive from 1 January 2018.

They shall apply the provisions necessary to comply with Articles 2 and 3 of this Directive with from 1 January 2021.

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 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President