Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

COUNCIL IMPLEMENTING REGULATION (EU) 2019/2026

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[(1)], and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Directive 2006/112/EC was amended by Council Directive (EU) 2017/2455[(2)] which, inter alia, extended the scope of the special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons to all types of services as well as to intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries. Directive (EU) 2017/2455 also introduced certain provisions for taxable persons facilitating supplies of goods or services made by other taxable persons through the use of an electronic interface such as a marketplace, platform, portal or similar means.

(2) The detailed provisions for the application of those special schemes laid down in Council Implementing Regulation (EU) No 282/2011[(3)] should be updated following the extension of their scope.

(3) The definitions of ‘intra-Community distance sales of goods’ and ‘distance sales of goods imported from third territories or third countries’ in Directive 2006/112/EC also cover supplies of goods where the supplier intervenes indirectly in their dispatch or transport to the customer. Therefore, to ensure the correct and uniform application of those definitions across Member States and to enhance legal certainty for both economic operators and tax administrations, it is necessary to clarify and define the meaning of the term ‘indirectly’ in this context.

(4) In order to ensure the uniform application across Member States of the provisions concerning taxable persons facilitating supplies of goods and services in the Community and to improve legal certainty for taxable persons subject to value added tax (VAT) rules

and for tax admininstrations that enforce those rules, it is necessary to further define the meaning of the term 'facilitates' and to clarify when a taxable person is not considered to facilitate supplies of goods or services through an electronic interface.

(5) In order to ensure the uniform application of the VAT rules, it is necessary to clearly define the moment when the payment by the customer can be considered to be accepted so as to determine in which taxable period supplies by taxable persons facilitating supplies of goods in the Community through the use of an electronic interface or by any taxable person making use of the special scheme for distance sales of goods imported from third territories or third countries have to be declared.

(6) It is necessary to determine which type of information should be kept in the records of taxable persons facilitating supplies of goods and services in the Community through an electronic interface. This should take account of the nature of the information available to such taxable persons, its relevance for tax administrations and the requirement that such accounting and record-keeping be proportionate in order to comply with the rights and obligations laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council[(4)].

(7) A taxable person facilitating certain supplies of goods in the Community through the use of an electronic interface is deemed to have received and supplied the goods himself and is liable to pay VAT on these supplies. It is important to take into account that such a taxable person may be dependent on the accuracy of the information provided by the suppliers selling goods through that electronic interface to correctly declare and pay the amount of VAT due. It is therefore reasonable to provide that, when the information received is erroneous, such a taxable person shall not be held liable for any amount of VAT in excess of the VAT which he declared and paid on these supplies where he can demonstrate that he did not and could not reasonably have known that the information received was incorrect. This should allow Member States to release those taxable persons from additional VAT liability where they act in good faith.

(8) In order to reduce the administrative burden on taxable persons facilitating certain supplies of goods in the Community through the use of an electronic interface, it is appropriate to release them from the burden of having to prove the status of the seller and customer. Therefore certain rebuttable presumptions should be introduced whereby suppliers selling goods through that electronic interface are presumed to be taxable persons and their customers non-taxable persons.

(9) To avoid doubt, it is necessary to specify that the identification number allocated to an intermediary acting in the name and on behalf of a taxable person using the import scheme is an authorisation enabling him to act as intermediary and cannot be used by the intermediary to declare VAT on taxable transactions that he carries out himself.

(10) The provision excluding a taxable person who voluntarily ceased using a special scheme from re-entering that special scheme for a period of two calendar quarters is not considered useful by Member States and may create additional burdens for the taxable person concerned. That provision should therefore be removed.

(11) To limit the IT impact of the change in the way corrections to previous VAT returns under a special scheme have to be made, it is preferable to provide that corrections to a VAT return relating to a tax period preceding the date from which Member States are to apply national measures to comply with Articles 2 and 3 of Directive (EU) 2017/2455 are to be made by means of amendments to that return. In addition, as corrections to previous VAT returns will have to be submitted in a subsequent return for tax periods as of 1 January 2021, taxable persons excluded from a special scheme will no longer be able to make corrections in a subsequent return. As a consequence, it is necessary to provide that such corrections should be discharged directly with the tax authorities of the relevant Member States of consumption.

(12) As the name of the customer must only be kept in the records of a taxable person making use of a special scheme if available to that taxable person, is not needed to determine the Member State in which the supply is subject to VAT and may raise data protection issues, it is no longer necessary to include the name of the customer in the records to be kept by taxable persons making use of a special scheme. However, to facilitate the control of supplies of goods covered by a special scheme, it is necessary to include information on returns of goods and consignment or transaction numbers amongst the information to be kept by taxable persons.

(13) In order to ensure consistency between the special arrangements for declaration and payment of import VAT on the one hand, and customs provisions regarding deferment of payment of customs duty and obligations of the person presenting the goods to customs on the other hand, and to guarantee the correct payment of import VAT where those arrangements are used, it should be specified that the monthly payment of import VAT under the special arrangements could be made subject to the normal conditions applied under customs law to authorise deferment of payment of import duty. Furthermore, it should be specified that the application of the special arrangements does not oblige Member States to require the person presenting the goods to customs to be empowered by the person for whom the goods are destined to present the goods to customs on his behalf.

(14) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 282/2011 is amended as follows:

(1) Chapter IV is amended as follows:

(a) the heading of Chapter IV is replaced by the following:

TAXABLE TRANSACTIONS (TITLE IV OF DIRECTIVE 2006/112/EC)

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) 2019/2026. (See end of Document for details)*

SECTION 1

Supply of goods

(Articles 14 to 19 of Directive 2006/112/EC);

(b) the following Articles are inserted:

Article 5a

For the application of Article 14(4) of Directive 2006/112/EC, goods shall be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in particular in the following cases:

(a) where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;

(b) where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer;

(c) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;

(d) where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer.

However, goods shall not be considered to have been dispatched or transported by or on behalf of the supplier where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly to provide or to help organise the dispatch or transport of those goods.

Article 5b

For the application of Article 14a of Directive 2006/112/EC, the term "facilitates" means the use of an electronic interface to allow a customer and a supplier offering goods for sale through the electronic interface to enter into contact which results in a supply of goods through that electronic interface.

However, a taxable person is not facilitating a supply of goods where all of the following conditions are met:

(a) that taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;

(b) that taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;

(c) that taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods.

Article 14a of Directive 2006/112/EC shall not apply to a taxable person who only provides any of the following:

(a) the processing of payments in relation to the supply of goods;

(b) the listing or advertising of goods;

(c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

Article 5c

For the application of Article 14a of Directive 2006/112/EC, a taxable person, who is deemed to have received and supplied the goods himself, shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies where all of the following conditions are met:

(a) the taxable person is dependent on information provided by suppliers selling goods through an electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;

(b) the information referred to in point (a) is erroneous;

(c) the taxable person can demonstrate that he did not and could not reasonably know that this information was incorrect.

Article 5d

Unless he has information to the contrary, the taxable person deemed to have received and supplied the goods pursuant to Article 14a of Directive 2006/112/EC shall regard:

(a) the person selling goods through an electronic interface as a taxable person;

(b) the person buying those goods as a non-taxable person.;

(c) the following heading is inserted before Article 6:

Section 2

Supply of services

(Articles 24 to 29 of Directive 2006/112/EC);

(2) Article 14 is deleted;

(3) the following Chapter is inserted: