Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions

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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) In its communication of 7 April 2016 on an action plan on VAT, the Commission announced its intention to put forward a proposal for a definitive value added tax (VAT) system in relation to cross-border business-to-business trade between Member States. The Council, in its conclusions of 8 November 2016, invited the Commission to propose in the meantime certain improvements to the Union VAT rules for cross-border transactions, inter alia, for the purposes of exemptions in respect of intra-Community transactions.

(2) Directive 2006/112/EC sets out a number of conditions for the exemption of supplies of goods from VAT in the context of certain intra-Community transactions. One of those conditions is that the goods have to be dispatched or transported from one Member State to another.

(3) However, the divergent approach amongst Member States in the application of those exemptions for cross-border transactions has created difficulties and legal uncertainty for businesses. This is contrary to the objective of enhancing intra-Community trade and to the abolition of the fiscal borders. It is therefore important to specify and harmonise the conditions under which the exemptions can apply.

(4) As cross-border VAT fraud is primarily linked to the exemption for intra-Community supplies, it is necessary to specify certain circumstances in which goods should be considered as having been dispatched or transported from the territory of the Member State of supply.

(5) In order to provide a practical solution for businesses and also to provide assurance for tax administrations, two rebuttable presumptions should be introduced in Council Implementing Regulation (EU) No 282/2011[(2)].

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) 2018/1912. (See end of Document for details)*

(6) The call-off stock simplification arrangements should be accompanied by appropriate recording obligations in order to ensure their correct application.

(7) 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) in Chapter VIII, the following Section is inserted:

Section 2A

Exemptions for intra-Community transactions

(Articles 138 to 142 of Directive 2006/112/EC)

Article 45a

1 For the purpose of applying the exemptions laid down in Article 138 of Directive 2006/112/EC, it shall be presumed that goods have been dispatched or transported from a Member State to a destination outside its territory but within the Community in either of the following cases:

a the vendor indicates that the goods have been dispatched or transported by him or by a third party on his behalf, and either the vendor is in possession of at least two items of non-contradictory evidence referred to in point (a) of paragraph 3 which were issued by two different parties that are independent of each other, of the vendor and of the acquirer, or the vendor is in possession of any single item referred to in point (a) of paragraph 3 together with any single item of non-contradictory evidence referred to in point (b) of paragraph 3 confirming the dispatch or transport which were issued by two different parties that are independent of each other, of the vendor and of the acquirer;

b the vendor is in possession of the following:

(i) a written statement from the acquirer, stating that the goods have been dispatched or transported by the acquirer, or by a third party on behalf of the acquirer, and identifying the Member State of destination of the goods; that written statement shall state: the date of issue; the name and address of the acquirer; the quantity and nature of the goods; the date and place of the arrival of the goods; in the case of the supply of means of transport, the identification number of the means of transport; and the identification of the individual accepting the goods on behalf of the acquirer; and

(ii) at least two items of non-contradictory evidence referred to in point (a) of paragraph 3 that were issued by two different parties that are independent of each other, of the vendor and of the acquirer, or any single item referred to in point (a) of paragraph 3 together with any single item of non-contradictory evidence referred to in point (b) of paragraph 3 confirming the dispatch or transport which were issued by two different parties that are independent of each other, of the vendor and of the acquirer.

The acquirer shall furnish the vendor with the written statement referred to in point (b)(i) by the tenth day of the month following the supply.

2 A tax authority may rebut a presumption that has been made under paragraph 1.

3 For the purposes of paragraph 1, the following shall be accepted as evidence of dispatch or transport:

a documents relating to the dispatch or transport of the goods, such as a signed CMR document or note, a bill of lading, an airfreight invoice or an invoice from the carrier of the goods;

b the following documents:

(i) an insurance policy with regard to the dispatch or transport of the goods, or bank documents proving payment for the dispatch or transport of the goods;

(ii) official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;

(iii) a receipt issued by a warehouse keeper in the Member State of destination, confirming the storage of the goods in that Member State.;

(2) in Chapter X, the following Section is inserted:

Section 1A

General obligations

(Articles 242 to 243 of Directive 2006/112/EC)
Article 54a

1 The register referred to in Article 243(3) of Directive 2006/112/EC that is to be kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:

a the Member State from which the goods were dispatched or transported, and the date of dispatch or transport of the goods;

b the VAT identification number of the taxable person for whom the goods are intended, issued by the Member State to which the goods are dispatched or transported;

c the Member State to which the goods are dispatched or transported, the VAT identification number of the warehouse keeper, the address of the warehouse at which the goods are stored upon arrival, and the date of arrival of the goods in the warehouse;

d the value, description and quantity of the goods that arrived in the warehouse;

e the VAT identification number of the taxable person substituting for the person referred to in point (b) of this paragraph under the conditions referred to in Article 17a(6) of Directive 2006/112/EC;

f the taxable amount, description and quantity of the goods supplied and the date on which the supply of the goods referred to in point (a) of Article 17a(3)