Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises

COUNCIL DIRECTIVE (EU) 2020/285

of 18 February 2020

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2006/112/EC[(3)] allows Member States to continue to apply their special schemes to small enterprises in accordance with common provisions and with a view to closer harmonisation. However, those provisions are outdated and do not reduce the compliance burden of small enterprises, as they were designed for a common system of value added tax (VAT) based on taxation in the Member State of origin.

(2) In its action plan on VAT, the Commission announced a comprehensive simplification package for small enterprises which aims to reduce their administrative burden and helps create a fiscal environment to facilitate their growth and the development of cross# border trade. The simplification package entails a review of the special scheme for small enterprises as outlined in the Communication on the follow#up to the action plan on VAT. The review of the special scheme for small enterprises therefore constitutes an important element of the reform package set out in the action plan on VAT.

(3) In order to address the issue of the disproportionate compliance burden faced by exempt small enterprises, certain simplification measures should also be available to them.

(4) The special scheme for small enterprises currently only allows for an exemption to be granted to enterprises established in the Member State in which the VAT is due. This has

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a negative impact on competition in the internal market for enterprises not established in that Member State. To address this and to avoid further distortions, small enterprises established in Member States other than that in which the VAT is due should also be allowed to benefit from the exemption.

(5) Where a taxable person is subject to the regular VAT regime in its Member State of establishment, but avails itself of the VAT exemption for small enterprises in another Member State, the input tax deduction should reflect a connection to taxed supplies of the taxable person. Therefore, where such taxable persons procure inputs in their Member State of establishment which are connected to exempt supplies in other Member States, no input VAT deduction should be possible.

(6) Small enterprises may only benefit from the exemption where their annual turnover is below the threshold applied by the Member State in which the VAT is due. In setting their threshold, Member States should abide by the rules on thresholds laid down by Directive 2006/112/EC. Those rules, most of which were put in place in 1977, are no longer suitable.

(7) For the purposes of simplification, a number of Member States have been authorised to apply a threshold higher than that authorised under Directive 2006/112/EC on a temporary basis. As it is not appropriate to continue modifying general rules using measures granted by way of derogation, the rules on thresholds should be updated.

(8) Member States should be able to set their national threshold for the exemption at the level that best suits their economic and political conditions, subject to the upper threshold provided for under this Directive. In this regard, it should be clarified that where Member States apply varying thresholds for different business sectors, this would need to be based on objective criteria. Where a taxable person is eligible to benefit from more than one sectoral threshold, Member States should ensure that the taxable person can only use one of those thresholds. They should also ensure that their thresholds do not differentiate between established and non#established taxable persons.

(9) The annual turnover threshold, which is the basis for the exemption put in place by the special scheme laid down in this Directive, consists only of the combined value of the supplies of goods and services made by a small enterprise in the Member State where the exemption is granted. Distortions of competition could arise where an enterprise, not established in that Member State, could benefit from such an exemption regardless of the turnover it generates in other Member States. In order to mitigate such distortions of competition and as a tax revenue safeguard, only those enterprises whose Union annual turnover is below a certain threshold should be eligible for exemption in a Member State where they are not established. Enterprises whose turnover in the Member State in which they are established is below the national threshold should be able to continue to make exempt supplies in that Member State irrespective of the turnover they generate in other Member States, even if their overall turnover exceeds the Union threshold.

(10) In order to allow an effective control of the application of the exemption and to ensure that Member States have access to the necessary information, taxable persons who want to avail themselves of the exemption in a Member State in which they are not established should be required to give prior notification to the Member State in which they are

established. For the reasons of simplification and reduction of compliance costs, such taxable persons should be identified by an individual number in the Member State of establishment only. It is possible, but not necessary, for that number to be the individual VAT identification number.

(11) In order to ensure the proper functioning and monitoring of the exemption as well as the timely transmission of information, the reporting obligations of taxable persons who avail themselves of the exemption in a Member State in which they are not established, should be clearly set out. This should enable compliant taxable persons to be released from such obligations and from the registration obligation in Member States other than the Member State of establishment. However, Member States should be able to require that, where such non#established taxable persons do not comply with the reporting obligations set out specifically for them, they must meet the general VAT registration and reporting obligations as set out in national VAT laws.

(12) In order to avoid inconsistencies in the calculation of the Member State annual turnover serving as a reference for the application of the exemption, and of the Union annual turnover, the elements of the turnover to be taken into account should be specified.

(13) In order to prevent circumvention of the rules regarding the exemption for small enterprises and to preserve the purpose of that exemption, a taxable person, whether or not established in the Member State granting the exemption, should not be able to benefit from the exemption where the national threshold laid down therein was exceeded in the preceding calendar year. For the same reasons, a taxable person not established in the Member State granting the exemption should not be able to benefit from the exemption where the Union annual turnover threshold was exceeded in the preceding calendar year.

(14) In order to ensure a gradual transition of small enterprises from the exemption to taxation, taxable persons should be allowed to continue to benefit from the exemption for small enterprises for a limited period of time where their turnover does not exceed the national exemption threshold by more than a set percentage of that threshold. As the level of thresholds applied can differ from Member State to Member State, Member States should be able to choose to apply one of the two proposed percentages as long as the application of the percentage does not result in exempt taxable person's turnover exceeding a certain fixed amount. Where, during a calendar year, the Union annual turnover threshold is exceeded, it is necessary, in view of the threshold's function as a revenue safeguard, for the exemption to cease to apply as of that time.

(15) Where an exemption applies, small enterprises availing themselves of the exemption in the Member State of establishment should, at a minimum, have access to a VAT registration procedure within a given time frame. It should be possible for Member States to extend that time frame in specific cases where in#depth checks are required to prevent tax evasion or avoidance.

(16) Small enterprises availing themselves of the exemption in the Member State of establishment should, at a minimum, have access to simplified reporting obligations.

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(17) In addition to granting an exemption from VAT, the special schemes also allow for graduated tax relief. Graduated tax relief is a source of complexity and contributes little to reducing the compliance burden of small enterprises. This measure should therefore be removed.

(18) Member States should be able to give taxable persons the right to choose between the general VAT regime and the special scheme for small enterprises. If the taxable person exercises that right, it is appropriate to leave it for Member States to lay down the detailed rules and conditions for exercising that choice.

(19) This Directive should not entail new registration or reporting obligations for small enterprises that avail themselves of the exemption only in the Member State of establishment.

(20) Since the objective of this Directive, namely to reduce the compliance burden of small enterprises, cannot be sufficiently achieved by the Member States, but can rather 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 the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(21) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[(4)], 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.

(22) In order to ensure that the simplification measures set out in Directive 2006/112/EC as regards the special scheme for small enterprises can be monitored properly, it is necessary to amend Council Regulation (EU) No 904/2010[(5)] so that the relevant competent authorities of the Member States have automated access to the data collected from taxable persons benefiting from the VAT exemption for small enterprises.

(23) In order to provide small enterprises an easy access to the provisions concerning the special scheme for small enterprises in each Member State, those provisions should be published on the website of the Commission.

(24) The Committee of the Regions delivered an opinion on 10 October 2018[(6)].

(25) Directive 2006/112/EC and Regulation (EU) No 904/2010 should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/112/EC

Directive 2006/112/EC is amended as follows:

(1) in point (b) of Article 2(1), point (i) is replaced by the following:

(i) a taxable person acting as such, or a non#taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Article 284 and who is not covered by Article 33 or 36;;

(2) Article 139 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

The exemption provided for in Article 138(1) shall not apply to the supply of goods carried out by taxable persons who, within the Member State in which the supply is carried out, are covered by the exemption for small enterprises provided for in Article 284.;

(b) paragraph 2 is replaced by the following:

2. The exemption provided for in point (b) of Article 138(2) shall not apply to the supply of products subject to excise duty by taxable persons who, within the Member State in which the supply is carried out, are covered by the exemption for small enterprises provided for in Article 284.;

(3) Article 167a is amended as follows:

(a) the second paragraph is replaced by the following:

Member States which apply the optional scheme referred to in the first paragraph shall set a threshold for taxable persons using that scheme within their territory, based on the annual turnover of the taxable person calculated in accordance with Article 288. That threshold may not be higher than EUR 2 000 000 or the equivalent in national currency.;

(b) the third paragraph is deleted;

(4) in Article 169, point (a) is replaced by the following:

(a) transactions other than those exempt under Article 284 relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;;

(5) in Article 220a(1), the following point is added:

(c) where the taxable person is benefitting from the exemption for small enterprises provided for in Article 284.;

(6) in Article 270, point (a) is replaced by the following: