Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods

COUNCIL DIRECTIVE (EU) 2019/1995

of 21 November 2019

amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies 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 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)] as amended by Council Directive (EU) 2017/2455[(4)] provides that where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or other similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 or the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied the goods himself. As that Directive splits a single supply into two supplies, it is necessary to determine to which of those supplies the dispatch or transport of the goods should be ascribed in order to properly determine their place of supply. It is also necessary to ensure that the chargeable event of those two supplies occurs at the same time.

(2) Since a taxable person who facilitates through the use of an electronic interface the supply of goods to a non-taxable person in the Community may deduct, in accordance with existing rules, the value added tax (VAT) paid to suppliers not established in the Community, there is a risk that the latter might not pay the VAT to the tax authorities. To avoid that risk, the supply from the supplier selling goods through the use of an electronic interface should be exempt from VAT, while that supplier should be granted the right to deduct the input VAT which he paid in respect of the purchase or import of the goods supplied. For that purpose, the supplier should always be registered in the Member State where he acquired or imported those goods.

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

(3) Furthermore, suppliers who are not established in the Community, who make use of an electronic interface to sell goods, might hold stock in several Member States and might, in addition to intra-Community distance sales of goods, supply goods from that stock to customers in the same Member State. Currently, such supplies are not covered by the 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. In order to reduce the administrative burden, those taxable persons who facilitate the supply of goods to non-taxable persons in the Community through the use of an electronic interface, who are deemed to have received and supplied the goods themselves, should also be allowed to use this special scheme to declare and pay VAT for those domestic supplies.

(4) To ensure consistency in terms of the payment of VAT and import duty upon the importation of goods, the time period for the payment of import VAT to customs where the special arrangements for the declaration and payment of import VAT are used should be aligned to that laid down in respect of customs duty in Article 111 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(5)].

(5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[(6)], 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.

(6) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

(1) in Section 2 of Chapter 1 of Title V, the following Article is added:

Article 36b

Where a taxable person is deemed to have received and supplied goods in accordance with Article 14a, the dispatch or transport of the goods shall be ascribed to the supply made by that taxable person.;

(2) Article 66a is replaced by the following:

Article 66a

By way of derogation from Articles 63, 64 and 65, the chargeable event of the supply of goods by a taxable person who is deemed to have received and supplied the goods in accordance with Article 14a and of the supply of goods to that taxable person shall occur and VAT shall become chargeable at the time when the payment has been accepted.;

(3) the following Article is inserted:

Article 136a

Where a taxable person is deemed to have received and supplied goods in accordance with Article 14a(2), Member States shall exempt the supply of those goods to that taxable person.;

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

(b) transactions which are exempt pursuant to Articles 136a, 138, 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, Article 157(1)(b), Articles 158 to 161 or Article 164;;

(5) in Article 204(1), the third subparagraph is replaced by the following:

However, Member States may not apply the option referred to in the second subparagraph to a taxable person within the meaning of point (1) of Article 358a who has opted for the special scheme for services supplied by taxable persons not established within the Community.;

(6) in Article 272(1), point (b) is replaced by the following:

(b) taxable persons carrying out none of the transactions referred to in Articles 20, 21, 22, 33, 36, 136a, 138 and 141;;

(7) the heading of Chapter 6 of Title XII is replaced by the following:

Special schemes for taxable persons supplying services to non-taxable persons or making distance sales of goods or certain domestic supplies of goods;

(8) 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, for supplies of goods within a Member State made by electronic interfaces facilitating those supplies and for services supplied by taxable persons established within the Community but not in the Member State of consumption;

(9) Article 369a is replaced by the following:

Article 369a

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

(1) "taxable person not established in the Member State of consumption" means a taxable person who has established his business in the Community or has a fixed establishment there but who has not established his business and has no fixed establishment within the territory of the Member State of consumption;

(2) "Member State of identification" means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by that decision for the calendar year concerned and the two calendar years following.