Council Directive (EU) 2018/2057 of 20 December 2018 amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold

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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 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) In its communication of 7 April 2016 on an action plan on VAT, the Commission announced its intentions to come forward with a proposal for a definitive value added tax (VAT) regime for cross-border business-to-business trade between Member States on the basis of the taxation of cross-border supplies of goods and services.

(2) In light of the current level of VAT fraud and the fact that not all Member States are equally affected by such fraud, and given that it will take several years for the definitive VAT regime to be implemented, some urgent and specific measures may be necessary.

(3) In this context, certain Member States have asked to be allowed to implement a temporary generalised reverse charge mechanism ('GRCM') with a certain threshold per transaction which would derogate from one of the general principles of the current VAT system, as regards the fractionated payment system, in order to address endemic carousel fraud. Carousel fraud finds notably its roots in the current exemption for intra-Community supplies that allows for goods to be obtained VAT-free. A number of traders subsequently engage in tax fraud by not paying to the tax authorities the VAT received from their customers. Those customers, however, being in receipt of valid invoices, remain entitled to a tax deduction. The same goods can be supplied several times over by including again exempt intra-Community supplies. Similar carousel fraud can also occur when services are supplied. By designating the taxable person to whom the goods

or services are supplied as the person liable for payment of VAT, the derogation would remove the opportunity to engage in that form of tax fraud.

(4) Member States showing differences in development of the capacities of their tax authorities sustain a special effort, in terms of addressing higher levels of VAT fraud and revenue losses, in the implementation of the VAT regime, as referred to in the first paragraph of Article 27 of the Treaty on the Functioning of the European Union.

(5) In order to limit the risk of fraud shifting between Member States, Member States that fulfil certain criteria as regards their fraud level, in particular in relation to carousel fraud, and that are able to establish that other control measures are not sufficient to combat that fraud, should be allowed to use the GRCM. In addition, they should establish that estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the estimated overall additional burden on businesses and tax authorities and that businesses and tax authorities will not incur costs that are higher than those incurred as a result of the application of other control measures.

(6) If Member States choose to apply the GRCM, they should apply it to all non-cross-border supplies of goods and services above a defined threshold per transaction. The application of the GRCM should not be restricted to any specific sector.

(7) Member States choosing to apply the GRCM should introduce specific electronic reporting obligations on taxable persons so as to ensure the effective functioning and monitoring of the application of the GRCM. They should detect and prevent all new forms of tax fraud, such as artificial splitting of the taxable amount of transactions.

(8) In order to be able to assess whether the introduction of the GRCM in one Member State results in fraud shifting towards other Member States and to be able to assess the degree of possible disturbance to the functioning of the internal market, it is appropriate to provide for a specific obligation to exchange information between the Member States that apply the GRCM and those that do not. All exchanges of information are subject to the applicable provisions on the protection of personal data and confidentiality, which include exemptions and restrictions for safeguarding the interests of the Member States or of the Union in the area of taxation.

(9) In order to assess the effect of the application of the GRCM on fraudulent activities in a transparent manner, predefined evaluation criteria should be established by those Member States, to enable an assessment of the level of fraud before and after the application of the GRCM.

(10) The decisions authorising the application of the GRCM would have a budgetary impact which could be significant for one or more Member States. Accordingly, the power to authorise the application of the GRCM should be conferred on the Council.

(11) A Member State choosing to apply the GRCM should request the Commission to propose the application of the GRCM and provide relevant information to enable the Commission to assess such request. Where necessary, the Commission should be able to request additional information.

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(12) Given the unexpected effects that the application of the GRCM might have on the functioning of the internal market because of a possible shift in fraud to other Member States that do not apply the GRCM, the Council should be able, as a safeguard measure, to repeal all implementing decisions authorising the application of the GRCM. In view of the need to react quickly in a situation where a considerable negative impact on the internal market has been established, reversed unanimity voting should be used.

(13) In view of the uncertain effects that the GRCM might have, the application thereof should be limited in time.

(14) To closely monitor the impact on the internal market, all Member States should, where the GRCM is used in at least one Member State, present reports to the Commission so as to enable an assessment of the impact on fraud, the compliance costs for businesses and a shift in fraudulent activities due to the application of the GRCM.

(15) Council Directive 2006/112/EC[(3)] should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Directive 2006/112/EC, the following Article is inserted:

Article 199c

1 By way of derogation from Article 193, a Member State may, until 30 June 2022, introduce a generalised reverse charge mechanism (‘GRCM’) on non-cross-border supplies, providing that the person liable for payment of VAT is the taxable person to whom all supplies of goods and services are made above a threshold of EUR 17 500 per transaction.

A Member State wishing to introduce the GRCM shall comply with all of the following conditions:

a it had in 2014, in accordance with the method and figures set out in the 2016 final report dated 23 August 2016 on the VAT gap published by the Commission, a VAT gap, expressed as a percentage of the VAT total tax liability, of at least 5 percentage points above the Community median VAT gap;

b it has, based on the impact assessment that accompanied the legislative proposal for this Article, a carousel fraud level within its total VAT gap of more than 25 %;

c it establishes that other control measures are not sufficient to combat carousel fraud on its territory, in particular by specifying the control measures applied and the particular reasons for their lack of effectiveness, as well as the reasons why administrative cooperation in the field of VAT has proven insufficient;

d it establishes that the estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the expected overall additional burden on businesses and tax authorities by at least 25 %; and

e it establishes that the introduction of the GRCM will not result in businesses and tax authorities incurring costs that are higher than those incurred as a result of the application of other control measures.

The Member State shall attach to the request referred to in paragraph 3 the calculation of the VAT gap according to the method and figures available in the report on the VAT gap published by the Commission, as referred to in point (a) of the second subparagraph of this paragraph.