# Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States

## COUNCIL DIRECTIVE (EU) 2018/1910

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## amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States

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 1967, when the Council adopted the common system of value added tax (VAT) by means of First Council Directive 67/227/EEC[(3)] and Second Council Directive 67/228/EEC[(4)], the commitment was made to establish a definitive VAT system operating within the European Community in the same way as it would within a single Member State. Since the political and technical conditions were not ripe for such a system when the fiscal frontiers between Member States were abolished by the end of 1992, transitional VAT arrangements were adopted. Council Directive 2006/112/EC[(5)] provides that those transitional arrangements have to be replaced by definitive arrangements.

(2) In accordance with its communication of 7 April 2016 on an action plan on VAT, the Commission put forward a proposal setting out the elements for a definitive VAT system for cross-border business-to-business (B2B) trade between Member States that would be based on the principle of taxation of cross-border supplies of goods in the Member State of destination.

(3) The Council, in its conclusions of 8 November 2016, invited the Commission to make certain improvements to the Union VAT rules for cross-border transactions with regard to the role of the VAT identification number in the context of the exemption for intra-Community supplies, call-off stock arrangements, chain transactions and the proof of transport for the purposes of the exemption for intra-Community transactions.

(4) In light of the request made by the Council and that it will take several years for the definitive VAT system for intra-Community trade to be implemented, these specific measures, intended to harmonise and simplify certain arrangements for businesses, are appropriate.

(5) Call-off stock refers to the situation where, at the time of the transport of goods to another Member State, the supplier already knows the identity of the person acquiring the goods, to whom these goods will be supplied at a later stage and after they have arrived in the Member State of destination. This currently gives rise to a deemed supply (in the Member State of departure of the goods) and a deemed intra-Community acquisition (in the Member State of arrival of the goods), followed by a 'domestic' supply in the Member State of arrival, and requires the supplier to be identified for VAT purposes in that Member State. To avoid this, such transactions, where they take place between two taxable persons should be, under certain conditions, considered to give rise to one exempt supply in the Member State of departure and one intra-Community acquisition in the Member State of arrival.

(6) Chain transactions refer to successive supplies of goods which are subject to a single intra-Community transport. The intra-Community movement of the goods should only be ascribed to one of the supplies, and only that supply should benefit from the VAT exemption provided for the intra-Community supplies. The other supplies in the chain should be taxed and could require the VAT identification of the supplier in the Member State of supply. In order to avoid different approaches amongst Member States, which may lead to double taxation or non-taxation, and in order to enhance legal certainty for operators, a common rule should be established that, provided certain conditions are met, the transport of the goods should be attributed to one supply within the chain of transactions.

(7) As regards the VAT identification number in relation to the exemption for the supply of goods in the intra-Community trade, it is proposed that the inclusion of the VAT identification number of the person acquiring the goods in the VAT Information Exchange System (VIES), assigned by a Member State other than that in which the transport of the goods begins, become, in addition to the condition of transport of the goods outside the Member State of supply, a substantive condition for the application of exemption rather than a formal requirement. Furthermore, the VIES listing is essential for informing the Member State of arrival of the presence of goods in its territory and is therefore a key element in the fight against fraud in the Union. For that reason, Member States should ensure that, where the supplier does not comply with his VIES listing obligations, the exemption should not apply except where the supplier is acting in good faith, that is to say, where he can duly justify before the competent tax authorities any of his shortcomings relating to the recapitulative statement, which could also include at that time the provision by the supplier of the correct information as required under Article 264 of Directive 2006/112/EC.

(8) Since the objective of this Directive, namely the improved operation of VAT arrangements in the context of cross-border B2B trade, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effect, be better achieved

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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 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.

(9) 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.

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

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2006/112/EC is amended as follows:

(1) the following Article is inserted:

*Article 17a*

1 The transfer by a taxable person of goods forming part of his business assets to another Member State under call-off stock arrangements shall not be treated as a supply of goods for consideration.

2 For the purposes of this Article, call-off stock arrangements shall be deemed to exist where the following conditions are met:

a goods are dispatched or transported by a taxable person, or by a third party on his behalf, to another Member State with a view to those goods being supplied there, at a later stage and after arrival, to another taxable person who is entitled to take ownership of those goods in accordance with an existing agreement between both taxable persons;

b the taxable person dispatching or transporting the goods has not established his business nor has a fixed establishment in the Member State to which the goods are dispatched or transported;

c the taxable person to whom the goods are intended to be supplied is identified for VAT purposes in the Member State to which the goods are dispatched or transported and both his identity and the VAT identification number assigned to him by that Member State are known to the taxable person referred to in point (b) at the time when the dispatch or transport begins;

d the taxable person dispatching or transporting the goods records the transfer of the goods in the register provided for in Article 243(3) and includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to him by the Member State to which the goods are dispatched or transported in the recapitulative statement provided for in Article 262(2).

3 Where the conditions laid down in paragraph 2 are met, the following rules shall apply at the time of the transfer of the right to dispose of the goods as owner to