

COUNCIL DIRECTIVE 2013/43/EU

of 22 July 2013

amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud

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,

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⁾ specifies that value added tax (VAT) shall be payable by any taxable person carrying out transactions involving the taxable supply of goods or services. For cross-border transactions and for certain domestic high risk sectors, however, it provides for a shift of the obligation to pay VAT to the person to whom the supply is made (the reverse charge mechanism).
- (2) Given the seriousness of VAT fraud, Member States should be allowed to apply, on a temporary basis, a mechanism whereby the obligation to pay VAT with regard to supplies of certain categories of goods and services shifts onto the person to whom the taxable supply of goods or services is made, including where those categories are neither listed in Article 199 of Directive 2006/112/EC nor subject to specific derogations granted to Member States.
- (3) To that end, the Commission came forward with a proposal in 2009, listing a number of goods and services to which, for a limited period, the reverse charge mechanism could be applied. The Council opted for splitting the proposal and adopted Council Directive 2010/23/EU ⁽⁴⁾, which was however limited

to greenhouse gas emission allowances only, given that the fraud situation in that sector required an immediate reaction. At the same time, the Council took the political commitment to continue negotiations on the remaining part of the Commission proposal.

- (4) Since then, fraud has occurred in other sectors and, therefore, new goods and services should be added to the remaining part of the Commission proposal as regards the pre-defined list of goods and services to which the reverse charge could apply. In particular, fraud has occurred in relation to supplies of gas and electricity, telecommunication services, game consoles, tablet PC's and laptops, cereals, industrial crops including oil seeds and sugar beets, and raw and semi-finished metals including precious metals.
- (5) The introduction of the reverse charge mechanism targeting those goods and services, which according to recent experience are particularly susceptible to fraud, as opposed to its general application, should not adversely affect the fundamental principles of the VAT system, such as fractionated payments.
- (6) The pre-defined list, from which Member States may choose, should be restricted to supplies of goods and services which, according to recent experience, are particularly susceptible to fraud.
- (7) In applying the reverse charge mechanism, Member States have the discretion to lay down the conditions for the application of the mechanism including the setting of thresholds, the categories of suppliers or recipients to whom this mechanism may apply and the partial application of the mechanism within categories.
- (8) Since a reverse charge mechanism is a temporary measure pending longer term legislative solutions with a view to making the VAT system more resilient to instances of VAT fraud, the reverse charge mechanism set out under Article 199a of Directive 2006/112/EC ought to apply only for a limited period of time.
- (9) In order to ensure that the reverse charge mechanism can be applied for a sufficiently long time so as to be effective and to allow for a subsequent evaluation, it is necessary that the current time-limit of 30 June 2015 is extended. In the same way, the date for the evaluation period and the end date for the period, during which a shift in fraudulent activities has to be reported, should be postponed.

⁽¹⁾ OJ C 341E, 16.12.2010, p. 81.

⁽²⁾ OJ C 339, 14.12.2010, p. 41.

⁽³⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽⁴⁾ Council Directive 2010/23/EU of 16 March 2010 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain services susceptible to fraud (OJ L 72, 20.3.2010, p. 1)

- (10) In order to provide all Member States with the option of applying the reverse charge mechanism as set out above, a specific amendment to Directive 2006/112/EC is necessary.
- (11) Since the objective of the proposed action, namely to address VAT fraud through temporary measures which derogate from existing Union rules, cannot be sufficiently achieved by the Member States and can therefore, 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 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.
- (12) 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 Article 193 the reference to "Articles 194 to 199" is replaced by the reference to "Articles 194 to 199b";
- (2) Article 199a is amended as follows:
- (a) in paragraph 1, the first sentence is replaced by the following:
- "Member States may, until 31 December 2018 and for a minimum period of two years, provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:";
- (b) in paragraph 1, the following points are added:
- "(c) supplies of mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies, whether or not they have any other use;
- (d) supplies of integrated circuit devices such as micro-processors and central processing units in a state prior to integration into end user products;
- (e) supplies of gas and electricity to a taxable dealer as defined in Article 38(2);
- (f) supplies of gas and electricity certificates;
- (g) supplies of telecommunication services as defined in Article 24(2);
- (h) supplies of game consoles, tablet PC's and laptops;
- (i) supplies of cereals and industrial crops including oil seeds and sugar beet, that are not normally used in the unaltered state for final consumption;
- (j) supplies of raw and semi-finished metals, including precious metals, where they are not otherwise covered by point (d) of Article 199(1), the special arrangements for second-hand goods, works of art, collector's items and antiques pursuant to Articles 311 to 343 or the special scheme for investment gold pursuant to Articles 344 to 356.";
- (c) the following paragraphs are inserted:
- "1a. Member States may lay down the conditions for the application of the mechanism provided for in paragraph 1.
- 1b. The application of the mechanism provided for in paragraph 1 to the supply of any of the goods or services listed in points (c) to (j) of that paragraph is subject to the introduction of appropriate and effective reporting obligations on taxable persons who supply the goods or services to which the mechanism provided for in paragraph 1 applies.";
- (d) paragraph 2 is replaced by the following:
- "2. Member States shall inform the VAT Committee of the application of the mechanism provided for in paragraph 1 on the introduction of any such mechanism and shall provide the following information to the VAT Committee:
- (a) the scope of the measure applying the mechanism together with the type and the features of the fraud, and a detailed description of accompanying measures, including any reporting obligations on taxable persons and any control measures;
- (b) actions taken to inform the relevant taxable persons of the introduction of the application of the mechanism;
- (c) evaluation criteria to enable comparison between fraudulent activities in relation to the goods and services listed in paragraph 1 before and after the application of the mechanism, fraudulent activities in relation to other goods and services before and after the application of the mechanism, and any increase in other types of fraudulent activities before and after the application of the mechanism;
- (d) the date of commencement and the period to be covered by the measure applying the mechanism.";

- (e) in the first subparagraph of paragraph 3, the first sentence is replaced by the following:

"Member States applying the mechanism provided for in paragraph 1 shall, on the basis of the evaluation criteria provided for under point (c) of paragraph 2, submit a report to the Commission no later than 30 June 2017.";

- (f) in the second subparagraph of paragraph 3, point (a) is replaced by the following:

"(a) the impact on fraudulent activities in relation to supplies of goods or services covered by the measure;"

- (g) paragraph 4 is replaced by the following:

"4. Each Member State that has detected a shift in trends of fraudulent activities in its territory in relation to the goods or services listed in paragraph 1 from the date of entry into force of this Article with respect to such goods or services, shall submit a report to the Commission in that respect no later than 30 June 2017.

5. Before 1 January 2018, the Commission shall present to the European Parliament and to the Council an overall assessment report on the effects of the mechanism provided for in paragraph 1 on combatting fraud."

Article 2

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 3

The Directive shall apply until 31 December 2018.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 July 2013.

For the Council
The President
C. ASHTON