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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) **BACKGROUND**

- **Grounds for and objectives of the proposal**

The system for the exchange of information on intra-Community supplies of goods established under the transitional VAT arrangements adopted when the single market was introduced is no longer sufficient to combat effectively tax evasion connected with intra-Community transactions. The Council, in its conclusions of 5 June 2007, therefore asked the Commission to submit a proposal aimed at reducing to one month both the reference period for the collection of information on intra-Community transactions and the maximum period for the transmission of that information between Member States.

- **General context**

Tax evasion represents a very considerable loss of revenue for the Member States and distorts the operation of the internal market. This form of fraud is often organised transnationally. In May 2006 the Commission therefore adopted a communication concerning the need to develop a coordinated strategy to combat tax evasion more effectively. With regard to VAT evasion, and in particular intra-Community carousel fraud, the communication sets out conventional measures aimed at strengthening the VAT system without altering its principles and more ambitious measures affecting the very principles of VAT collection.

Subsequent discussions within the Council showed that the more ambitious measures could not be implemented in the short term. The Council therefore asked the Commission, *inter alia* in its conclusions of 5 June 2007, to introduce a number of conventional measures after they had been discussed in the Anti-Tax Fraud Strategy (ATFS) expert group. The measures to be taken to strengthen the intra-Community VAT system are numerous and complementary. Of the measures discussed by the ATFS expert group, the Council highlighted four to be implemented as soon as possible, some of which require amendments to existing legislation.

This proposal concerns two of those measures, namely the reduction to one month of both the frequency of recapitulative statements of intra-Community transactions and the deadline for the exchange of information between tax administrations.

In its conclusions of 4 December the Council called on the Commission to continue discussions in the expert group on the other conventional measures; these discussions might therefore lead to other legislative proposals.

It should be noted that the European Court of Auditors, in its Special Report No 8/2007 concerning administrative cooperation in the field of value added tax, made a number of recommendations in respect of the exchange of information on intra-Community transactions. In paragraph 108 of the report, it recommended, on the one hand, radically shortening the deadlines for collecting and transmitting data and, on the other, enhancing the possibilities for cross-checks.

- **Existing provisions in the area of the proposal**

The proposed measure is aimed solely at speeding up the collection and exchange of information on intra-Community transactions. The provisions in force are set out in Chapters 5 and 6 of Title XI of Council Directive 2006/112/EC of 28 November 2006 and in Chapter V of Regulation (EC) No 1798/2003 of 7 October 2003. Under the current provisions, data are collected from businesses with the following frequency: the recapitulative statements containing information on intra-Community supplies of goods are submitted by traders quarterly, in some cases monthly. From 1 January 2010 the recapitulative statements will also include information on supplies of services in the Member State of the customer for which the customer is liable for payment of VAT. Information on intra-Community acquisitions of goods in the Member State of arrival is collected by means of VAT returns, which are submitted on a monthly, two-monthly, quarterly, six-monthly or annual basis.

At present, the interval between the time at which a transaction takes place and the time at which the information is made available to the Member State of the purchaser ranges from three to six months. The proposal would reduce this interval to one or two months.

Directive 2006/112/EC already gives Member States the option of collecting recapitulative statements on a monthly basis. Since, however, this option does not directly benefit the Member State collecting the information, only four Member States collect monthly statements from a significant number of taxable persons.

- **Consistency with the other policies and objectives of the Union**

Combating tax evasion is part of the Lisbon Strategy. In its communication of 25 October 2005 on the contribution of taxation and customs policies to the Lisbon strategy, the Commission stressed that tax fraud creates a significant distortion in the functioning of the internal market, prevents fair competition and erodes revenue that should be used to fund public services at national level. Increased levels of fraud result in an increasing tax burden on businesses that comply with tax rules as governments are forced to make up the resulting shortfall in revenue.

The proposal also contains a significant simplification for businesses by obliging the Member States to allow recapitulative statements and VAT returns to be submitted by electronic file transfer.

2) **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The measure was one of a series of conventional measures discussed at the conference on tackling VAT fraud organised by the Commission in Brussels on 29 March 2007. This event was attended by representatives of large companies, trade associations, tax professionals and representatives of the Member States.

The measure was discussed with a number of large companies operating in most Member States and subject to a great diversity of compliance obligations across these different jurisdictions.

The measure was presented to organisations representing SMEs at the meeting held by the EU's SME Envoy in Brussels on 28 November 2007.

It has also been examined with the Member States in the Anti-Tax Fraud Strategy (ATFS) expert group.

Summary of responses and how they have been taken into account

Although they had doubts about the tax administrations' capacity to make use of the information submitted, most of the businesses consulted acknowledge that the switch to monthly statements is no great burden for them. Accordingly, most of them are prepared to accept the measure if it is part of a comprehensive strategy of enhancing the efficiency of the tax administrations that would include advantages and cost reductions for businesses that comply with their tax obligations in a proper and satisfactory manner. The SME representatives confirmed that the measure would not affect the great majority of SMEs.

The measure is part of a series of measures some of which are expressly aimed at offering businesses greater legal certainty and reducing their administrative burden as well as significantly improving the exchange of information and cooperation between tax administrations.

- **Collection and use of expertise**

Scientific areas and areas of expertise concerned

Economic assessment of the costs for businesses, including SMEs.

Methodology used

Standard cost method.

Main organisations/experts consulted

Price Waterhouse Coopers carried out a study for the Commission by sending a questionnaire to fourteen businesses (seven multinationals and seven SMEs) based in four different Member States.

Summary of opinions received and used

There was no mention of potentially serious risks with irreversible consequences.

The finding of the economic assessment is that the measure's cost will be very small for the great majority of businesses concerned. However, in some cases, for instance that of businesses registered for VAT in many Member States, the cost can be significant. The study also shows that this cost can be reduced by harmonising the information to be submitted and simplifying the way in which it is submitted. The study also shows that, where the planned cost is significant for SMEs, the arrangements for submitting information are a major factor in the calculation of this cost.

Means used to make the expert advice publicly available

Publication on the Internet site of the Directorate-General for Taxation and Customs Union.

- **Impact assessment**

The planned measure has not been subjected to a complete impact assessment. However, it has been discussed in detail by the ATFS expert group, subjected to an economic assessment and discussed with the main stakeholders.

The experts emphasised how important it was for the tax administrations to obtain information on intra-Community trade faster if they were to be able to combat VAT evasion more effectively.

The planned measure is balanced since it enables information to be made available three months sooner on average while imposing a minimal burden on businesses. The measure concerns a limited number of businesses (4% of businesses registered for VAT in the Community), and the study has shown that the additional cost for businesses will be very small, save where the procedures for submitting recapitulative statements are unusually complicated. The proposal contains a provision expressly aimed at simplifying these procedures.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal is aimed primarily at harmonising and reducing to one month the period for declaring intra-Community transactions in the recapitulative statements referred to in Title XI, Chapter 6, of Council Directive 2006/112/EC.

The proposal is also aimed at reducing from three months to one month the period for transmission of this information between Member States.

To obtain the information needed to combat tax evasion, it also proposed that information be collected monthly on intra-Community acquisitions of goods and purchases of services from a supplier established in another Member State for which the customer is liable for VAT. To do this, purchasers or customers carrying out such transactions for an amount higher than EUR 200 000 per calendar year will be obliged to submit their VAT returns monthly. This threshold has been calculated so as to avoid imposing further obligations on businesses making intra-Community acquisitions on an occasional basis or for small amounts while covering amounts significant for fraud. The proposal also provides for the amounts relating to the services concerned to be entered separately in the return for the cross-checking purposes.

The proposal contains provisions aimed at harmonising the rules for charging VAT on services in order to make sure that transactions are declared by the vendor and the purchaser during the same period. This provision will enable the information submitted to be cross-checked efficiently.

Lastly, the proposal includes a provision aimed at simplifying the procedures for submitting recapitulative statements in Member States where these procedures are unusually complex in order to reduce the burden that such submission can represent for

businesses.

- **Legal basis**

Article 93 of the EC Treaty

- **Subsidiarity principle**

The proposal falls under shared Community and Member State competence. It is, however, in accordance with the principle of subsidiarity since its objectives can be adequately achieved only by the adoption of a Community measure.

In this instance, Council Directive 2006/112/EC and Council Regulation (EC) No 1798/2003 already lay down common rules on the collection and exchange of information on intra-Community transactions. The Member States cannot adopt national legislation that is contrary to Community law. The harmonised provisions in force therefore have to be amended by an act adopted by the Community. Furthermore, measures taken at Community level enable tax evasion connected with intra-Community transactions to be combated more effectively.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

During the discussions concerning the strategy to be adopted to combat tax evasion connected with intra-Community transactions, a number of options were considered which radically altered the system of VAT collection and liability. It was agreed that these measures could not be introduced in the short term owing to the changes they would impose on traders. This is why the amendments to the VAT Directive are minor. The additional obligations are divided fairly between taxable persons and tax administrations.

The measure has been targeted so that it affects just a small number of businesses. Only 4% of businesses liable for VAT submit recapitulative statements and 9% engage in intra-Community acquisitions of goods. Thanks to the high threshold for acquisitions, the measure will affect only a small proportion of the latter. Moreover, 60% of the quarterly recapitulative statements lodged by businesses contain just one or two lines of information, so the additional burden for these businesses, which include the majority of SMEs, will be minimal. The measure does not change the form or content of the recapitulative statements either; it simply changes the frequency. In the matter of VAT returns, only one obligation is added: a reporting obligation already applicable to goods is extended to services.

- **Choice of instruments**

Proposed instrument(s): Regulation, Directive.

Other instruments would not have been appropriate for the following reasons.

The Regulation and the Directive are the only means of amending the rules in force.

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

5) **ADDITIONAL INFORMATION**

- **Simplification**

The proposal introduces simplified administrative procedures applicable to entities and private individuals.

The economic assessment carried out showed that lodging recapitulative statements was particularly burdensome for businesses when the procedure involved manually entering data on an electronic form.

By obliging the Member States to accept recapitulative statements by electronic file transfer, the proposal in certain cases relieves taxable persons of complex data-entry obligations.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **Detailed explanation of the proposal by chapter or by article**

Measures contained in the Directive

The amendment of Articles 64 and 66 of the Directive and the introduction of an Article 65a are aimed at ensuring uniform rules for charging VAT in the Community so that service providers do not have to comply with charging rules that vary according to their customer's place of establishment in order to be able to declare these transactions. This amendment is crucial if the information in the recapitulative statements to be lodged by the service providers is to be cross-checked with the information in the VAT returns to be lodged by the customers for these services.

The amendment of Article 250(2) of the Directive is aimed at simplifying the procedures for lodging VAT returns.

The amendment of Article 251 of the Directive is aimed at ensuring that information on intra-Community acquisitions of services is collected in all Member States for cross-checking with the information in the recapitulative statements.

The amendment of Article 252 of the Directive is aimed at synchronising the frequency of information on acquisitions with that on sales. A threshold has, however, been introduced to target only amounts of significance in terms of fraud and to avoid imposing new obligations on a large number of taxable persons.

The amendment of Articles 263 to 265 of the Directive is aimed at ensuring the monthly collection of recapitulative statements.

The amendment of Article 263(2) of the Directive is aimed at simplifying the procedures for lodging recapitulative statements.

Measures contained in the Regulation

The amendment of Articles 23 and 24 of the Regulation is aimed at aligning it on the Directive.

The amendment of Article 25 of the Regulation is aimed at speeding up the exchange of information between the Member States.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

- (1) The evasion of value added tax (VAT) has a significant impact on the Member States' tax revenue and distorts economic activity in the single market by creating unjustified flows of goods and by placing goods on the market at abnormally low prices.
- (2) The shortcomings of the intra-Community VAT arrangements, and in particular the system for the exchange of information on supplies of goods within the Community, as laid down by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁴, are one of the causes of this tax evasion. In particular, the time that elapses between a transaction and the corresponding exchange of information under the VAT information exchange system is an obstacle to the effective use of that information to tackle fraud.
- (3) In order to combat VAT evasion effectively, it is necessary for the administration of the Member State in which the VAT is chargeable to receive information on the intra-Community transactions as soon as possible
- (4) In order for the cross-checking of information to be useful for combating fraud, intra-Community transactions should be declared for the same tax period by both the supplier and the purchaser or customer.

¹ OJ C [...], [...], p.[...].

² OJ C [...], [...], p.[...].

³ OJ C [...], [...], p.[...].

⁴ OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2008/8/EC (OJ L 44, 20.2.2008, p. 11).

- (5) To enable the tax administrations to make good use of the information collected, the information on intra-Community transactions for which the purchaser or customer is liable for VAT should be collected at the same frequency as information on supplies of goods and services.
- (6) In view of changes in the business environment and tools, businesses should be guaranteed the possibility of meeting their obligations with regard to declarations by simple electronic procedures in order to reduce the administrative burden to a minimum.
- (7) Since the objectives of the proposed action to tackle VAT evasion cannot be sufficiently achieved by the Member States, whose action in the matter depends on information collected by the other Member States, and can therefore, by reason of the need to involve all Member States, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.
- (8) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) Article 64(2) is replaced by the following:

"2. Supplies of services for which VAT is payable by the customer pursuant to Article 196, which are supplied continuously over a period of more than one year and which do not give rise to statements of account or payments during that period shall be regarded as being completed on expiry of each calendar year until such time as the supply of services comes to an end.

Member States may provide that, in certain cases other than those referred to in the previous paragraph, the continuous supply of goods or services over a period of time is to be regarded as being completed at least at intervals of one year."

- (2) The following Article 65a is inserted:

"Article 65a

In the case of supplies of services for which VAT is payable by the customer pursuant to Article 196, where an invoice is drawn up before the service is supplied or a payment made on account, VAT shall be chargeable on receipt of the invoice and on the amount invoiced."

- (3) In Article 66, the following second paragraph is added:

"The derogation provided for in the first paragraph shall not, however, apply to supplies of services in respect of which VAT is payable by the customer pursuant to Article 196."

(4) Article 250(2) is replaced by the following:

"2. The VAT return referred to in paragraph 1 shall be submitted by electronic file transfer.

Member States may, however, authorise VAT returns to be submitted by other means for certain categories of taxable person."

(5) In Article 251, the following point (f) is added:

"(f) the total value, exclusive of VAT, of acquisitions of services supplied by taxable persons established in the Community and in respect of which the taxable person is liable for payment of VAT by virtue of Article 196 and in respect of which VAT has become chargeable during this tax period."

(6) Article 252(2) is replaced by the following:

"2. The tax period shall be one month.

The Member States may, however, set a longer period, provided that it does not exceed one year, for taxable persons the total value of whose intra-Community acquisitions of goods and services during the previous calendar year for which they are liable for VAT by virtue of Article 196 does not exceed EUR 200 000 or its equivalent in national currency."

(7) Article 263 is replaced by the following:

"Article 263

1. The recapitulative statement shall be drawn up for each calendar month within a period not exceeding one month and in accordance with procedures to be determined by the Member States.

2. The recapitulative statements referred to in paragraph 1 shall be submitted by electronic file transfer.

Member States may, however, authorise recapitulative statements to be submitted by other means for certain categories of taxable person."

(8) Article 264(2) is replaced by the following:

"2. The value referred to in point (d) of paragraph 1 shall be declared for the calendar month during which VAT became chargeable.

The amounts referred to in point (f) of paragraph 1 shall be declared for the calendar month during which the person acquiring the goods was notified of the adjustment."

(9) Article 265(2) is replaced by the following:

"2. The value referred to in point (c) of paragraph 1 shall be declared for the calendar month during which VAT became chargeable."

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2010. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Parliament⁶,

Having regard to the opinion of the European Economic and Social Committee⁷,

Whereas:

- (1) To combat VAT evasion more effectively, it is imperative that the Member States collect and exchange information on intra-Community transactions as rapidly as possible. A period of one month is the most appropriate response to this need, taking account of businesses' accounting and financial periods.
- (2) In view of the amendments made by Council Directive 2008/XX/EC⁸ to the period for declaring intra-Community transactions in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁹, it is necessary to amend the references to that period in Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92¹⁰.
- (3) Since the objectives of the proposed action to tackle VAT evasion cannot be sufficiently achieved by the Member States, whose action in the matter depends on information collected by the other Member States, and can therefore, by reason of the need to involve all Member States, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality

⁵ OJ C [...], [...], p.[...].

⁶ OJ C [...], [...], p.[...].

⁷ OJ C [...], [...], p.[...].

⁸ OJ L XX, p. XX.

⁹ OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2008/8/EC (OJ L 44, 20.2.2008, p. 11).

¹⁰ OJ L 264, 15.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 143/2008 of 12 February 2008 (OJ L 44, 20.2.2008, p. 1).

enshrined in the same Article, this Regulation does not go beyond what is necessary to achieve its objective.

- (4) Since the amendments contained in this Regulation are necessary to adapt Regulation (EC) No 1798/2003 to the measures provided for in Directive 20XX/XX/EC, with which the Member States have to comply by 1 January 2010, this Regulation must enter into force on the same date.
- (5) Regulation (EC) No 1798/2003 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1798/2003 is amended as follows:

- (1) The second paragraph of Article 23 is replaced by the following:

"The values referred to in point 2 of the first paragraph shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters for periods prior to 1 January 2010 and to calendar months as from that date."

- (2) The second paragraph of Article 24 is replaced by the following:

"The values referred to in point 2 of the first paragraph shall be expressed in the currency of the Member State providing the information and shall relate to calendar quarters for periods prior to 1 January 2010 and to calendar months as from that date."

- (3) Article 25(1) and (2) are replaced by the following:

"1. Where the competent authority of a Member State is obliged to grant access to information under Articles 23 and 24, it shall do so as soon as possible and within one month at the latest of the end of the calendar month to which the information relates.

2. By way of derogation from paragraph 1, where information is added to a database in the circumstances provided for in Article 22, access to such additional information shall be granted as quickly as possible and no later than one month after the end of the calendar month in which it was collected."

Article 2

This Regulation shall enter into force on 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*