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2016/0372 (NLE)

Modernising VAT for cross-border B2C e-commerce

Proposal for a

COUNCIL IMPLEMENTING REGULATION

amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

{SWD(2016) 379}

{SWD(2016) 382}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal is part of the package of legislation on modernising VAT for cross-border B2C e-commerce. The context for the package is set out in detail in the explanatory memorandum for the proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods - COM(2016) 757. In preparing this package of proposals the Commission, as part of the Better Regulation agenda, carried out a regulatory fitness check of the existing Mini One Stop Shop (MOSS) which applies to B2C supplies of telecommunications, broadcasting and electronically supplied services as well as of the 2015 changes to the place of supply rules for such services. The regulatory fitness check identified that the requirement as part of the 2015 rules to use two pieces of evidence for the identification of the location of customers is particularly onerous for SMEs and micro-businesses.

The proposal to amend Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax¹ is designed to address this shortcoming with effect from 2018 by providing that a business with cross-border intra-Community sales of telecommunications, broadcasting and electronically supplied services up to EUR 100 000 will only need one piece of evidence.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 397 of Directive 2006/112/EC on the common system of value added tax² (the 'VAT Directive'). This article provides that the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement the VAT Directive.

• Subsidiarity (for non-exclusive competence)

The proposal is consistent with the principle of subsidiarity as the problem which has been identified (high administrative burden, in particular for SMEs) is triggered by a requirement laid down in the existing Regulation. The proposal simplifies this requirement and will thus clearly offer value over and above what can be achieved at Member State level.

• Proportionality

The proposal is consistent with the principle of proportionality i.e. it does not go beyond what is necessary to meet the objectives of the Treaty on the Functioning of the European Union, in particular the smooth functioning of the single market. As with the subsidiarity test, it is not possible for Member States to address the problems and problem drivers without a proposal to amend the VAT Directive and associated acts. The introduction of this proposal is proportional in that it offers a significant simplification for SMEs and micro-businesses. However, this simplification does not place undue risk on VAT revenues for Member States given that total sales for the businesses who will benefit from this simplification are estimated to account for just 0.3% of total cross-border sales of the services concerned.

¹ OJ L 77, 23.3.2011, p. 1.

² OJ L 347, 11.12.2006, p. 1.

- **Choice of the instrument**

This proposal amends Council implementing Regulation (EU) No 282/2011.

3. RESULTS OF EX-POST EVALUATION, STAKEHOLDER CONSULTATION AND IMPACT ASSESSMENT

This proposal is part of the package of legislation on modernising VAT for cross-border B2C e-commerce. The results of the ex-post evaluation, stakeholder consultation and the impact assessment are set out in detail in the explanatory memorandum for the proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods - COM(2016) 757.

The stakeholder consultation identified that the requirement of the 2015 changes to the place of supply rules for electronic services to have two pieces of evidence to identify the location of customers is particularly onerous for SMEs and micro-businesses. It requires systems development and investment in merchant retailing software which is disproportionate to the level of cross-border sales. The simplified evidence requirements complement the introduction of the cross-border sales threshold of EUR 10 000 in the proposal within this package to amend Council Directive 2006/112/EC. In quantitative terms, the introduction of an intra-EU cross-border threshold in 2018 will take 6 500 businesses out of the current MOSS system leading to a potential regulatory cost saving for these businesses of EUR 13 million. The introduction in 2018 of simplified evidence requirements will benefit an additional 1 000 businesses. The study supporting the impact assessment has estimated that the requirement for one piece of evidence does not present an undue risk to VAT revenues for Member States.

4. BUDGETARY IMPLICATIONS

This proposal is part of the package of legislation for the proposal on modernising VAT for cross-border B2C e-commerce. The budgetary implications for the package as a whole are set out in detail in the explanatory memorandum for the proposal to amend the VAT Directive - COM(2016) 757. This amendment should not generate costs for tax administrations to adjust to the new threshold and could simplify the complexity of auditing such businesses. As outlined above, there should not be an undue risk to overall VAT revenues as a result of this change given that they represent 0.3% of total cross-border sales.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The requirement laid down in Article 24b(d) of Implementing Regulation (EU) No 282/2011 that the supplier of telecommunications, broadcasting and electronically supplied services supplied to non-taxable persons has to collect two items of non-contradictory evidence of the place of establishment of his customers is extremely burdensome for businesses, in particular SMEs. This is because their business flow and volume is not important enough to invest in costly technological solutions allowing them to obtain two forms of proof of the customer location. This proposal, therefore, provides that a single item of evidence is sufficient where the total annual value of the supplies, exclusive of VAT, covered by Article 24b(d) does not exceed EUR 100 000. This simplification should already take effect as from 1 January 2018 as it does not require any changes to the IT system for registration and declaration and payment of the VAT (the MOSS).

Proposal for a

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amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Implementing Regulation (EU) No 282/2011² lays down detailed provisions for the presumption of the location of the customer for determining the place of supply of telecommunications, broadcasting or electronically supplied services provided to non-taxable person.
- (2) The evaluation of the requirements for the application of those presumptions has shown that for the taxable person established in a Member State and supplying such services to non-taxable person in other Member States, to obtain, under certain circumstances, two items of non-contradictory evidence of the place where his customer is established or has his permanent address or usually resides, is extremely burdensome.
- (3) The burden is particularly onerous for small and medium-sized companies. The requirement for one piece of evidence should simplify the obligations for such companies whose intra-Community supplies to consumers in other Member States are below a certain threshold.
- (4) The simplification of the requirement to prove the customer's location is complementary to the amendments introduced by Article 1 of Council Directive [...] /EU³ in the special schemes laid down in Chapter 6 of Title XII of Directive 2006/112/EC and should therefore apply from the same date.
- (5) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

³ Council Directive [...] /EU of [...] amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

HAS ADOPTED THIS REGULATION:

Article 1

In Article 24b of Implementing Regulation (EU) No 282/2011, the following second and third paragraphs are added:

'For supplies of services falling under point (d) of the first paragraph where the total value of such services, exclusive of VAT, provided by a taxable person from his business establishment or a fixed establishment located in a Member State to persons established, having their permanent address or usually residing in other Member States, does not exceed EUR 100 000, or the equivalent in national currency, in the current and the preceding calendar year, the presumption shall be that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of one item of evidence as listed in Article 24f.

Where, during a calendar year, the threshold provided in the second paragraph has been reached, that paragraph shall not apply as of that time and until such time as the conditions provided in that paragraph are fulfilled again.'

Article 2

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

It shall apply from 1 January 2018.

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

Done at Brussels,

For the Council
The President