

Council Directive (EU) 2018/1695 of 6 November 2018 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud

COUNCIL DIRECTIVE (EU) 2018/1695

of 6 November 2018

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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<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Tax fraud in the field of value added tax (VAT) leads to considerable budget losses and has an impact on the operation of the internal market.
- (2) Article 199a of Council Directive 2006/112/EC<sup>(3)</sup> allows Member States to provide that the person liable for payment of VAT on supplies listed in that Article is the taxable person to whom the supply is made (the 'reverse charge mechanism') in order to promptly tackle the problem of the missing trader fraud in intra-Community trade (MTIC). Member States may apply this mechanism until 31 December 2018 and for a minimum period of two years.
- (3) The Quick Reaction Mechanism (QRM) special measure set out in Article 199b of Directive 2006/112/EC offers Member States a faster procedure that allows the introduction of the reverse charge mechanism as regards specific supplies of goods and services in order to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses. In accordance with Article 3 of Council Directive 2013/42/EU<sup>(4)</sup>, Member States may apply the QRM special measure until 31 December 2018.

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- (4) On 8 March 2018, the Commission presented a report to the Council and the European Parliament on the effects of Articles 199a and 199b of Directive 2006/112/EC on combatting fraud (the ‘report’).
- (5) According to the report, Member States and stakeholders generally consider the reverse charge mechanism set out in Article 199a of Directive 2006/112/EC as an effective and efficient temporary tool in fighting VAT fraud in the given sectors or in preventing the fraud from taking place. The requirement of a minimum period of two years for the application of the measure laid down in Article 199a(1) of Directive 2006/112/EC proved to be an impediment to certain Member States wishing to introduce the reverse charge mechanism and not fulfilling this condition. Consequently, the requirement of a minimum period of two years should be removed from that provision.
- (6) Although the QRM special measure set out in Article 199b of Directive 2006/112/EC has never been used effectively, Member States consider that it should remain a useful tool and a precautionary measure against exceptional cases of VAT fraud.
- (7) Given the findings and the conclusion of the report, it appears that the measures set out in Articles 199a and 199b of Directive 2006/112/EC have proven to be useful temporary and targeted measures to fight VAT fraud. Those measures are to expire on 31 December 2018 and this would deprive Member States of an efficient tool to fight VAT fraud. It is therefore appropriate to prolong the application of those measures for a limited period of time, until the envisaged entry into force of the definitive VAT regime.
- (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) in Article 199a(1), the introductory words are replaced by the following:

Until 30 June 2022, Member States may provide that the person liable for the payment of VAT is the taxable person to whom any of the following supplies are made;
- (2) Article 199b is replaced by the following:

*Article 199b*

  - 1 A Member State may, in cases of imperative urgency and in accordance with paragraphs 2 and 3, designate the recipient as the person liable to pay VAT on specific supplies of goods and services by derogation from Article 193 as a Quick Reaction Mechanism (QRM) special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.

The QRM special measure shall be subject to appropriate control measures by the Member State with respect to taxable persons who supply the goods or services to which that measure applies, and shall be for a period not exceeding nine months.
  - 2 A Member State wishing to introduce a QRM special measure as provided for in paragraph 1 shall send a notification to the Commission using the standardised form established in accordance with paragraph 4 and at the same time send it to

the other Member States. The Member State shall provide the Commission with the information indicating the sector concerned, the type and the features of the fraud, the existence of imperative grounds of urgency, the sudden and massive character of the fraud and its consequences in terms of considerable and irreparable financial losses. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two weeks of receipt of the notification and specify what additional information is required. Any additional information provided by the Member State concerned to the Commission shall at the same time be sent to the other Member States. If the additional information provided is not sufficient, the Commission shall inform the Member State concerned thereof within one week.

The Member State wishing to introduce a QRM special measure as provided for in paragraph 1 of this Article shall at the same time also make an application to the Commission in accordance with the procedure laid down in Article 395(2) and (3).

In cases of imperative urgency as set out in paragraph 1 of this Article, the procedure laid down in Article 395(2) and (3) shall be completed within six months of receipt of the application by the Commission.

3           Once the Commission has all the information it considers necessary for appraisal of the notification referred to in the first subparagraph of paragraph 2, it shall notify the Member States thereof. Where it objects to the QRM special measure, it shall produce a negative opinion within one month of that notification, and shall inform the Member State concerned and the VAT Committee thereof. Where the Commission does not object, it shall confirm this in writing to the Member State concerned and to the VAT Committee within the same time period. The Member State may adopt the QRM special measure from the date of receipt of that confirmation. In appraising the notification, the Commission shall take into account the views of any other Member State sent to it in writing.

4           The Commission shall adopt an implementing act establishing a standardised form for the submission of the notification for the QRM special measure referred to in paragraph 2 and of the information referred to in the first subparagraph of paragraph 2. That implementing act shall be adopted in accordance with the examination procedure referred to in paragraph 5.

5           Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(5)</sup> shall apply and for this purpose the committee shall be the committee established by Article 58 of Council Regulation (EU) No 904/2010<sup>(6)</sup>.

6           The QRM special measure as provided for in paragraph 1 shall apply until 30 June 2022.;

(3)       in Article 395, paragraph 5 is deleted.

#### *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*

This Directive is addressed to the Member States.

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Done at Brussels, 6 November 2018.

*For the Council*

*The President*

H. LÖGER

- (1) Opinion of 3 October 2018 (not yet published in the Official Journal).
- (2) Opinion of 11 July 2018 (not yet published in the Official Journal).
- (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 2013/42/EU of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards a quick Reaction Mechanism against VAT fraud (OJ L 201, 26.7.2013, p. 1).
- (5) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
- (6) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).';