

Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises

Article 1

Amendments to Directive 2006/112/EC

Directive 2006/112/EC is amended as follows:

- (1) in point (b) of Article 2(1), point (i) is replaced by the following:
 - (i) a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Article 284 and who is not covered by Article 33 or 36;;
- (2) Article 139 is amended as follows:
 - (a) the first subparagraph of paragraph 1 is replaced by the following:

The exemption provided for in Article 138(1) shall not apply to the supply of goods carried out by taxable persons who, within the Member State in which the supply is carried out, are covered by the exemption for small enterprises provided for in Article 284.;
 - (b) paragraph 2 is replaced by the following:

2. The exemption provided for in point (b) of Article 138(2) shall not apply to the supply of products subject to excise duty by taxable persons who, within the Member State in which the supply is carried out, are covered by the exemption for small enterprises provided for in Article 284.;
- (3) Article 167a is amended as follows:
 - (a) the second paragraph is replaced by the following:

Member States which apply the optional scheme referred to in the first paragraph shall set a threshold for taxable persons using that scheme within their territory, based on the annual turnover of the taxable person calculated in accordance with Article 288. That threshold may not be higher than EUR 2 000 000 or the equivalent in national currency.;
 - (b) the third paragraph is deleted;
- (4) in Article 169, point (a) is replaced by the following:
 - (a) transactions other than those exempt under Article 284 relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;;

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- (5) in Article 220a(1), the following point is added:
- (c) where the taxable person is benefitting from the exemption for small enterprises provided for in Article 284.;
- (6) in Article 270, point (a) is replaced by the following:
- (a) the total annual value, exclusive of VAT, of their supplies of goods and services does not exceed by more than EUR 35 000, or the equivalent in national currency, the amount of the annual turnover which is used as a reference for taxable persons covered by the exemption for small enterprises provided for in Article 284.;
- (7) in Article 272(1), point (d) is deleted;
- (8) in Title XII, Chapter 1, the following Section is inserted:

Section #1

Definitions
Article 280a

For the purposes of this Chapter, the following definitions apply:

- (1) “Member State annual turnover” means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within that Member State during a calendar year;
- (2) “Union annual turnover” means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within the territory of the Community during a calendar year.;
- (9) in Title XII, Chapter 1, the heading of Section 2 is replaced by the following:
- Exemptions;
- (10) Article 282 is replaced by the following:
- Article 282*
- The exemptions provided for in this Section shall apply to the supply of goods and services by small enterprises.;
- (11) in Article 283(1), point (c) is deleted;
- (12) Article 284 is replaced by the following:
- Article 284*

1 Member States may exempt the supply of goods and services made within their territory by taxable persons who are established in that territory and whose Member State annual turnover, attributable to such supplies, does not exceed the threshold fixed by those Member States for the application of this exemption. That threshold shall be no higher than EUR 85 000 or the equivalent in national currency.

Member States may fix varying thresholds for different business sectors based on objective criteria. However, none of those thresholds shall exceed the threshold of EUR 85 000 or the equivalent in national currency.

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Member States shall ensure that a taxable person eligible to benefit from more than one sectoral threshold can only use one of those thresholds.

Thresholds set by a Member State shall not differentiate between taxable persons who are established and those who are not established in that Member State.

- 2 Member States that have put in place the exemption under paragraph 1 shall also grant that exemption to the supplies of goods and services in their own territory made by taxable persons established in another Member State, provided that the following conditions are fulfilled:
- a the Union annual turnover of that taxable person does not exceed EUR 100 000;
 - b the value of the supplies in the Member State where the taxable person is not established does not exceed the threshold applicable in that Member State for granting the exemption to taxable persons established in that Member State.

- 3 Notwithstanding Article 292b, in order for a taxable person to avail itself of the exemption in a Member State in which that taxable person is not established, the taxable person shall:
- a give prior notification to the Member State of establishment; and
 - b be identified for the application of the exemption by an individual number in the Member State of establishment only.

Member States may use the individual VAT identification number already allocated to the taxable person in respect of that person's obligations under the internal system or apply the structure of a VAT number or any other number for the purpose of the identification referred to in point (b) of the first subparagraph.

The individual identification number referred to in point (b) of the first subparagraph shall have the suffix "EX", or the suffix "EX" shall be added to that number.

- 4 The taxable person shall inform the Member State of establishment in advance, by means of an update to a prior notification, of any changes to the information previously provided in accordance with the first subparagraph of paragraph 3, including the intention to avail itself of the exemption in a Member State or Member States other than the ones indicated in the prior notification and the decision to cease applying the exemption scheme in a Member State or Member States in which that taxable person is not established.

The cessation shall be effective as of the first day of the next calendar quarter following the receipt of the information from the taxable person or, where such information is received during the last month of a calendar quarter, as of the first day of the second month of the next calendar quarter.

- 5 The exemption shall apply as regards the Member State in which the taxable person is not established and where that taxable person intends to avail itself of the exemption according to:
- a a prior notification, from the date of informing the taxable person of the individual identification number by the Member State of establishment; or
 - b an update to a prior notification, from the date of confirming the number to the taxable person in consequence of his update by the Member State of establishment.

The date referred to in the first subparagraph shall be no later than 35 working days following the receipt of the prior notification or the update to the prior notification

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referred to in the first subparagraph of paragraph 3 and in the first subparagraph of paragraph 4, except in specific cases where in order to prevent tax evasion or avoidance Member States may require additional time to carry out the necessary checks.

6 The corresponding value in national currency of the amount referred to in this Article shall be calculated by applying the exchange rate published by the European Central Bank on 18 January 2018.;

(13) the following Articles are inserted:

Article 284a

1 The prior notification referred to in point (a) of the first subparagraph of Article 284(3) shall contain at least the following information:

- a the name, activity, legal form and address of the taxable person;
- b the Member State or Member States in which the taxable person intends to avail itself of the exemption;
- c the total value of supplies of goods and/or services carried out in the Member State in which the taxable person is established and in each of the other Member States during the previous calendar year;
- d the total value of supplies of goods and/or services carried out in the Member State in which the taxable person is established and in each of the other Member States during the current calendar year prior to the notification.

The information referred to in point (c) of the first subparagraph of this paragraph has to be given for each previous calendar year belonging to the period referred to in the first subparagraph of Article 288a(1) as regards any Member State which applies the option stipulated therein.

2 Where the taxable person informs the Member State of establishment in accordance with Article 284(4) that it intends to avail itself of the exemption in a Member State or Member States other than the ones indicated in the prior notification, that person is not obliged to give the information referred to in paragraph 1 of this Article in so far as that information has already been included in reports previously submitted under Article 284b.

The update to a prior notification referred to in the first subparagraph shall include the individual identification number referred to in point (b) of Article 284(3).

Article 284b

1 A taxable person availing itself of the exemption provided for in Article 284(1) in a Member State in which that person is not established in accordance with the procedure under Article 284(3) and (4) shall report for each calendar quarter to the Member State of establishment the following information, including the individual identification number referred to in point (b) of Article 284(3):

- a the total value of supplies carried out during the calendar quarter in the Member State of establishment or “0” if no supplies have been made;
- b the total value of supplies carried out during the calendar quarter in each of the Member States other than the Member State of establishment or “0” if no supplies have been made.

2 The taxable person shall communicate the information set out in paragraph 1 within one month from the end of the calendar quarter.

3 When the Union annual turnover threshold referred to in point (a) of Article 284(2) is exceeded, the taxable person shall inform the Member State of establishment

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within 15 working days. At the same time, the taxable person shall be required to report the value of the supplies referred to in paragraph 1 that have been made from the beginning of the current calendar quarter up until the date the Union annual turnover threshold was exceeded.

Article 284c

1 For the purposes of points (c) and (d) of Article 284a(1) and Article 284b(1) the following shall apply:

- a the values shall consist of the amounts listed in Article 288;
- b the values shall be denominated in euro;
- c where the Member State granting the exemption applies varying thresholds as referred to in the second subparagraph of Article 284(1), the taxable person shall be obliged in respect of that Member State to report separately the total value of supplies of goods and/or services as regards each threshold that may be applicable.

For the purposes of point (b) of the first subparagraph, Member States which have not adopted the euro may require the values to be expressed in their national currencies. If the supplies have been made in other currencies, the taxable person shall use the exchange rate applying on the first day of the calendar year. The conversion shall be made by applying the exchange rate published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

2 The Member State of establishment may require the information referred to in Article 284(3) and (4) and in Article 284b(1) and (3) to be submitted by electronic means, in accordance with conditions laid down by that Member State.

Article 284d

1 A taxable person availing itself of the exemption in a Member State in which that taxable person is not established shall not be required in respect of the supplies covered by the exemption in that Member State:

- a to be registered for VAT purposes pursuant to Articles 213 and 214;
- b to submit a VAT return pursuant to Article 250.

2 A taxable person availing itself of the exemption in the Member State of establishment and in any Member State in which that taxable person is not established shall not be required, in respect of the supplies covered by the exemption in the Member State of establishment, to submit a VAT return pursuant to Article 250.

3 By derogation from paragraphs 1 and 2 of this Article, where a taxable person fails to comply with the rules provided for in Article 284b, Member States may require such a taxable person to fulfil VAT obligations such as those referred to in paragraph 1 of this Article.

Article 284e

The Member State of establishment shall, without delay, either deactivate the identification number referred to in point (b) of Article 284(3) or, if the taxable person continues to avail itself of the exemption in another Member State or other Member States, adapt the information received pursuant to Article 284(3) and (4) as regards the Member State or Member States concerned, in the following cases:

- (a) the total value of supplies reported by the taxable person exceeds the amount referred to in point (a) of Article 284(2);

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- (b) the Member State granting the exemption has notified that the taxable person is not eligible for the exemption or the exemption has ceased to apply in that Member State;
- (c) the taxable person has informed of its decision to cease to apply the exemption; or
- (d) the taxable person has informed, or it may otherwise be assumed, that his activities have ceased.;

(14) Articles 285, 286 and 287 are deleted;

(15) Article 288 is replaced by the following:

Article 288

1 The annual turnover serving as a reference for applying the exemption provided for in Article 284 shall consist of the following amounts, exclusive of VAT:

- a the value of supplies of goods and services, in so far as they would be taxed were they supplied by a non-exempt taxable person;
- b the value of transactions which are exempt, with deductibility of the VAT paid at the preceding stage, pursuant to Article 110 or 111 or Article 125(1);
- c the value of transactions which are exempt pursuant to Articles 146 to 149 and Articles 151, 152 and 153;
- d the value of transactions which are exempt pursuant to Article 138 where the exemption provided for in that Article applies;
- e the value of real estate transactions, financial transactions as referred to in points (b) to (g) of Article 135(1), and insurance and reinsurance services, unless those transactions are ancillary transactions.

2 Disposals of the tangible or intangible capital assets of a taxable person shall not be taken into account for the purposes of calculating the turnover referred to in paragraph 1.;

(16) the following Article is inserted:

Article 288a

1 A taxable person, whether or not established in the Member State granting the exemption provided for in Article 284(1), shall not be able to benefit from that exemption during a period of one calendar year where the threshold laid down in accordance with that paragraph was exceeded in the preceding calendar year. The Member State granting the exemption may extend this period to two calendar years. Where, during a calendar year, the threshold referred to in Article 284(1) is exceeded by:

- a not more than 10 %, a taxable person shall be able to continue to benefit from the exemption provided for in Article 284(1) during that calendar year;
- b more than 10 %, the exemption provided for in Article 284(1) shall cease to apply as of that time.

Notwithstanding points (a) and (b) of the second subparagraph, Member States may set a ceiling of 25 % or allow the taxable person to continue to benefit from the exemption provided for in Article 284(1) without any ceiling during the calendar year when the threshold is exceeded. However, the application of this ceiling or option may not result in exempting a taxable person whose turnover within the Member State granting the exemption exceeds EUR 100 000.

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By derogation from the second and third subparagraphs, Member States may determine that the exemption provided for in Article 284(1) shall cease to apply as of the time when the threshold laid down in accordance with that paragraph is exceeded.

- 2 A taxable person not established in the Member State granting the exemption provided for in Article 284(1) shall not be able to benefit from that exemption, where the Union annual turnover threshold referred to in point (a) of Article 284(2) was exceeded in the preceding calendar year.

Where, during a calendar year, the Union annual turnover threshold referred to in point (a) of Article 284(2) is exceeded, the exemption provided for in Article 284(1) granted to a taxable person not established in the Member State granting that exemption shall cease to apply as of that time.

- 3 The corresponding value in national currency of the amount referred to in paragraph 1 shall be calculated by applying the exchange rate published by the European Central Bank on 18 January 2018.;

- (17) in Article 290, the second sentence is replaced by the following:

Member States may lay down the detailed rules and conditions for applying that option.;

- (18) Articles 291 and 292 are deleted;

- (19) in Title XII, Chapter 1, the following Section is inserted:

Section 2a

Simplification of obligations for exempt small enterprises

Article 292a

For the purposes of this Section, “exempt small enterprise” means any taxable person benefitting from the exemption in the Member State in which the VAT is due as provided for in Article 284(1) and (2).

Article 292b

Without prejudice to Article 284(3), Member States may release exempt small enterprises established in their territory, that avail themselves of the exemption only within that territory, from the obligation to state the beginning of their activity pursuant to Article 213 and to be identified by means of an individual number pursuant to Article 214, except where those enterprises carry out transactions covered by point (b), (d) or (e) of Article 214.

Where the option referred to in the first paragraph is not exercised, Member States shall put in place a procedure for the identification of such exempt small enterprises by means of an individual number. The identification procedure shall not take longer than 15 working days except in specific cases where in order to prevent tax evasion or avoidance Member States may require additional time to carry out the necessary checks.

Article 292c

Member States may release exempt small enterprises established in their territory that avail themselves of the exemption only within that territory from the obligation to submit a VAT return laid down in Article 250.

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Where the option referred to in the first paragraph is not exercised, Member States shall allow such exempt small enterprises to submit a simplified VAT return to cover the period of a calendar year. However, exempt small enterprises may opt for the application of the tax period set in accordance with Article 252.

Article 292d

Member States may release exempt small enterprises from certain or all obligations referred to in Articles 217 to 271.;

- (20) in Title XII Chapter 1, Section 3 is deleted;
- (21) in Article 314, point (c) is replaced by the following:
 - (c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;;
- (22) in Article 334, point (c) is replaced by the following:
 - (c) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;.