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Proposal for a

COUNCIL REGULATION

amending Regulation (EU) No 904/2010 as regards the certified taxable person

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of the package of legislation to introduce a definitive VAT system for intra-Union cross-border trade based on the principle of taxation in the Member State of destination of the goods in order to create a robust single European VAT area. A legislative proposal for such a simpler and fraud-proof definitive VAT system for intra-Union trade was included in the Commission's Work Programme for 2017¹. These proposals for a definitive VAT system for intra-Union cross-border trade also include improvements to the current VAT system as requested by the Member States².

Both for the definitive VAT system and also as regards certain of the aforementioned improvements to the current system taxable persons should be able, under certain conditions, to obtain the status of a certified taxable person. The concept of certified taxable person should allow for an attestation that a particular business can globally be considered to be a reliable taxpayer. Certain simplification rules related to call-off stock arrangements, chain transactions and the proof of transport of goods transported or dispatched to another Member State which could be fraud-sensitive, should apply only where certified taxable persons are involved in the relevant transaction. The certified taxable person concept should in addition allow for a gradual implementation of the definitive VAT system because during the first step of that definitive system reverse charge would apply where the acquirer, in case of intra-Union supplies of goods, is a certified taxable person. The justification is that, the certified taxable person being by definition a reliable taxpayer, no fraud should occur as a result of VAT not being charged on intra-Union supplies of goods made for a certified taxable person.

In this context, it is essential for businesses and tax administrations that the certified taxable person status of a business can be checked immediately and online. To that end, it is necessary that all Member States store information on businesses and their certified taxable person status in an electronic system and that the competent authorities of each Member State ensure that confirmation is provided of the certified taxable person status of any business. These obligations of Member States are to be established within the legislation on administrative co-operation, i.e. Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax³ (the "VAT Administrative Cooperation Regulation").

• Consistency with existing policy provisions in the policy area

The proposal is intended to give a practical effect to the certified taxable person status, which is a basic component of the definitive VAT regime for intra-Union trade based on the principle of taxation in the Member State of destination of the goods, as announced in the

¹ Commission Work Programme 2017: Delivering a Europe that protects, empowers and defends, COM(2016) 710 final.

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1487237841093&uri=CELEX:52016DC0710>
See Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (No. 14257/16 FISC 190 ECOFIN 1023 of 9 November 2016)

³ <http://data.consilium.europa.eu/doc/document/ST-14257-2016-INIT/en/pdf>
OJ L 268, 12.10.2010, p. 1–18

VAT Action Plan⁴. The certified taxable person status is also relevant in relation to certain improvements to the current system requested by Member States; namely in relation to rules on chain transactions, call-off stock situations and the proof of transport in exempt intra-Community supplies of goods.

- **Consistency with other Union policies**

The creation of a simple, modern and fraud-proof VAT system is one of the fiscal priorities set out by the Commission for 2017⁵.

Combating missing trader VAT fraud is also one of the European Union's priority crime areas, under the 2014-2017 EU Policy Cycle of Europol⁶. Reference could also be made to the agreement⁷ on the creation of the European Public Prosecutor's Office (EPPO) which will be competent, under certain conditions, for VAT fraud.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation

- **Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity, as set out in Article 5(3) of the Treaty on European Union (TEU), action at Union level may only be taken if the envisaged aims cannot be achieved sufficiently by the Member States alone and can therefore, by reason of the scale or effects of the proposed actions, be better achieved by the Union.

Issues related to the storage of, and the provision of access to, information regarding the certified taxable person status of businesses can, by their nature, not be decided by individual Member States since businesses and tax administrations in all Member States should, in a standardised way, be able to check the certified taxable person status of businesses established in other Member States. This requires a common framework and an initiative in this respect requires a proposal by the Commission to amend the VAT Administrative Cooperation Regulation.

- **Proportionality**

The proposal simply defines a framework regarding the certified taxable person status, while operational control and application measures remain the responsibility of the Member States. In particular, the granting or repealing of the certified taxable person status of individual

⁴ Action Plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148 final of 7 April 2016)

⁵ Annual Growth Survey 2017, see https://ec.europa.eu/info/publications/2017-european-semester-annual-growth-survey_en

⁶ [EMPACT priorities \(European multidisciplinary platform against criminal threats\)](#)

⁷ See <http://www.consilium.europa.eu/en/press/press-releases/2017/06/08-epo/>

taxable persons, based upon commonly agreed conditions, remains the sole competence of the Member States.

- **Choice of the instrument**

Since the existing legislation is a Regulation, it can be amended only by another Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Commission has set up two working groups for discussions at technical level regarding VAT, namely the Group on the Future of VAT (GFV) and the VAT Expert Group (VEG). These groups have discussed the definitive VAT system for intra-Union trade, including the issue of the certified taxable person. In addition, a public consultation was organised from 20 December 2016 to 20 March 2017 resulting in 121 contributions⁸.

- **Impact assessment**

Reference is made to the separate impact assessment [SWD(2017)325 and its summary SWD(2017)326] which has been carried out in relation to, inter alia, this proposal.

The impact assessment for the proposal was considered by the Regulatory Scrutiny Board on 14 July 2017 [Ares(2017)3573962-SEC(2017)423]. The Board gave a positive opinion to the proposal with some recommendations that have been taken into account. The opinion of the Board and the recommendations are mentioned in Annex 1 to the Staff Working Document for the impact assessment accompanying this proposal.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implications for the Union budget.

5. OTHER ELEMENTS

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

The aim of Article 1 of the proposal is to provide the basis for the integration of the certified taxable person status into the VIES system (VAT Information Exchange System). Currently, the VIES system is, inter alia, used to check the validity of the VAT number of a client in another Member State in order to ascertain that a supply of goods, transported or dispatched to that customer outside the Member State of supply, can be exempt from VAT. From a practical point of view, the checking of the certified taxable person status of the customer in order not to charge VAT in case of an intra-Union supply of goods under the definitive system is quite similar as the checking of a VAT number. Since the certified taxable person

⁸ See, about stakeholder consultation, Annex 2 of the Staff Working Document - Impact assessment accompanying the document Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States and the results of the related open public consultation:

https://ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations_en

status is relevant in cross-border situations and since the IT infrastructure is already in place and used by all tax administrations, it is suitable to use the existing infrastructure and to extend its functioning in order to include the certified taxable person status of taxable persons.

To integrate the certified taxable person status, it is first necessary that Member States, who are in charge of granting and withdrawing the certified taxable person status of businesses that are established in their territory, collect this information and store it electronically. To that end, Article 17 of the VAT Administrative Cooperation Regulation is amended to ensure that also information on the certified taxable person status of taxable persons is stored. Further by adapting Article 31 of the VAT Administrative Cooperation Regulation it is ensured that confirmation of the certified taxable person status of a particular person can be obtained by electronic means.

Proposal for a

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amending Regulation (EU) No 904/2010 as regards the certified taxable person

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In its VAT Action Plan³, the Commission announced its intention to put forward a proposal setting out the principles for a definitive value added tax (VAT) system in relation to cross-border business-to-business trade between Member States. The Council, in its conclusions of 8 November 2016⁴, invited the Commission to make certain improvements in the meantime to the Union VAT rules in relation to cross-border transactions.
- (2) The certified taxable person is one of the essential components of that new definitive VAT system for intra-Union trade and will, in addition, be used for certain simplification measures within the current VAT system. The concept of the certified taxable person should allow for proving that a specific taxable person can be considered as a reliable taxpayer within the Union.
- (3) Certain rules laid down by Directive 2006/112/EC⁵ for transactions that are considered fraud-sensitive shall apply only where certified taxable persons are involved. It is therefore essential that the certified taxable person status of a taxable person can be verified by electronic means in order to guarantee that those rules may apply.
- (4) In the first step towards a definitive VAT system as proposed by the VAT Action Plan, in the case of intra-Union supplies of goods the reverse charge procedure should apply

¹ OJ C , , p. .

² OJ C , , p. .

³ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT - Towards a single EU VAT area - Time to decide (COM(2016)148 final of 7.4.2016).

⁴ Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (No. 14257/16 FISC 190 ECOFIN 1023 of 9 November 2016).

⁵ 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).

where the person acquiring the goods is a certified taxable person. It is therefore essential, for a taxable person making an intra-Union supply of goods, to know whether or not his customer has been granted the certified taxable person status. Given the practical similarity with the current exemption for intra-Community supplies of goods and in order to avoid unnecessary costs or burden, use should be made of the current VAT Information Exchange System (VIES) in which information on the certified taxable person status should be integrated.

- (5) In order to provide information on the certified taxable person status of taxable persons in Member States, Member States should record and store in an electronic system the up to date certified taxable person status of taxable persons. Tax authorities of a Member State should thereafter grant tax authorities of other Member States automatic access to this information and should be able, upon demand from persons referred to in Article 31(1) of Council Regulation (EU) No 904/2010⁶, to confirm by electronic means the certified taxable person status of any taxable person where that status is relevant for the purpose of the transactions referred to in that Article.
- (6) Taking into account that the provisions included in this Regulation result from the amendments introduced by Council Directive [...] ⁷/EU, this Regulation should apply from the date of the application of those amendments.
- (7) Regulation (EU) No 904/2010 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 904/2010 is amended as follows:

- (1) Article 17 is replaced by the following:

'Article 17

1. Each Member State shall store in an electronic system the following information:

- (a) information which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC;
- (b) data on the identity, activity, legal form and address of persons to whom it has issued a VAT identification number, collected pursuant to Article 213 of Directive 2006/112/EC, as well as the date on which that number was issued;
- (c) data on VAT identification numbers it has issued which have become invalid, and the dates on which those numbers became invalid;
- (d) information which it collects pursuant to Articles 360, 361, 364 and 365 of Directive 2006/112/EC as well as, as from 1 January 2015, information which it collects pursuant to Articles 369c, 369f and 369g of that Directive;

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).

⁷ Council Directive [...] /EU of [...] amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States (OJ L [...])

(e) information as regards the status of a certified taxable person pursuant to Article 13a of Directive 2006/112/EC, as well as the date on which that status was granted, refused and withdrawn.

2. The technical details concerning the automated enquiry of the information referred to in points (b), (c), (d) and (e) of paragraph 1 of this Article shall be adopted in accordance with the procedure provided for in Article 58(2).'

(2) Paragraph 1 of Article 31 is replaced by the following:

'1. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and non-established taxable persons supplying telecommunication services, broadcasting services and electronically supplied services, in particular those referred to in Annex II to Directive 2006/112/EC, are allowed to obtain, for the purposes of such transactions, confirmation by electronic means of the validity of the VAT identification number of any specified person as well as the associated name and address. The competent authorities of each Member State shall also ensure that it can be verified by electronic means whether any specified person is a certified taxable person pursuant to Article 13a of Directive 2006/112/EC where such tax status is relevant for the purposes of that Article. This information shall correspond to the data referred to in Article 17 of this Regulation.'

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 2019.

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

Done at Brussels,

For the Council
The President