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# **Opinion Statement FC 6/2018**

## **on a Proposal for a Council Directive amending Directive 2006/112/EC, on the common system of value added tax as regards the special scheme for small enterprises**

**Prepared by the CFE Fiscal Committee**  
**Submitted to the European Institutions in July 2018**

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**This Opinion Statement concerns the proposal to amend Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises. CFE Tax Advisers Europe welcomes the proposal, however, particularly given the current proposals to reform the taxations of supplies between Member States, the CFE does not consider that these proposals go far enough to address the problems caused for such businesses by the VAT system.**

CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 30 national organisations from 24 European countries, representing more than 200,000 tax advisers. CFE is part of the European Union Transparency Register no. 3543183647-05. We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Ms. Stella Raventós, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Tax Policy Manager, at [info@taxadviserseurope.org](mailto:info@taxadviserseurope.org). For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

## I. Background

CFE Tax Advisers Europe welcomes the proposals by the Commission amending Directive/112/EC on the common system of value added tax as regards the special scheme for small enterprises and VAT<sup>1</sup>. The CFE also welcomes the majority of the proposals in the draft report by the Committee on Economic and Monetary Affairs of 3 May 2018<sup>2</sup>. However, particularly given the current proposals to reform the taxations of supplies between Member States, the CFE does not consider that these proposals go far enough to address the problems caused for such businesses by the VAT system<sup>3</sup>.

## II. Identified Issues Facing SMEs & Proposed Amendments to Draft Directive

The CFE, in particular, welcomes the proposal that taxable persons who are established in a different Member State should be able to benefit from national exemptions provided their Union annual turnover does not exceed 100,000 Euros. The CFE also welcomes the proposed simplification for non-exempt small enterprises. These are currently limited to businesses with a turnover of 2 million Euros. We consider that there would be merit in extending them to small enterprises with a turnover of less than 10 million Euros.

The Report by the Committee on Economic and Monetary Affairs correctly observes that the VAT system imposes proportionally higher burdens on small enterprises than larger businesses. In the future, this will be particularly true when cross-border supplies are made from businesses established in one state to customers established in other states. When the supplies are made to consumers, this is because the abolition of the distance sales rules in Article 34 of the Directive 2006/112/EC, by Directive 2017/2455, will mean that VAT will increasingly have to be accounted for in the country where the customer is established. The proposed adoption of the definitive regime will also mean that businesses going forward will be increasingly required to account for VAT at the rates in force in the country where their customer is established. We fear that small businesses are likely to have considerable difficulties in qualifying as certified taxable persons.

Even in a national context, it can be frequently very difficult to determine what is the appropriate rate to tax supplies. This can be particularly true with supplies of services, when difficulties can arise in determining whether there is one composite or multiple supplies for VAT purposes or whether supplies are closely linked to supplies that are exempt under Article 132(1). b, g, h, i, l, m, n, of Directive 2006/112/EC. These problems are likely to be increased in a cross-border context, especially if Member States are given a greater freedom to alter their VAT rates, as is currently proposed<sup>4</sup>. While larger businesses are likely to have the funds and profits to seek advice to determine what VAT to charge in different Member States, seeking such advice will clearly impose much greater burdens on small businesses. Particularly for small businesses, these changes therefore create an additional barrier on the proper functioning of the internal market and are likely to inhibit its proper functioning unless further relief is provided.

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<sup>1</sup> Com(2018) 21 Final.

<sup>2</sup> 2018/0006(CNS)

<sup>3</sup> The European Economic and Social Committee in its opinion of 23 May 2018 also highlighted the need to ensure that the VAT system within the internal market did not place "unjustified obstacles in the way of small businesses' development".

<sup>4</sup> Com (2018) 20 Final

Under Directive 2017/2455 the only relieving provision is proposed Article 59c of Directive 2006/112/EC. This just applies to distance sales of goods to consumers, within proposed Article 33 of Directive 2006/112/EC, and electronic services to consumers, within Article 58 of the Directive. In relation to such supplies, this article permits suppliers to use the rules of the Member State where they are established provided the value of supplies do not, on a Union wide basis, exceed 10,000 Euros. This is much less generous than the current distance sales rules, where the threshold before national rules apply is a minimum of 35,000 Euro and a maximum of 100,000 Euros in each Member State.

The proposed Article 59c is not just directed at small enterprises. Given the problems that they in particular will face as a result of the proposed changes, the CFE considers that there is a powerful case for considering that special relief should be provided to such traders. For example, Article 59c could be altered so that in the case of such enterprises the threshold is increased from 10,000 Euros to 25,000 Euros. At present, the threshold also only applies to distance sales of goods and some electronic services. However, we can see no reason why it should not be extended to other services, for example the services of architects. Indeed, when the definitive regime is adopted, particularly if improvements are made to the procedures for recovering input tax incurred in other Member States, we can see a powerful case for also extending the provisions to cross-border business to business supplies.

The CFE also welcomes the Committee on Economic and Monetary Affairs' suggestion that there should be an on-line portal that can be used to establish the status of exempt businesses, although the CFE can see that another alternative would be to have a special national registration scheme for such enterprises which in turn can be verified on the VIES system. The current absence of any method of verifying an exempt businesses' status in some Member States causes problems on cross-border supplies, since suppliers are frequently concerned their national tax authority will seek to impose a national VAT charge on any supplies they make unless they can establish that their customer has a VAT registration in another Member State. This in turn results in suppliers wanting to charge VAT on such supplies. These and related problems are addressed in greater detail in a separate [Opinion Statement on the problems caused by VAT numbers on cross-border transactions](#)<sup>5</sup>.

The CFE also considers that the European Commission's maximum threshold for exemption of 85,000 Euros is to be proffered to the threshold of 50,000 Euros being suggested by the Committee on Economic and Monetary Affairs. It also considers that it is important that the exemption for small enterprises should remain optional. Otherwise, there are dangers that the rules will operate to preclude input tax recovery by start-up businesses.

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<sup>5</sup> Issues connected with VAT registration were also considered in a report from the Commission (2017) 780 of 18 December 2017.