

Opinion Statement concerning a Proposal for a Council Directive amending Directive 2006/112/EC of 28 November 2006, as regards provisions relating to distance sales of goods and certain domestic supplies of goods (2018/0415(CNS))

Prepared by the CFE Fiscal Committee

Submitted to the European Commission on 5 February 2019

This Opinion Statement was prepared by way of response to the European Commission's "Have Your Say" feedback process as concerns a proposal to amend Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods (2018/0415(CNS)). CFE Tax Advisers Europe welcomes the proposal but has certain concerns relating to practical implications of the proposed Directive.

CFE Tax Advisers Europe is a Brussels-based umbrella association uniting 30 European national tax institutes and associations of tax advisers from 24 European countries. Founded in 1959, CFE represents more than 200,000 tax advisers. CFE Tax Advisers Europe is part of the European Union Transparency Register no. 3543183647 - 05. For further information regarding this opinion statement please contact Stella Raventós, Chair of the CFE Fiscal Committee or Brodie McIntosh, Tax Technical Officer at info@taxadviserseurope.org

This Opinion Statement was prepared by way of response to the European Commission's "Have Your Say" feedback process on the European Commission's proposal, published on 11 December 2018, to amend Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods (2018/0415(CNS)).

Whilst CFE welcomes the proposal, it is concerned by provisions in the Directive on limiting liability rules. We are concerned that Commission's proposals on limitation of liability do not go far enough. We would suggest altering Article 5(c)1(c) so that it reads:

- "(c) the taxable person can demonstrate that he did not know that the information was incorrect; and
- (d) it is not established that the taxable person was acting unreasonably in failing to appreciate that the information was incorrect".

We feel that this slightly relaxes the test over that currently suggested by the Commission because:

- (i) while the trader retains the burden of proving he did not have actual knowledge this places the burden on the tax authority to establish that he failed to act with reasonable care. We consider that it is unreasonable to expect a trader who establishes that he was acting in good faith to also have to establish that he was acting with reasonable care;
- (ii) we are also concerned that tax authorities may be able to contend that a taxpayer who was acting reasonably in not knowing that information was incorrect could still reasonably discover the error, such that the Commission's formulation could have the consequence of penalising reasonable traders because it could be contended that even though they acted reasonably they might still reasonably have discovered the error.

We are therefore concerned that the Commission's proposals potentially place disproportionate burdens on businesses. Even on our suggested wording, a platform will find itself in a worse position than a trader innocently caught up in MTIC trade where the burden of proof is completely on the State.

Businesses subject to Article 14a are deemed to be making a supply, which inevitably limits their ability to verify information. It is also potentially very significant that the Commission has made its proposals in 2018/0413 (CNS) on the collection of data relating to payments. We consider that this information is likely to be a very valuable tool to tax authorities in tracing cases where there have been defaulting distance sellers of goods. It therefore makes it less necessary for article 5(c) to be adopted in a manner that merely gives the very limited relief currently proposed by the Commission.