

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

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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⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

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⁽³⁾ 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⁽⁴⁾, 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