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GROUP ON THE FUTURE OF VAT

GFV NO 072 REV 2

VAT e-commerce package of 5 December 2017

Implementing provisions to be laid down in Council Implementing Regulation (EU) 282/2011 (the VAT Implementing Regulation)

1 PURPOSE OF THE DOCUMENT

On 5 December 2017, the Council adopted Council Directive EU 2017/2455 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

Working documents GFV 062 Rev 1, GFV 063 Rev 1, GFV 065 and GFV 067 discussed at the GFV meetings of 22 January and 9 February 2018 examined whether the provisions of this Directive relating to, respectively, the non-Union scheme, the Union scheme, the Import scheme and the special arrangements upon importation required further implementing provisions to be laid down in the VAT Implementing Regulation (Council Implementing Regulation (EU) 282/2011).

On the basis of these discussions, the table in the Annex has been drafted, showing the amendments which, in the Commission's view, are required to the VAT Implementing Regulation. The first version of this table was discussed at the GFV meeting of 12 March 2018 (GFV No 072), the second version at the GFV meeting of 13 June 2018 (GFV no 072 Rev1).

2 FOLLOW-UP OF THE GFV MEETING OF 13 JUNE 2018

The amendments to Regulation 282/2011 shown in 'track changes' in document GFV No 072 and GFV No 072 Rev1 have been accepted and are now shown in bold/underline/strikethrough in the table in **Annex 1**. Only amendments made following the discussions at the GFV meeting of 13 June 2018 are now shown in 'track changes'. Where necessary, the amendments are explained in the column 'Comments'. They are submitted to the GFV for discussion at its meeting of 6-7 September 2018. The draft implementing provisions concerning electronic interfaces are now included in Annex 1 of this working document as well (former: GFV No 075). The need for implementing provisions relating to the special arrangements for declaration and payment of import VAT (where the IOSS is not used) will be discussed on the basis of working document GFV No 067 Rev. 2, together with customs representatives.

Finally, all Member States' comments received after the meeting of 13 June 2018 as well as TAXUD's position on these comments have been included in **Annex 2** (in a separate document).

The most important issues discussed during the meeting of 13 June 2018 have been integrated as follows:

(1) Article 57e – intermediary registration: Some Member States were in favour of including a provision in the Implementing Regulation stating that the intermediary identification number referred to in Article 369q(2) of the VAT Directive is an authorisation to act as intermediary and not a VAT identification number as such allowing to carry out taxable transactions. A paragraph has been added.

(2) Article 57g (quarantine period – exclusion from using a special scheme for two calendar quarters in case of voluntary deregistration by a taxable person): A majority of

Member States that intervened during the last meeting on 13 June 2018 were in favour of deleting the quarantine period for taxable persons who deregister voluntarily.

(3) Article 58(2) – Exclusion of an intermediary – need to inform the taxable persons represented:

– A legal provision has been added (Article 58(4) last sentence) providing that the individual VAT identification numbers of all taxable persons represented by an intermediary who is deleted from the identification register are invalidated.

– In case of the deletion of an intermediary from the registry, the majority of MS was in favour of having the MSI inform the taxable persons he represents thereof electronically (Article 58(4), fourth subparagraph).

– In case an intermediary is deleted from the identification registry, the VAT identification number (IOSS) that has been allocated to him to represent a taxable person remains valid for the period of time needed to import the goods supplied prior to the date of exclusion, which may not exceed two months as from that date, except for the situation in which there is persistent failure to comply with the rules (Article 58 (3)). However, supplies carried out as of the date on which the exclusion becomes effective cannot be declared via the IOSS.

(4) Article 63(c) – Record keeping: For both the Union and non-Union scheme and the Import scheme, the Commission wondered if it is relevant to provide that the records to be kept shall include the name of the customer, where known to him. This would not seem to be required as the information must only be kept 'if available' and as it already includes the information needed to determine the place of taxation (point (1)(l) and point 2(l)). The majority of Member States agreed to delete the name of the customer.

Council Implementing Regulation (EU) No 282/2011	
Adapted version	**Comments**
Article 5a **For the application of Article 14(4) of Directive 2006/112/EC, the following shall apply:** **(a) the supplier shall be regarded as having intervened indirectly in the dispatch or transport of the goods in any of the following cases:** **i) where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;** **ii) where the dispatch or transport of the goods is provided by a third party but the supplier bears totally or partially the responsibility for the delivery of the goods to the customer;** **iii) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party that will arrange the dispatch or transport of the goods;** **(b) in cases of intervention other than those listed under point (a), in particular where the supplier promotes by any means ~~actively promotes~~ the delivery services of a third party to the customer, puts the customer and the third party in contact and provides to the third party the information needed for the delivery of the goods, he shall likewise be regarded as having intervened indirectly in the transport or dispatch of the goods;** **(c) goods shall not be considered to have been "dispatched or transported by or on behalf of the supplier" where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly in providing or helping organising the dispatch or transport of those goods.**	The wording of this Article reflects the text of the guidelines adopted at the 104th meeting of the VAT Committee concerning the meaning of indirect intervention of the supplier in the dispatch or transport of goods. A minor change has been made in point (b) following the remark of one MS at the GFV meeting of 13 June 2018.
In Chapter IV add	

Section 1 **Supply of goods (Articles 14 and 14a)**	
Article 5b *Paragraph1 – Alternative 1* **1. For the application of Article 14a of Directive 2006/112/EC, the term facilitate shall mean that the electronic interface ~~links~~ allows the customer and the underlying supplier to enter into contact resulting in a supply through that~~e~~ electronic interface. A taxable person is not facilitating ~~a~~ the supply [of goods] (through the use of an electronic interface) when all of the following conditions are met:** **a) he does not set directly or indirectly the general terms under which the supply is made;** **b) he ~~does not confirm~~is not directly or indirectly involved in ~~the~~ charginge ~~to~~ the customer;** **c) he ~~does not~~is not ~~confirm~~ directly or indirectly involved in the ordering or delivery of the goods.** ~~*Paragraph 1 – Alternative 2*~~ ~~**1. For the application of Article 14a of Directive 2006/112/EC, the term facilitate shall mean that the electronic interface links the customer and the underlying supplier resulting in a supply through the electronic interface. This consists of activities such as providing the identification data of the customer and of the supplier, providing the description and price of the goods, allowing the customer to place the purchase order and to carry out the payment, directly or indirectly by being redirected to a payment service provider site.**~~ ***[Paragraph 2*** **Article 14a of Directive 2006/112/EC shall not apply to a taxable person who provides only ~~one of the following activities~~for:**	To cater for the same definition of "facilitate" in Article 14a and 242a. [of goods] is put here in brackets.

• **[~~only~~]the processing of payments in relation to the supply of goods; or** • **[~~only] providing for~~the listing or advertising of the goods; or** • **[~~only~~]the re-directing or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.]** ***~~Paragraph 3~~*** **~~2. For the application of this Article, the economic reality shall prevail over any contractual relation.~~** ***Paragraph 43*** **3. For the application of Article 14a of Directive 2006/112/EC, the deemed supplier shall not be held liable for the payment of any amount in excess of the VAT which was accounted for ~~additional VAT~~ when:** **a. he is dependent on information provided by the underlying supplier or other third parties ~~the information available on the VAT rates provided by the tax authorities;~~ and** **b. this information is erroneous; and** **c. he can demonstrate that he did not or could not reasonably know~~was not aware or should not have been aware~~ that this information was incorrect.**	Paragraph 3 is added to provide for legal certainty and proportionality for the deemed supplier in the assessment of the VAT. The deemed supplier (electronic interface) will depend in "good-faith" on information he receives from third parties to fulfil his VAT obligations. He should therefore in principle be allowed to rely on the correctness of the information obtained. Nevertheless, this provision will not relieve the deemed supplier from the obligation to carry out proportionate checks for verifying the correctness of the information provided. The latter is reflected under point c and can be added in the recitals and/or Explanatory Notes.
Article 5c **For the application of Article 14a of Directive 2006/112/EC, unless the deemed supplier has information to the contrary, the following shall be presumed :** - **the underlying supplier is a taxable person** - **the customer is a non-taxable person.**	This Article is added to provide for legal certainty and proportionality for the deemed supplier when assessing the underlying supplier and the taxable supplies. In the explanatory notes, “as long as that customer has not communicated his individual VAT identification number to him” can be provided.
In Chapter IV add	To be added for the current Articles 6 to 9a of the VAT IR

Section 2 **Supply of services (Articles 24 to 29 of Directive 2006/112/EC)**	
Article 14 ~~Where in the course of a calendar year the threshold applied by a Member State in accordance with Article 34 of Directive 2006/112/EC is exceeded, Article 33 of that Directive shall not modify the place of supplies of goods other than products subject to excise duty carried out in the course of the same calendar year which are made before the threshold applied by the Member State for the calendar year then current is exceeded provided that all of the following conditions are met:~~ ~~(a) the supplier has not exercised the option provided for under Article 34(4) of that Directive;~~ ~~(b) the value of his supplies of goods did not exceed the threshold in the course of the preceding calendar year.~~ ~~However, Article 33 of Directive 2006/112/EC shall modify the place of the following supplies to the Member State in which the dispatch or transport ends:~~ ~~(a) the supply of goods by which the threshold applied by the Member State for the calendar year then current was exceeded in the course of the same calendar year;~~ ~~(b) any subsequent supplies of goods within that Member State in that calendar year;~~ ~~(c) supplies of goods within that Member State in the calendar year following the calendar year in which the event referred to in point (a) occurred.~~	Article 14 should be deleted, following the deletion of Article 34 of the VAT Directive.
Article 41~~ab~~ **For the application of Article 66a [and 369n] of Directive 2006/112/EC, the time when the payment has been accepted means the time when the payment confirmation or payment authorisation message or a commitment for payment from the customer has been received by or on behalf of the supplier~~-~~. The actual payment of money shall not influence the time when the payment is accepted. ~~time when the payment has been accepted shall not be conditioned by an instant exchange of money.~~**	

In Chapter X **Add Section 1a** **Record keeping (Articles 242 and 242a of Directive 2006/112/EC)**	
Article ~~54b~~ 54a **For the purpose of Article 242a of Directive 2006/112/EC, the term facilitates is defined under Article 5b of this Regulation.** **[A deemed supplier of goods or services pursuant to Article 14a of ~~the~~ Directive 2006/112/EC or to Article 9a of this Regulation shall keep the following records:** - **the records as detailed in Article 63c of this Regulation, if the taxable person has opted to apply the special schemes foreseen in Article 369b and Article 369m of ~~the~~ Directive 2006/112/EC;** - **the records as provided in Article 242 of ~~the~~ Directive 2006/112/EC, if the taxable person did not opt to use the special schemes in Article 369b and Article 369m of ~~the~~ Directive 2006/112/EC.]** **A taxable person referred to in Article 242a of ~~the VAT~~ Directive 2006/112/EC shall keep the following records:** **a)** **details of the supplier: his name, postal address, electronic address and/or website, VAT identification number or national tax number, if available, bank number and/or virtual accounts** **b)** **for supplies of goods: description of goods, time of supply, destination of goods, value of supplies;** c) **for supplies of services: type of service, time of supply, information to establish the place of supply, the value of the supplies.**	To be provided in the Explanatory notes: A deemed supplier of goods or services pursuant to Article 14a of the Directive or to Article 9a of this Regulation shall keep the following records: - the records as detailed in Article 63c of this Regulation, if the taxable person has registered for one of the special schemes foreseen in Article 369b and Article 369m of the Directive; - the records as provided in Article 242 of the Directive, if the taxable person did not opt to use the special schemes in Article 369b and Article 369m of the Directive.

CHAPTER XI **SPECIAL SCHEMES**	
SECTION 2 ***Special schemes for ~~non-established~~ taxable persons supplying ~~telecommunications services, broadcasting services or electronic~~ services to non-taxable persons or making distance sales of goods (Articles 358 to ~~369k~~369x of Directive 2006/112/EC)***	Adaptation of the heading according to the extension of the OSS to services other than TBE services and distance sales of goods (non-Union, Union and Import scheme).
Subsection 1 **Definitions** *Article 57a* For the purposes of this Section, the following definitions shall apply: (1) 'non-Union scheme' means the special scheme for ~~telecommunications services, broadcasting services or electronic~~ services supplied by taxable persons not established within the Community provided for in Section 2 of Chapter 6 of Title XII of Directive 2006/112/EC; (2) 'Union scheme' means the special scheme for ~~telecommunications services, broadcasting services or electronic~~ services supplied by taxable persons established within the Community but not established in the Member State of consumption **and for intra-Community distance sales of goods** provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC; **(2a) 'Import scheme' means the special scheme for distance sales of goods imported from third territories or third countries provided for in Section 4 of Chapter 6 of Title XII of Directive 2006/112/EC.** (3) 'special scheme' means the 'non-Union scheme', the 'Union scheme' **or the**	Amendments following the extension of the OSS to services other than TBE services and distance sales of goods, including the Import scheme (new paragraph 2a).

'**Import scheme**' as the context requires; (4) 'taxable person' means a taxable person ~~not established within the Community~~ **referred to in** ~~as defined in point (1) of~~ Article ~~358a~~ **359** of Directive 2006/112/EC **permitted to use the non-Union scheme**, ~~or~~ a taxable person ~~not established in the Member State of consumption, as defined in point (1) of the first paragraph of~~ **referred to in** Article ~~369a~~ **369b of that Directive permitted to use the Union scheme or any taxable person referred to in Article 369m of that Directive permitted to use the Import scheme.** **(5) 'intermediary' means a person as defined in point (2) of Article 369l of Directive 2006/112/EC.**	Paragraph (4) has been reworded. It now refers to the Articles determining who can use the special schemes instead of the definitions of 'taxable persons' in each scheme. The reason is that taxable persons making intra-EU distance sales of goods can also be established in the Member State of consumption or outside the Community (which is a situation not covered by the definition in Article 369a(1) of the VAT Directive). For the Import scheme, the definition in Article 369l, (1) of 'taxable persons not established in the Community' does not cover all taxable person who can use the Import scheme. GFV of 13 June 2018: A definition of "intrinsic value", if required, has to be included in customs legislation or the concept has to be clarified in explanatory notes.
Subsection 2 **Application of the Union scheme** Article 57b **1.** Where a taxable person using the Union scheme has established his business within the Community, the Member State in which his place of business is established shall be the Member State of identification. Where a taxable person using the Union scheme has established his business outside the Community, but has more than one fixed establishment in the Community, he may choose any Member State in which he has a fixed establishment as the Member State of identification, in accordance with the second paragraph of Article 369a of Directive 2006/112/EC. **2. Where a taxable person not established within the Community uses the Union scheme for intra-Community distance sales of goods, the Member State from which the goods are dispatched or transported from ~~intra-Community distance sales of goods are carried out~~ shall be the Member State of identification.**	A second paragraph is added to determine the Member State of identification in the exceptional situation that a taxable person not established in the EU wants to make use of the Union scheme to declare intra-EU distance sales of goods. To be noted that if such sales are facilitated by an electronic interface, that interface will be deemed to be the supplier. GFV of 13 June 2018: the wording has been amended to make it more precise and align it with Article 369g(2) of the VAT Directive, as requested by a number of Member States.

Subsection 3 **Scope of the Union scheme** *Article 57c* The Union scheme shall not apply to ~~telecommunications, broadcasting or electronic~~ services supplied in a Member State where the taxable person has established his business or has a fixed establishment. The supplies of those services shall be declared to the competent tax authorities of that Member State in the VAT return as provided for under Article 250 of Directive 2006/112/EC.	The change reflects the extension of the OSS to all services supplied in another MS.
Subsection 4 **Identification** *Article 57d* **1.** When a taxable person informs the Member State of identification that he intends to make use of ~~one of~~ the ~~special~~ **non-Union or Union** scheme~~s~~, that special scheme shall apply as from the first day of the following calendar quarter. However, where the first supply of **goods or** services to be covered by~~that special~~ **the non-Union or the Union** scheme takes place before the date referred to in the first paragraph, the special scheme shall apply as from the date of that first supply, provided the taxable person informs the Member State of identification of the commencement of his activities to be covered by the scheme no later than the tenth day of the month following that first supply. **2. When a taxable person or an intermediary acting on his behalf informs the Member State of identification that he intends to make use of the Import scheme, that special scheme shall apply as from the day the taxable person or the intermediary has been allocated the individual VAT identification number for the Import scheme as laid down in Article 369q of Directive 2006/112/EC.**	The amendments in the first paragraph mirror the extension of the OSS. A new paragraph 2 is added, providing that the Import scheme applies as from the day of allocation of the individual VAT identification number. Supplies cannot be made prior to that date as the individual VAT identification number must be included in the customs declaration upon importation.

Article 57e The Member State of identification shall identify the taxable person using the Union scheme by means of his VAT identification number as referred to in Articles 214 and 215 of Directive 2006/112/EC. The individual identification number allocated to an intermediary pursuant to Article 369q(2) of Directive 2006/112/EC is a number that allows him to act as intermediary on behalf of taxable persons making use of the Import scheme and cannot be used by the intermediary to declare VAT on taxable transactions.	A taxable person not established within the Community using the Union scheme (to declare intra-Community distance sales of goods) should already have a VAT number allocated by the MSI in accordance with Article 214 of the VAT Directive in order to be able to use the Union scheme. In the GFV of 13 June 2018, MS agreed to add a clarification that the identification number an intermediary receives to act as such is not a VAT number.
Article 57f 1. Where a taxable person using the Union scheme ceases to meet the conditions of the definition laid down in point (2) of the first paragraph of Article 369a of Directive 2006/112/EC, the Member State in which he has been identified shall cease to be the Member State of identification. Where that taxable person still fulfils the conditions for using that special scheme, he shall, to continue using that scheme, indicate as the new Member State of identification the Member State in which he has established his business or, if he has not established his business in the Community, a Member State where he has a fixed establishment. Where the Member State of identification changes in accordance with **sub**paragraph 1, that change shall apply as from the date on which the taxable person ceases to have a business establishment or a fixed establishment in the Member State previously indicated as the Member State of identification. **2. Where a taxable person using the Import scheme or an intermediary acting on his behalf ceases to meet the conditions laid down in points (3) (b) to (e) of the second paragraph of Article 369l of Directive 2006/112/EC, the Member State in which the taxable person or intermediary has been identified shall cease to be the Member State of identification. Where that taxable person or intermediary still fulfils the conditions for using that special scheme, he shall, to continue using that scheme, indicate as the new Member State of identification, the Member State in which he has established his business or, if he has not established his business in the Community, a Member State where he has a fixed establishment.** Where the Member State of identification changes in accordance with subparagraph 1,	A 2nd subparagraph is added to paragraph 2. This is needed to determine as of when the change of MSI is effective. As mentioned at the GFV meeting of 13 June 2018, in the situation covered by this provision, the IOSS VAT identification number should remain valid for a certain period of time after the taxable person (or the intermediary acting on his behalf) ceased to meet the conditions for registration in the IOSS in a specific Member State in order to allow exempting imports taking place after the date on which the change became effective. This is covered in Article 58.

that change shall apply as from the date on which the taxable person or the intermediary ceases to have a business establishment or a fixed establishment in the Member State previously indicated as the Member State of identification.	
Article 57g **1.** A taxable person using ~~a~~ **the non-Union or the Union** ~~special~~ scheme may cease using ~~that~~ **those** special scheme**s** regardless of whether he continues to supply **goods or** services which can be eligible for ~~that~~ **those** special scheme**s**. The taxable person shall inform the Member State of identification at least 15 days before the end of the calendar quarter prior to that in which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next calendar quarter. VAT obligations relating to supplies of ~~telecommunications, broadcasting or electronic~~ **goods or** services arising after the date on which the cessation became effective shall be discharged directly with the tax authorities of the Member State of consumption concerned. ~~Where a taxable person ceases using a special scheme in accordance with the first **sub**paragraph, he shall be excluded from using that scheme in any Member State for two calendar quarters from the date of cessation.~~ **2. A taxable person using the Import scheme may cease using that scheme regardless of whether he continues to carry out distance sales of goods imported from third territories or third countries. The taxable person or the intermediary acting on his behalf shall inform the Member State of identification at least 15 days before the end of the month prior to that in which he intends to cease using the scheme. Cessation shall be effective as of the first day of the next month and the taxable person shall no longer be allowed to use the scheme for supplies carried out as from that day.** **~~Where a taxable person ceases using the Import scheme in accordance with this subparagraph, he shall be excluded from using that scheme in any Member State for two calendar quarters from the date of cessation.~~**	The amendments mirror the extension of the OSS to goods and services and include the import scheme. **GFV of 13 June 2018:** A great number of Member States was in favour of deleting the quarantine period. A 2nd paragraph is added covering the situation where a taxable person voluntarily ceases to use the Import scheme. It defines the date as of which the taxable person is excluded, ie. is no longer allowed to make supplies under the scheme. This means, implicitly, that the taxable persons must be reassured that all goods supplied using the IOSS have been imported in the EU prior to the exclusion from the scheme. **GFV of 13 June 2018:** A great number of Member States was in favour of deleting the quarantine period.

Subsection 5 **Reporting obligations** *Article 57h* 1. A taxable person **or an intermediary acting on his behalf** shall, no later than the tenth day of the next month, inform the Member State of identification by electronic means of: — the cessation of his activities covered by a special scheme, — any changes to his activities covered by a special scheme whereby he no longer meets the conditions necessary for using that special scheme, and — any changes to the information previously provided to the Member State of identification. 2. Where the Member State of identification changes in accordance with Article 57f, the taxable person **or the intermediary acting on his behalf** shall inform both relevant Member States of the change no later than the tenth day of the month following the change of establishment. He shall communicate to the new Member State of identification the registration details required when a taxable person makes use of a special scheme for the first time.	Obligations have been added for an intermediary (Import scheme).
Subsection 6 **Exclusion** *Article 58* **1.** Where at least one of the criteria for exclusion laid down in Article 363**,** ~~or~~ Article 369e **or Article 369r(1) and (3)** of Directive 2006/112/EC applies to a taxable person using one of the special schemes, the Member State of identification shall exclude that taxable person from that scheme. Only the Member State of identification can exclude a taxable person from using one of the special schemes. The Member State of identification shall base its decision on exclusion on any	The adaptation mirrors the extension of the OSS. Paragraph 1 concerns the exclusion of a taxable person from one of the schemes.

information available, including information provided by any other Member State.	
2. The exclusion of a taxable person from the non-Union or the Union scheme shall be effective as from the first day of the calendar quarter following the day on which the decision on exclusion is sent by electronic means to the taxable person. However ~~**or the intermediary acting on his behalf, except in the following situations:**~~	The exclusion details have been separated into one paragraph (2nd) concerning the non-Union or the Union scheme and one paragraph (3rd) dealing with the Import scheme. A fourth paragraph is dedicated to the deletion of the intermediary from the register.
~~**(a)** However w~~**W**~~**w**~~here the exclusion is due to a change of place of business or fixed establishment, the exclusion shall be effective as from the date of that change.~~**;**	
3. The exclusion of a taxable person from the Import scheme shall be effective as from the first day of the month following the day on which the decision on exclusion is sent by electronic means to the taxable person and the taxable person shall no longer be allowed to use the scheme for supplies carried out as from that day, except for the following situations:	
(a) ~~However w~~**W**here the exclusion is due to a change of place of business or fixed establishment, the exclusion shall be effective as from the date of that change;	
(b) Where the exclusion ~~from the Import scheme~~ is due to the persistent failure to comply with the rules of this scheme, the exclusion shall be effective as from the day ~~on~~ following the day on which the decision on exclusion is sent by electronic means to the taxable person~~ or the intermediary acting on his behalf.~~;	The exclusion of a taxable person from the Import scheme means that as of the date the exclusion becomes effective the taxable person can no longer use the scheme for subsequent supplies. The goods supplied before the exclusion should however still benefit from the exemption upon importation after the exclusion became effective. To achieve this purpose, the IOSS number will remain valid for a maximum of two months after the exclusion. There is one exception to this rule: in case of persistent failure to comply with the rules (by the intermediary or the taxable person himself), the IOSS number will become invalid at the date of exclusion.
Except for the situation described in point (b), the individual VAT identification number allocated for the use of the Import scheme shall remain valid for the period of time needed to import the goods supplied prior to the date of exclusion, which may not exceed two months as from that date.	
~~2~~**4. Where at least one of the criteria for exclusion laid down in Article 369r(2) of Directive 2006/112/EC applies to an intermediary, the Member State of identification shall delete that intermediary ~~person~~ from the identification register and exclude the taxable persons represented by this intermediary from the Import scheme.**	A 4th paragraph has been added dealing with the deletion of an intermediary from the register.
Only the Member State of identification can delete an intermediary from the	

identification register. **The Member State of identification shall base its decision on deletion on any information available, including information provided by any other Member State.** **The deletion shall be effective as from the first day of the month following the day on which the decision on deletion is sent by electronic means to the intermediary and the taxable persons he represents, except in the following situations:** **(a) Where the deletion is due to a change of place of business or fixed establishment, the deletion shall be effective as from the date of that change;** **(b) Where the deletion of the intermediary is due to the persistent failure to comply with the rules of the Import scheme, the deletion shall be effective as from the day following the day on which the decision on deletion is sent by electronic means to the intermediary and the taxable persons he represents.**	
Article 58a A taxable person using a special scheme who has, for a period of ~~eight consecutive calendar quarters~~two years, made no supplies of **goods or** services covered by that scheme in any Member State of consumption, shall be assumed to have ceased his taxable activities within the meaning of point (b) of Article 363**,** ~~or~~ point (b) of Article 369e **or point (b) of Article 369r(1) and (3)** of Directive 2006/112/EC respectively. This cessation shall not preclude him from using a special scheme if he recommences his activities covered by either scheme.	There is no need to add a paragraph concerning the intermediary (Import scheme), because this is already covered by point (a) of Article 369r(2), which provides that Member States shall delete an intermediary from the identification register if he has not acted as such during two consecutive calendar quarters. In this regard, an intermediary should still be considered to act as such if he is submitting nil returns for a period of more than six months for a taxable person who does not make any new supplies during more than six months.
Article 58b 1. Where a taxable person is excluded from one of the special schemes for persistent failure to comply with the rules relating to that scheme, that taxable person shall remain excluded from using either scheme in any Member State for ~~eight calendar quarters~~ **two years** following the ~~calendar quarter~~ **return period** during which the taxable person was excluded**, except where in the Import scheme the exclusion is due to the persistent failure to comply with the rules by the intermediary acting**	Paragraph 1 has been amended so as to cover also the Import scheme for which the return period is one month.

on behalf of the taxable person. **Where an intermediary is deleted from the identification register for persistent failure to comply with the rules of the Import scheme, he shall not be allowed to act as an intermediary for two years following the month during which he was deleted from that register.**	
2. A taxable person **or an intermediary** shall be regarded as having persistently failed to comply with the rules relating to one of the special schemes, within the meaning of point (d) of Article 363**,** ~~or~~ point (d) of Article 369e**, point (d) of Article 369r(1) and (3) or point (c) of Article 369r(2)** of Directive 2006/112/EC, in at least the following cases:	The date on which reminders will be sent and consequently the calculation of 10 days after this date have changed due to the extension of the deadline to submit returns and pay VAT.
(a) where reminders pursuant to Article 60a have been issued to him **or the intermediary acting on his behalf** by the Member State of identification, for three immediately preceding ~~calendar quarters~~ **return periods** and the VAT return has not been submitted for each and every one of these ~~calendar quarters~~ **return periods** within 10 days after the reminder has been sent;	
(b) where reminders pursuant to Article 63a have been issued to him **or the intermediary acting on his behalf** by the Member State of identification, for three immediately preceding ~~calendar quarters~~ **return periods** and the full amount of VAT declared has not been paid by him **or the intermediary acting on his behalf** for each and every one of these ~~calendar quarters~~ **return periods** within 10 days after the reminder has been sent, except where the remaining unpaid amount is less than EUR 100 for each ~~calendar quarter~~ **return period**;	
(c) where following a request from the Member State of identification ~~or the Member State of consumption~~ and one month after a subsequent reminder by the Member State of identification, he **or the intermediary acting on his behalf** has failed to make electronically available the records referred to in Articles 369**,** ~~and~~ 369k **and 369x** of Directive 2006/112/EC.	**To be discussed:** To align point (c) with Article 47i of Regulation 904/2010, "or the Member State of Consumption" has been deleted, because the MSC always has to request a taxable person's records via the MSI. There is no provision obliging the MSI to issue a reminder in case a taxable person has not submitted his records. This could be added in a fourth paragraph of Article 63c similar to what is foreseen for returns and payments (Articles 60a and 63a) – see proposed amendment in Article 63c.

Article 58c A taxable person who has been excluded from ~~one of the special~~ **the non-Union or the Union** scheme~~s~~ shall discharge all VAT obligations relating to supplies of ~~telecommunications, broadcasting or electronic~~ **goods or** services arising after the date on which the exclusion became effective directly with the tax authorities of the Member State of consumption concerned.	
Subsection 7 **VAT return** *Article 59* 1. Any return period within the meaning of Article 364**,** ~~or~~ Article 369f **or Article 369s** of Directive 2006/112/EC shall be a separate return period. 2. Where, in accordance with the second **sub**paragraph of Article 57d**(1), the non-Union or Union** ~~a special~~ scheme applies from the date of the first supply, the taxable person shall submit a separate VAT return for the calendar quarter during which the first supply took place. 3. Where a taxable person has been registered under ~~each of the special~~ **the non-Union or Union** scheme~~s~~ during a return period, he shall submit VAT returns and make the corresponding payments to the Member State of identification for each scheme in respect of the supplies made and the periods covered by that scheme. 4. Where the Member State of identification changes in accordance with Article 57f after the first day of the ~~calendar quarter~~ **return period** in question, the taxable person **or the intermediary acting on his behalf** shall submit VAT returns and make corresponding payments to both the former and the new Member State of identification covering the supplies made during the respective periods in which the Member States have been Member State of identification.	
Article 59a Where a taxable person using a special scheme has supplied no **goods or** services in any Member State of consumption under that special scheme during a return period **and does not make any corrections to previous returns**, he **or the intermediary**	

acting on his behalf shall submit a VAT return indicating that no supplies have been made during that period (a nil-VAT return).	
Article 60 Amounts on VAT returns made under the special schemes shall not be rounded up or down to the nearest whole monetary unit. The exact amount of VAT shall be reported and remitted.	
Article 60a The Member State of identification shall remind, by electronic means, taxable persons **or intermediaries acting on their behalf** who have failed to submit a VAT return under Article 364**,** ~~or~~ Article 369f **or Article 369s** of Directive 2006/112/EC, of their obligation to submit such a return. The Member State of identification shall issue the reminder on the tenth day following that on which the return should have been submitted, and shall inform the other Member States by electronic means that a reminder has been issued. Any subsequent reminders and steps taken to assess and collect the VAT shall be the responsibility of the Member State of consumption concerned. Notwithstanding any reminders issued, and any steps taken, by a Member State of consumption, the taxable person **or the intermediary acting on his behalf** shall submit the VAT return to the Member State of identification.	The date on which a reminder has to be sent has to be adapted by IT due to the extension of the period to submit a return form 20 days to the end of the month.
~~*Article 61*~~ ~~1.~~ **~~Until 31 December 2020,~~** ~~Cc~~~~hanges to the figures contained in a VAT return shall, after its submission, be made only by means of amendments to that return and not by adjustments to a subsequent return.~~ **~~As from 1 January 2021, changes to the figures contained in a VAT return shall, after its submission, be made only by adjustments in a subsequent return.~~** ***~~[~~Article 61*** **1. Changes to the figures contained in a VAT return relating to periods up to and including the last return period in 2020 shall, after its submission, be made only by means of amendments to that return and not by adjustments in a subsequent**	Article 61 has to be adapted according to MS' decision to keep two systems until 2023 (as of 2021 the current rule – corrections are made in the original return – will apply for corrections made to returns concerning Q4 2017 until Q 4 2020 and the new rule – correction in a subsequent return – will apply to returns as of Q1 2021) or to have one single system as of 2021 (as of 2021 all possible corrections will be done in a subsequent return). The legal text reflects both options. Option 1 mirrors one single system as of 2021 and option 2 – in square brackets – reflects the option keeping two

return. **Changes to the figures contained in a VAT return relating to periods as of the first return period in 2021 shall, after its submission, be made only by adjustments in a subsequent return.]** 2. The amendments referred to in paragraph 1 shall be submitted electronically to the Member State of identification within three years of the date on which the initial return was required to be submitted. However, the rules of the Member State of consumption on assessments and amendments shall remain unaffected.	systems in place until 2023. **Member States are asked to state which solution they prefer. Following the IT workshop of 4th July, the second option seems to be the preferred one from an IT point of view.**
Article 61a **1.** If a taxable person: (a) ceases to use one of the special schemes; (b) is excluded from one of the special schemes; or (c) changes the Member State of identification in accordance with Article 57f(1) he **or an intermediary acting on his behalf** shall submit his final VAT return and the corresponding payment, and any ~~corrections to or~~ late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of the cessation, exclusion or change. **2. If an intermediary:** **(a) is deleted from the identification register; or** **(b) changes the Member State of identification in accordance with Article 57f(2)** **he shall submit the final VAT returns of all taxable persons on whose behalf he is acting and the corresponding payment, and any late submissions of previous returns, and the corresponding payments, to the Member State which was the Member State of identification at the time of deletion or change.**	This amendment reflects option 1 (one single system for corrections as of 2021). If MS wish to keep two systems in place until 2023 (option 2, see line above), this will have to be adapted. A 2nd paragraph is added covering the deletion of an intermediary.

Subsection 8 **Currency** *Article 61b* Where a Member State of identification whose currency is not the euro determines that VAT returns are to be made out in its national currency, that determination shall apply to the VAT returns of all taxable persons using the special schemes.	

Subsection 9 **Payments** *Article 62* Without prejudice to the third paragraph of Article 63a, and to Article 63b, a taxable person **or the intermediary acting on his behalf** shall make any payment to the Member State of identification. Payments of VAT made by the taxable person **or the intermediary acting on his behalf** under Article 367**,** ~~or~~ Article 369i **or Article 369v** of Directive 2006/112/EC shall be specific to the VAT return submitted pursuant to Article 364**,** ~~or~~ Article 369f **or Article 369s** of that Directive. Any subsequent adjustment to the amounts paid shall be effected by the taxable person **or the intermediary acting on his behalf** only by reference to that return and may neither be allocated to another return, nor adjusted on a subsequent return. Each payment shall refer to the reference number of that specific return.	
Article 63 A Member State of identification which receives a payment in excess of that resulting from the VAT return submitted under Article 364**,** ~~or~~ Article 369f **or Article 369s** of Directive 2006/112/EC shall reimburse the overpaid amount directly to the taxable person **or the intermediary acting on his behalf** concerned. Where a Member State of identification has received an amount in respect of a VAT return subsequently found to be incorrect, and that Member State has already	

distributed that amount to the Member States of consumption, those Member States of consumption shall each reimburse their respective part of any overpaid amount directly to the taxable person **or to the intermediary acting on his behalf**. However, where overpayments relate to periods up to and including the last return period in 2018, the Member State of identification shall reimburse the relevant portion of the corresponding part of the amount retained in accordance with Article 46(3) of Regulation (EU) No 904/2010 and the Member State of consumption shall reimburse the overpayment less the amount that shall be reimbursed by the Member State of identification. The Member States of consumption shall, by electronic means, inform the Member State of identification of the amount of those reimbursements.	The third paragraph must be kept as it will still be relevant for possible corrections to returns relating to periods as from Q4 2017 up to Q4 2018.
Article 63a Where a taxable person **or the intermediary acting on his behalf** has submitted a VAT return under Article 364**,** ~~or~~ Article 369f **or Article 369s** of Directive 2006/112/EC, but no payment has been made or the payment is less than that resulting from the return, the Member State of identification shall, by electronic means on the tenth day following the latest day on which the payment should have been made in accordance with Article 367**,** ~~or~~ Article 369i **or Article 369v** of Directive 2006/112/EC, remind the taxable person **or the intermediary acting on his behalf** of any VAT payment outstanding. The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent. Any subsequent reminders and steps taken to collect the VAT shall be the responsibility of the Member State of consumption concerned. When such subsequent reminders have been issued by a Member State of consumption, the corresponding VAT shall be paid to that Member State. The Member State of consumption shall, by electronic means, inform the Member State of identification that a reminder has been issued.	The MS/IT section has to recalculate the date on which the reminder has to be sent due to the extension of the period to pay VAT.
Article 63b Where no VAT return has been submitted, or where the VAT return has been	

submitted late or is incomplete or incorrect, or where the payment of VAT is late, any interest, penalties or any other charges shall be calculated and assessed by the Member State of consumption. The taxable person **or the intermediary acting on his behalf** shall pay such interests, penalties or any other charges directly to the Member State of consumption.	

Subsection 10 **Records** *Article 63c* 1. In order to be regarded as sufficiently detailed within the meaning of Articles 369 and 369k of Directive 2006/112/EC, the records kept by the taxable person shall contain the following information: (a) the Member State of consumption to which the **good or** service **is** supplied; (b) the type of ~~good or~~ service **or** ~~nature~~ **description and quantity of goods** supplied; (c) the date of the supply of **the good or** service; (d) the taxable amount indicating the currency used; (e) any subsequent increase or reduction of the taxable amount; (f) the VAT rate applied; (g) the amount of VAT payable indicating the currency used; (h) the date and amount of payments received; (i) any payments on account received before the supply of **the good or** service; (j) where an invoice is issued, the information contained on the invoice; ~~(k) the name of the customer, where known to the taxable person;~~ **(kł) for services,** the information used to determine the place where the customer is established or has his permanent address or usually resides **and, for goods, the information used to determine the place where the dispatch or the transport of**	**For both the Union and non-Union scheme (paragraph 1) and the Import scheme (paragraph 2), the Commission wonders if it is relevant to provide that the taxable person/intermediary shall keep in his records the name of the customer, where known to him. This would not seem to be required as the information must only be kept 'if available' and as it the records already contain the information needed to determine the place of taxation (point (1)(l) and point 2(l)). In addition, it may raise data protection issues, in particular under Article 14a of the VAT Directive in the deemed supplier situations.** **Member States are invited to express their views.** **GFV of 13 June 2018: MS agreed to this.**

the goods to the customer begins and ends; **(l) proof of possible returns of goods, including the taxable amount and the VAT rate applied.** **2. In order to be regarded as sufficiently detailed within the meaning of Article 369x of Directive 2006/112/EC, the records kept by the taxable person or the intermediary acting on his behalf shall contain the following information:** **(a) the Member State of consumption to which the goods are supplied;** **(b) the description and quantity of goods supplied;** **(c) the date of the supply of goods;** **(d) the taxable amount indicating the currency used;** **(e) any subsequent increase or reduction of the taxable amount;** **(f) the VAT rate applied;** **(g) the amount of VAT payable indicating the currency used;** **(h) the date and amount of payments received;** **(i) any payments on account received before the supply of goods;** **(j) where an invoice is issued, the information contained on the invoice;** ~~**(k) the name of the customer, where known to the taxable person;**~~ **(k) the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends;** **(l) proof of possible returns of goods, including the taxable amount and VAT rate applied;** ~~declared under the Import scheme.;~~ **(m) consignment number** and/or transaction number. ~~2~~**3**. The information referred to in paragraph 1 **and 2** shall be recorded by the taxable person **or the intermediary acting on his behalf** in such a way that it can be made available by electronic means without delay and for each single **good or** service supplied.	A new paragraph 2 is introduced for the Import scheme.

4. Where a taxable person or the intermediary acting on his behalf has been requested to submit, by electronic means, the records referred to in Articles 369, 369k and 369x of Directive 2006/112/EC and has failed to submit them within 10 days of the date of the making of the request, the Member State of identification shall remind the taxable person or the intermediary acting on his behalf to submit those records. The Member State of identification shall by electronic means inform the Member States of consumption that the reminder has been sent.	

SECTION 2 **Subsection 11** **Import scheme – time of supply** ***Article 63d***	**If needed, provisions clarifying the meaning of "VAT shall become chargeable at the time when the payment has been accepted" (369n of the VAT Directive) could be added, possibly in a new Subsection 11 of Section 2 of Chapter XI).** **A similar provision will be introduced related to Article 66a in the provisions concerning electronic interfaces (See GFV075).**
SECTION 3 **Special arrangements for declaration and payment of import VAT (Articles 369y to 369zc of Directive 2006/112/EC)**	**Possible additions (new Section 3 of Chapter XI):** **- Clarify the meaning of global (monthly) declaration and payment** **- Clarify the meaning of 'appropriate measures'** **- Clarify what 'VAT collected' means** **- Record keeping for the person presenting goods to customs: obligations laid down in EU and/or national customs legislation.** **- Returns of goods (before or after acceptance/payment by the customer)**
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 2021.** **However, Member States shall allow taxable persons ~~or~~and intermediaries acting on their behalf to submit the information required under Article 360, Article 369c**	This provision is added to allow taxable persons and intermediaries acting on their behalf to register for one of the schemes before they enter into force. The Union and Non-Union scheme already exist but their scope has been extended which requires including them in this provision.

or Article 369o of Directive 2006/112/EC for registration under the special schemes as from 1 October 2020.	