

Common system of value added tax (VAT): temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold

2016/0406(CNS) - 20/12/2018 - Final act

PURPOSE: to allow temporary derogations from the common VAT rules in order to better prevent VAT fraud.

LEGISLATIVE ACT: Council Directive (EU) 2018/2057 amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold.

CONTENT: in light of the current level of VAT fraud and pending the introduction of a definitive VAT system, certain Member States have asked to be allowed to implement a temporary generalised reverse charge mechanism ('GRCM') with a certain threshold per transaction which would derogate from one of the general principles of the current VAT system, as regards the fractionated payment system, in order to address endemic carousel fraud.

This Directive will allow a Member State, until 30 June 2022, to introduce a generalised reverse charge mechanism ('GRCM') on non-cross-border supplies, providing that the person liable for payment of VAT is the taxable person to whom all supplies of goods and services are made above a threshold of EUR 17 500 per transaction.

A Member State wishing to introduce the GRCM shall comply with all of the following conditions:

- it has, based on the impact assessment that accompanied the legislative proposal, a carousel fraud level within its total VAT gap of more than 25 %;
- it establishes that other control measures are not sufficient to combat carousel fraud on its territory, in particular by specifying the control measures applied and the particular reasons for their lack of effectiveness, as well as the reasons why administrative cooperation in the field of VAT has proven insufficient;
- it establishes that the estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the expected overall additional burden on businesses and tax authorities by at least 25 %; and
- it establishes that the introduction of the GRCM will not result in businesses and tax authorities incurring costs that are higher than those incurred as a result of the application of other control measures.

Member States that apply the GRCM shall establish appropriate and effective electronic reporting obligations for all taxable persons and, in particular, for taxable persons who supply or receive goods or services to which the GRCM applies to ensure the effective functioning and monitoring of the application of the GRCM.

Member States wishing to apply the GRCM shall submit a request to the Commission. Where the Commission considers that a request complies with the admission requirements, it shall, no later than three months after it has received all the necessary information, submit a proposal to the Council. The Council, acting unanimously on such a proposal from the Commission, may authorise the requesting Member State to apply the GRCM. It shall, within the same deadline, communicate its reasons to the requesting Member State and to the Council.

Member States that apply the GRCM shall submit an interim report to the Commission no later than one year after the start of application of the GRCM. Three months after the end of the application of the GRCM, Member States that apply the GRCM shall submit a final report on its overall impact.

ENTRY INTO FORCE: 16.1.2019. The Directive is applicable until 30.6.2022.