

EXPLANATORY MEMORANDUM PROPOSAL FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

6158/22

COM(2022) 39 final

Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards the extension of the application period 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

Submitted by HM Treasury

24 March 2022

SUBJECT MATTER

1. This proposal extends the application of Articles 199a and 199b of Directive 2006/112/EC (the VAT Directive) until 31 December 2025. Both Articles currently expire on 30 June 2022.
2. Article 199a lists supplies known to be particularly susceptible to fraud and allows Member States to provide that the person liable for payment of VAT in respect of these supplies is the taxable person to whom the supply is made – the reverse charge mechanism.
3. Article 199b provides for a Quick Reaction Mechanism (QRM) that enables Member States, in cases of urgency, to designate that the recipient of a supply is liable to pay the VAT on specific supplies of goods and services to combat sudden and massive fraud. The QRM is a temporary provision to enable Member States to act quickly and give time to put in place a normal derogation under Article 395 of Directive 2006/112/EC, and to allow time to develop a conventional response.
4. Article 199a of the VAT Directive was initially time extended, with amendments, until 31 December 2018. Article 199b of the VAT Directive was introduced for the period 2013 until 31 December 2018. Both Articles 199a and 199b of the VAT Directive were subsequently extended until 30 June 2022 in order to coincide with the initially foreseen date on which the VAT definitive system would enter into force on 1 July 2022.
5. As the definitive VAT system will no longer come into force on 1 July 2022, this proposal will have the effect of extending the application of Articles 199a and 199b of the VAT Directive until the end of 2025. This will allow negotiations on the definitive VAT system to continue between Member States in Council.

6. If the definitive VAT system does not enter into force before the end of 2025, the arrangements in Article 199a of the VAT Directive might, because of the sunset clause, come to an end in 2025. If the definitive VAT system would enter into force before 2025, Articles 199a and 199b will be amended and therefore replace the current rules which are being extended.

SCRUTINY HISTORY

7. Explanatory Memorandum EM 13868/09 was submitted for scrutiny at the beginning of the process for amending the Directive to include Article 199a and was cleared by the House of Commons European Scrutiny Committee (ESC) on 25 November 2009 (Report 2, 08/09) and the House of Lords European Union Committee (EUC) (sub-committee A) on 4 December 2009. Explanatory Memorandum EM 13027/12 on amending the Directive to include Article 199b was cleared by the ESC on 5 June 2013 (Report 4, 13/14) and the EUC sub-committee A on 11 June 2013.
8. Explanatory Memorandum EM 7125/18 on the Commission's report to the Council and European Parliament on the effects of Articles 199a and 199b was submitted on 27 April 2018 and was cleared by the ESC on 16 May without a substantive report to the House and by the EUC on 8 May 2018 (Sift 1691).
9. Explanatory Memorandum EM 9461/18 on the Commission's proposal to extend the application of Articles 199a and 199b to 30 June 2022 was submitted for scrutiny on 26 June 2018 and was cleared by the ESC on 4 July 2018 without a substantive report to the House and by the EUC on 3 July 2018 (Sift 1699).
10. EM 7125/18 on a European Commission report on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on combatting fraud was submitted on 27 April 2018. The EM was cleared by the ESC on 16 May 2018 without a substantive report to the House and by the EUC on 8 May 2018 (Sift 1691).

MINISTERIAL RESPONSIBILITY

11. The Financial Secretary to the Treasury has responsibility for this proposal.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

12. Under the Protocol on Ireland/Northern Ireland ('the Protocol'), Northern Ireland must align to EU VAT and excise rules for goods. Northern Ireland Executive Officials have been consulted in the drafting of this explanatory memorandum. Based on the feedback provided by UKG on this reserved area, NI Officials have no further comments.

LEGAL AND PROCEDURAL ISSUES

- i. Legal Base
 - a. Article 113 of the Treaty on the Functioning of the European Union.
- ii. Voting Procedure
 - a. Unanimity
- iii. Timetable for adoption and implementation
 - a. This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union

POLICY IMPLICATIONS

13. This proposal extends the application of Articles 199a and 199b of Directive 2006/112/EC (the VAT Directive) until 31 December 2025. Under the Protocol on Ireland/Northern Ireland ('the Protocol'), Northern Ireland must align to EU VAT and excise rules for goods.
14. However, more broadly, to note the Government is seeking to find a new balance in operating the Protocol in order to place it on a more sustainable footing.
15. Extension of these Articles will have no significant impact on the United Kingdom as a whole. This is because the extension will maintain the status quo until either the new definitive VAT system comes into force (if agreed before the end of 2025), or the end of 2025 when the sunset clause takes effect.

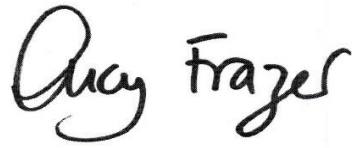
CONSULTATION

16. The Commission published a report on the effectiveness of the two Articles (EM 7125/18, COM (2018)118), where Member States were invited to provide their experience and assessment of the measures. Stakeholders were consulted via the VAT Expert Group. No new stakeholder consultations have occurred since then.

FINANCIAL IMPLICATIONS

17. None

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink that reads "Lucy Frazer". The signature is written in a cursive style with a large, looping initial 'L'.

Lucy Frazer QC

Financial Secretary to the Treasury

HM Treasury