

Common system of value added tax (VAT)

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The Commission presented a report on the effects of Articles 199a and 199b of Council Directive 2006/112/EC (VAT Directive) on combatting fraud.

The purpose of the measures foreseen in Articles 199a and 199b is to allow Member States to quickly tackle problems of the missing trader fraud in intra-Community trade (MTIC):

- in Article 199a by an option of applying the reverse charge mechanism for listed supplies. It allows Member States to provide that the person liable for payment of VAT on supplies listed in this Article is the taxable person to whom the supply is made (the reverse charge mechanism);
- in Article 199b allows Member States to designate the recipient as the person liable for payment of VAT on specific supplies of goods and services as a Quick Reaction Mechanism ('QRM') measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.

Both mechanisms are limited in time and shall apply until 31 December 2018.

The MTIC fraud occurs when a trader acquires goods from another Member State exempt from VAT and sells them on including VAT on the invoice to the customer. After having received the VAT amount from the customer such trader disappears before paying the VAT due to the tax authorities. At the same time the customer, acting in good faith or not, can deduct the VAT he paid to the supplier through his VAT return.

This report is based on feedback received from Member States and stakeholders on the effectiveness of sectoral reverse charge in the fight against fraud, as required by the VAT Directive.

The use of the measure included in Article 199a (1) of the VAT Directive: Member States generally consider the measure as a very effective and efficient tool in fighting VAT fraud in the given sectors or in preventing the fraud from appearing.

A number of Member States pointed out that due to the introduction of the reverse charge mechanism the missing trader fraud (MTIC) decreased significantly or disappeared completely in the defined sectors. The introduction of the reverse charge mechanism in the specified sectors helped Member States to significantly reduce revenue losses caused by the MTIC fraud and led to improved VAT collection. Next to the elimination of missing traders the measure also contributed to the decrease of the number of traders on the 'black' market and reinstalled fair competition in the sector.

All Member States applying the domestic reverse charge mechanism in emission allowances indicated that it was very efficient for stopping the particularly aggressive fraud. It was pointed out that the market of greenhouse emissions allowances is particularly susceptible to fraud given the high mobility of the allowances and the high amounts at stake whereby the measure enables Member States to prevent such VAT fraud from occurring. It is also considered effective in limiting the forthcoming losses in VAT revenues and therefore, some Member States introduced it as a preventive measure, as there were enough signals indicating fraud risks in the given sector.

Specifically regarding the supplies of greenhouse emission allowances, Member States pointed out that the reverse charge was necessary to fight the VAT fraud and to avoid that more losses would have been incurred by the state budgets.

All stakeholders consider that the measure was necessary to fight VAT fraud.

The measure appears to have eliminated fraud in a number of cases, to have decreased the risk of companies becoming part of VAT carousel fraud and to have cleaned the sector from inexplicably low prices, recreating a level playing field for honest businesses.

Member States are rather divided on the issue of the shift of fraud to other sectors. Whereas some Member States applying the measure consider that no shift of fraud to other goods or services took place, an equal number of Member States claim that a shift of fraud to other goods or services did take place.

Impact on compliance costs: a sectoral reverse charge mechanism adds some complexity to the VAT system of the participating Member State, leading to increased compliance costs for business and increased administrative burden for tax administrations. According to a recent study on the assessment of the optional reverse charge mechanism⁶, the reverse charge mechanism implies an increase by 43% of compliance costs to businesses.

The majority of Member States consider that compliance costs have increased somewhat as a result of the introduction of the measure. Although the cost increase is considerable, all Member States agree that it has been largely offset by the benefits. At the same time, stakeholders are adamant that costs are proportional to benefits obtained.

The assessment of the measure included in Article 199b of the VAT Directive: although it was never used, most Member States consider that it remains a useful tool for exceptional cases of VAT fraud.

Only one Member State pointed out that the measure is not useful, as other measures provided for by the VAT Directive are sufficient.

In conclusion, the Commission considers that the possibilities provided for in Articles 199a and 199b have proved very useful for Member States as temporary and targeted ad hoc measures. The expiry of the measures, without any alternative, could eventually lead to an increase in VAT fraud, less tax fairness and a loss of state revenue.

The definitive VAT system should solve the problem caused by the exemption from VAT linked to the intra-Community supply of goods, whereby the customer obtains the goods without having to pay VAT to the supplier. In the meantime, the Commission considers it necessary to extend both measures until the date of entry into force of the definitive arrangements or for another limited period.

Therefore, the Commission will make an appropriate legislative proposal in the second quarter of 2018 prolonging the existing measures.

