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**Opinion Statement of the CFE  
on persons liable for payment of VAT to the tax authorities  
regarding operations taking place in one Member State**

**Submitted to the European Institutions in February 2011**

The CFE recalls that the principle of legal certainty and the protection of individuals, in areas covered by Community law, requires that the Member States' legal rules be worded unequivocally so as to give the persons concerned a clear and precise understanding of their rights and obligations, and to enable national courts to ensure that those rights and obligations are observed (case 257/86 *Commission v Italy* [1988] ECR 3249).

The CFE observes that the provisions regarding the persons liable for payment of the VAT are highly complex, are not harmonized and are not adapted to current ways of doing business in the internal market. These national provisions are based on articles 193 to 199 of the Directive 2006/112/EC.

### ***Provisions concerned***

According to article 193 of the VAT Directive

*“VAT shall be payable by any taxable person carrying out a taxable supply of goods and services, except where it is payable by another person in the cases referred to in articles 194 to 199 and article 202”.*

According to article 194 (1)

*“Where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due, **Member States may provide that the person liable for payment of VAT is the person to whom the goods or services are supplied**”.*

Article 194(2) provides:

*“Member States shall lay down the conditions for implementation of paragraph 1”.*

According to article 199:

*“(1) **Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:***

- (a) the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods pursuant to Article 14(3);*
- (b) the supply of staff engaged in activities covered by point (a);*
- (c) the supply of immovable property, as referred to in Article 135(1)(j) and (k), where the supplier has opted for taxation of the supply pursuant to Article 137;*
- (d) the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI;*
- (e) the supply of goods provided as security by one taxable person to another in execution of that security;*
- (f) the supply of goods following the cession of a reservation of ownership to an assignee and the exercising of this right by the assignee;*
- (g) the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.*

(2). *When applying the option provided for in paragraph 1, **Member States may** specify the supplies of goods and services covered, and the categories of suppliers or recipients to whom these measures may apply.*

(3). *For the purposes of paragraph 1, **Member States may** take the following measures:*

*(a) provide that a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2 shall be regarded as a taxable person in respect of supplies received as referred to in paragraph 1 of this Article;*

*(b) provide that a non-taxable body governed by public law, shall be regarded as a taxable person in respect of supplies received as referred to in points (e), (f) and (g) of paragraph 1.*

(4). *Member States shall inform the VAT Committee of national legislative measures adopted pursuant to paragraph 1 in so far as these are not measures authorised by the Council prior to 13 August 2006 in accordance with Article 27(1) to (4) of Directive 77/388/EEC, and which are continued under paragraph 1 of this Article.”*

### ***Adverse consequences of anti-fraud measures***

Reverse charge procedures of the type outlined in article 199 have proven to be an efficient tool in the fight against missing trader fraud at local and international level since the fraudster becomes unable to collect taxes and disappear.

However, the CFE observes businesses are facing the following difficulties:

- First, reverse charge procedures have not been implemented uniformly by the different Member States and this is a source of administrative cost for businesses operating at a European level;

- Second, reverse charges increase the costs of suppliers (frequently foreign businesses), because the supplier cannot offset its input VAT (generally suffered on local acquisitions) against the output VAT (on local supplies) in its VAT return. The trader can only recover the VAT by making a claim under the eighth directive and under this directive the periods that a supplier needs to wait to obtain a refund of input VAT vary between countries from zero to more than a year. Such delays are discriminatory and constitute a significant trade barrier:

- Third, although such procedures have proven to be efficient against situations of missing traders in the building construction sector, in some countries, this causes a problem on the installation of machines because it is not clear whether or not the installation of such equipments is to be considered as immovable work on immovable property;

- Fourth, although Member States are obliged to take steps to ensure that taxable persons can be identified and to ensure the correct application of the transitional arrangements for the taxation of intra-community transactions, business can have problems in identifying invoices that require them to account for a reverse charge;

The CFE invites the Commission to examine the benefits of harmonising the rules determining who is liable to account for the payment of the VAT.