



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**Value added tax**

**taxud.c.1(2022)7158574 – EN**

Brussels, 19 September 2022

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 1052**

**NEW LEGISLATION**

**MATTERS CONCERNING THE IMPLEMENTATION  
OF RECENTLY ADOPTED EU VAT PROVISIONS**

**ORIGIN:** Belgium

**REFERENCE:** New Article 284(3)(b)

**SUBJECT:** The new special scheme for small enterprises: interaction with rules on intra-Community acquisitions

## **1. INTRODUCTION**

As Member States are starting to prepare for the implementation of Council Directive (EU) 2020/285<sup>1</sup> which will update the special scheme for small enterprises ('SME scheme'), questions may arise. This is the situation faced by Belgium which has therefore brought a question to the VAT Committee on the relationship between the SME scheme and the rules on intra-Community acquisitions by small enterprises applying that scheme. While the issue of a small enterprise having to be registered by means of an individual VAT identification number is not new, the opening of the exemption to small enterprises established in another Member State is a source of new questions.

The text of that question can be found in Annex.

## **2. SUBJECT MATTER**

With the changes made to the SME scheme which will apply from 1 January 2025, a small enterprise established in one Member State will, if eligible and below the respective domestic threshold, be able to benefit from exemption in any of the other Member States ('cross-border SME exemption'). That is so as any Member State applying an exemption to the supply of goods and services made within its territory by a small enterprise established there<sup>2</sup>, also must grant access to that exemption where the small enterprise making the supply is established in another Member State<sup>3</sup>.

To gain access to the cross-border SME exemption, the small enterprise must be identified by an individual number in its Member State of establishment only. That follows from the new Article 284 of the VAT Directive which in its paragraph 3 stipulates that:

*'... Notwithstanding Article 292b, in order for a taxable person to avail itself of the exemption in a Member State in which that taxable person is not established, the taxable person shall:*

- (a) give prior notification to the Member State of establishment; and*
- (b) be identified for the application of the exemption by an individual number in the Member State of establishment only.*

*Member States may use the individual VAT identification number already allocated to the taxable person in respect of that person's obligations under the internal system or apply the structure of a VAT number or any other number for the purpose of the identification referred to in point (b) of the first subparagraph.*

---

<sup>1</sup> Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

<sup>2</sup> See new Article 284(1) of the VAT Directive.

<sup>3</sup> See new Article 284(2) of the VAT Directive.

*The individual identification number referred to in point (b) of the first subparagraph shall have the suffix “EX”, or the suffix “EX” shall be added to that number.’*

If a small enterprise makes intra-Community acquisitions of goods, be it in its Member State of establishment (‘MSEST’) or in a Member State of exemption (‘MSEX’), Article 214 of the VAT Directive could also require registration of the small enterprise as according to paragraph 1 it is in general so that Member States are under an obligation to:

*‘... take the measures necessary to ensure that the following persons are identified by means of an individual number:*

...

- (b) every taxable person, or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 2(1)(b) and every taxable person, or non-taxable legal person, who exercises the option under Article 3(3) of making their intra-Community acquisitions subject to VAT; ...’*

Whilst this is not seen to give rise to particular issues should the acquisition be made in the MSEST, Belgium is uncertain as to whether the special scheme can still be applied if the small enterprise is required to register in a MSEX on account of intra-Community acquisitions made there. It could be that the doubt harboured by the Belgian delegation is shared by other Member States. What is certain, however, is that a common approach is called for.

### **3. BACKGROUND**

The issue evoked is triggered by the update made by Directive 2020/285 to the SME scheme and is linked to the exemption being opened to non-established small enterprises. Currently, only small enterprises established in the Member State in which the VAT is due are eligible for exemption (‘domestic SME exemption’). That will change from 1 January 2025, as based on the new Article 284 of the VAT Directive any Member State availing of the option provided for in paragraph 1 to apply an exemption to the supply of goods and services made within its territory by a small enterprise established there, must also as set out in paragraph 2 grant access to that exemption should the small enterprise making such a supply be established in another Member State.

As any other taxable person, a small enterprise must, pursuant to Article 213 of the VAT Directive, state when its activity as a taxable person commences, changes or ceases. The small enterprise will therefore be confronted with registration unless, being exempt from VAT, it is released from this obligation under Article 272(1)(d) of the VAT Directive. This will also be possible in future but is, in accordance with the new Article 292b of the VAT Directive, limited to the case where the small enterprise only applies the domestic SME exemption.

Where the cross-border SME exemption is applied, registration will be required. For reasons of simplification and reduction of compliance costs, a small enterprise seeking to access the cross-border SME exemption is to be registered in the MSEST only. As is the case with the One Stop Shop, it will under the SME scheme be for the MSEST to act as the focal point for the small enterprise which is to be identified by an individual number.

As also confirmed by recital 10 of Directive 2020/285, it is possible, but not necessary, for that number to be the individual VAT identification number.

Despite making taxable supplies in the MSEX, the small enterprise must not be registered in the MSEX. Meanwhile, should intra-Community acquisitions of goods be made by the small enterprise, the MSEX will be obliged, under Article 214(1)(b) of the VAT Directive, to take the measures necessary to ensure it is identified by an individual VAT identification number<sup>4</sup>.

#### **4. THE COMMISSION SERVICES' OPINION**

While the SME scheme as updated by Directive 2020/285 is at the centre of this question, focus is first and foremost on the interaction of the rules governing that special scheme and the normal VAT rules. While provision is made for a small enterprise wanting to avail of the cross-border SME exemption to be identified in the MSEST only, the question is whether identification in a MSEX for intra-Community acquisitions of goods made there could see the small enterprise barred from exemption under the SME scheme.

As also pointed out by the Belgian delegation, a distinction should certainly be made between the identification of a taxable person, in this instance a small enterprise, made in respect of their output transactions and that made in respect of their input transactions. There is no disputing that, when availing of the SME scheme, identification under the new Article 284(3) of the VAT Directive pertains to *output transactions* carried out by the small enterprise. Identification under Article 214(1)(b) of the VAT Directive caused by the small enterprise making intra-Community acquisitions of goods, on the other hand, relates to its *input transactions*.

##### **4.1 Input transactions**

The question raised by the Belgian delegation concerns the situation where a small enterprise is obliged under the normal rules to register as it is making intra-Community acquisitions of goods. That registration simply serves for the small enterprise to account for VAT on its acquisitions of goods which will have been supplied exempt of VAT by the supplier. That is so as the goods acquired in one Member State by way of a supply originating from another Member State will result in an input transaction for which the small enterprise will be liable to pay VAT.

As noted, there should be no reason for concern where intra-Community acquisitions of goods are made in the Member State of the small enterprise as it will be for the MSEST to issue the VAT identification number. This could not be said to raise any issue in regard to the new Article 284(3)(b) of the VAT Directive.

The situation giving the Belgian delegation rise to doubt is that where the intra-Community acquisitions of goods are made in another Member State. The reason for this is that the new Article 284(3)(b) of the VAT Directive specifies that the small enterprise should “*be identified for the application of the exemption by an individual number in the Member State of establishment only*”.

---

<sup>4</sup> This is assuming that during the current or the previous calendar year, the total value of its intra-Community acquisitions of goods is above the threshold of EUR 10 000. Should the value of such acquisitions be less than that, those will not be taxable unless the small enterprise has opted for taxation (see Article 3 of the VAT Directive).

It seems clear that this cannot in any way detract from the requirement to be identified under Article 214(1)(b) of the VAT Directive. Such identification is a requirement provided for under the normal rules and its scope cannot be seen as limited by the new Article 284(3)(b) of the VAT Directive which only concerns the registration “*for the application of the exemption*”. The issue is therefore rather whether the identification for intra-Community acquisitions of goods in a MSEX could have an impact not only on the entitlement to exemption in that MSEX but *in extremis* also on that in the MSEST.

In view of the Commission services, this should not be the case. It is true that the new Article 284(3)(b) of the VAT Directive provides for a small enterprise to be identified in the MSEST only. Given that it serves for the application of the exemption, this identification can, however, only be taken to pertain to output transactions of the small enterprise. With that in mind, it is not possible to see how the identification, obligated under the normal rule, of a small enterprise on account of input transactions by which goods are acquired in the MSEX can deprive the small enterprise of its entitlement for exemption under the SME scheme.

## **4.2 Output transactions**

To further expand on the question asked by the Belgian delegation, it may be useful to have a closer look at the background for the requirement of identification in the MSEST only. That identification serves for the small enterprise to gain access to the cross-border SME exemption of its supplies. As such, it is the output transactions that are targeted by such identification.

It should be said that in deciding to open the SME scheme to small enterprises established within the EU but not in the Member State where the VAT is due, measures had to be taken to allow an effective control of the application of the exemption and to ensure that Member States have access to the necessary information<sup>5</sup>. Rather than having it face the requirement of stating commencement of its activities under Article 213 of the VAT Directive and possible registration in respect of supplies made in each of the MSEX, it was decided, for reasons of simplification and reduction of compliance costs, that the small enterprise should be identified in the MSEST only. That is stipulated by provisions of the new Article 284(3)(b) of the VAT Directive. Moreover, the new Article 284d of the VAT Directive confirms that a small enterprise availing itself of the exemption in a Member State in which it is not established shall not in respect of the supplies covered by the exemption in that Member State be required to register for the purposes of VAT pursuant to Articles 213 and 214 of the VAT Directive.

While the SME scheme once updated will be opened to both established and non-established EU businesses, a small enterprise will not necessarily (be able to) avail of the exemption in relation to all of its supplies. If, for example, the value of supplies made in a particular MSEX exceeds the domestic annual turnover threshold, the exemption will cease to apply, subject to any measure taken for the gradual transition to taxation which may be implemented under the new Article 288a of the VAT Directive. That could see the small enterprise face the requirement of having to register in the (former) MSEX as would be the case if it were to make any intra-Community acquisition of goods there.

It is difficult to see how registration in a Member State other than the MSEST triggered by supplies no longer being eligible for exemption could take away the right of a small

---

<sup>5</sup> See recital 10 of Directive 2020/285.

enterprise to continue benefiting from exemption for supplies elsewhere. While in availing itself of the SME scheme, a small enterprise should be identified in the MSEST only, it is indeed solely in respect of the supplies covered by the exemption that, according to the new Article 284d of the VAT Directive, the small enterprise cannot be required to be registered for VAT purposes in another Member State. With that in mind and given that identification in the MSEST only is a measure put in place for the reasons of simplification and reduction of compliance cost, the Commission services cannot see that the entitlement of the small enterprise for its supplies in other Member States to be exempt can be set aside on account of it being required to register for taxed output transactions<sup>6</sup>.

### **4.3 Conclusion**

To conclude, the Commission believes that

- where, for *input transactions* in the form of intra-Community acquisitions of goods, a small enterprise is required to be identified under Article 214(1)(b) of the VAT Directive in the MSEX, the new Article 284(3)(b) of the VAT Directive cannot entail that the small enterprise would no longer be able to benefit from the exemption granted under the SME scheme in that MSEX;
- where, for *output transactions to be taxed*, a small enterprise can no longer benefit from the SME exemption in a particular MSEX because the value of its supplies exceeds the respective Member State annual turnover and it is required to register under Articles 213 and 214 of the VAT Directive, it should be kept in mind that the new Article 284(3)(b) of the VAT Directive only provides for identification for the application of the SME exemption; with the new Article 284d of the VAT Directive permitting for such registration, it cannot be taken to impact the exemption in other Member States.

## **5. DELEGATIONS' OPINION**

Delegations are invited to give their opinion on this question.

\*  
\*   \*

---

<sup>6</sup> Use of the One Stop Shop for taxed supplies made to non-taxable persons in the (former) MSEX could still see the small enterprise registered in the MSEST.

QUESTION FROM BELGIUM

**Interpretation of article 284, paragraph 3, b), new, of the VAT directive 2006/112/EC as modified by Council directive (EU) 2020/285**

Reference is made to the Council directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises (hereafter “directive 2020/285”) and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises.

We would like to submit a question to the European Commission regarding the relationship between the special scheme for small enterprises as such on the one hand and the specific rules on intra-Community acquisitions by small enterprises applying the special scheme on the other.

More in particular, we would be interested in obtaining the view of the European Commission and other delegations on the interpretation of the condition of article 284, paragraph 3, b), new of the directive 2006/112/EC (hereafter “VAT directive”).

**1. Scope - Application of the condition of article 284, paragraph 3, b), new of the VAT directive**

Article 284, paragraphs 2 and 3, new, of the VAT directive lay down the conditions to apply the special scheme for small enterprises in a Member State in which the taxable person is not established.

In addition, article 284, paragraph 3, new, of the VAT directive provides that:

*«Notwithstanding Article 292b, in order for a taxable person to avail itself of the exemption in a Member State in which that taxable person is not established, the taxable person shall:*

*(a) give prior notification to the Member State of establishment; and*

**(b) be identified for the application of the exemption by an individual number in the Member State of establishment only.**

*Member States may use the individual VAT identification number already allocated to the taxable person in respect of that person’s obligations under the internal system or apply the structure of a VAT number or any other number for the purpose of the identification referred to in point (b) of the first subparagraph.»*

The literal interpretation of the second condition under point (b) of article 284, paragraph 3, new, of the VAT Directive may trigger some issues when a taxable person

availing himself of the special scheme in a Member State in which he is not established makes intra-Community acquisitions of goods subject to VAT<sup>7</sup> in that Member State.

In order to clarify our question, we compare below the current situation with the new situation as it arises as of the entry into force of the new special scheme set out in directive 2020/2085 (January 1, 2025).

## **2. The situation "as is"**

The special scheme for small enterprises, as currently provided for in the VAT directive, allows a Member State only to grant the benefit of this scheme to taxable persons established on its territory.

There is currently no constraint, either legal or practical, to the joint application of:

- the special scheme for small enterprises (in a strictly national interpretation) and the specific rules on intra-Community acquisitions made in a Member State other than that in which the taxable persons subject to the special scheme are established (where the special scheme for small enterprises cannot be applied in any case);
- the special scheme for small enterprises (in a strictly national interpretation) and the specific rules on intra-Community acquisitions made in its Member State of establishment (where the special scheme for small enterprises can be applied).

This possible combination is in line with the application of the special scheme which is determined in function of the outgoing transactions of the enterprises concerned (cf. qualitative and quantitative restrictions exclusive linked to outgoing operations in articles 283-288 of the VAT directive).

Article 214, paragraph 1), (b) of the VAT directive provides that: *«Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number:*

- a) ...
- b) *every taxable person, or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 2(1)(b) and every taxable person, or non-taxable legal person, who exercises the option under Article 3(3) of making their intra-Community acquisitions subject to VAT;».*

It is not required to identify a taxpayer availing himself of the special scheme for small enterprises with an individual VAT identification number in accordance with article 214 as long as that taxpayer does not make intra-Community acquisitions of goods subject to VAT pursuant to article 2, paragraph 1, b), of the VAT directive or exercises the option under article 3, paragraph 3 of the VAT directive (even though Member States are allowed to do so, what is for instance the case in Belgium).

In any case, such a taxpayer does not communicate an individual VAT identification number to his supplier for his intra-Community acquisitions of goods or services as long

---

<sup>7</sup> Because he has exceeded the threshold set in article 3, paragraph 2, a), of the VAT directive or has exercised the option provided for in article 3, paragraph 3 of the VAT directive



as he has not opted to subject them to tax in Belgium or has not exceeded the threshold of €11.200 in Belgium.

If the latter threshold is exceeded (or if he exercised the option under article 3, paragraph 3 of the VAT directive), he will be required to subject his intra-Community acquisitions to VAT and pay the amount of VAT due to the VAT administration.

As of that moment, he will be awarded an individual VAT identification number which he will have to communicate to his supplier in order to allow him to exempt his supply from VAT in accordance with article 138 of the VAT directive.

More importantly, a taxable person subject to the special scheme who exceeds the threshold for the taxation of his intra-Community acquisitions in his Member State of establishment can make an intra-Community acquisition subject to VAT **without being excluded from the application of the special scheme** for small enterprises (in his Member State of establishment, i.e. the only Member State where he is allowed to avail him of the special scheme for small enterprises under the current arrangements).

Given the current territorial scope of the special scheme which is limited to the Member State of establishment, the coexistence of this special scheme with a VAT identification due to intra-Community acquisitions subject to VAT is only relevant when it concerns the Member State of establishment of the taxable person subject to the special scheme.

A taxable person not established in the Member State where he makes intra-Community acquisitions is required to identify for VAT purposes there in accordance with article 214, paragraph 1, b), of the VAT directive. The amount of VAT due on these intra-Community acquisitions will have to be reported in his periodic VAT return referred to in article 250 of the VAT directive. He also needs, where applicable, to include in this return any outgoing transactions performed in that Member State and subject them to VAT, as he is not allowed to avail him of the special scheme for small enterprises in that Member State.

It can be concluded therefore that under the current rules, the provisions of the special scheme for small enterprises on the one hand and the provisions relating to the intra-Community acquisitions (which, in any case, are not incorporated in the rules of the special scheme) on the other hand do not interfere with each other and are to be applied independently of each other.

### **3. The situation "to be" (as of January 1, 2025)**

According to the new special scheme provided for in directive 2020/285 destined to enter into force as of January 1, 2025, small enterprises will also be allowed to benefit from this scheme in other Member States than the Member State in which they are established.

In such a case, the new article 284, paragraph 3, first subparagraph, b), of the VAT directive, referred to above, provides that the taxable person concerned must *«be identified for the application of the exemption by an individual number in the Member State of establishment only.»*

This condition can be interpreted in the following two ways.

*a) Literal interpretation*

The wording of the above condition could indicate that a taxable person who avails himself of the special scheme in a Member State other than his Member State of establishment would no longer be able to benefit from this special scheme in that Member State where he makes intra-Community acquisitions subject to VAT.

In accordance with article 214, paragraph 1, b) of the VAT directive, the taxable person will indeed be provided with a VAT identification number in that Member State for these intra-Community acquisitions subject to VAT. He will therefore no longer be identified solely by an individual number in his Member State of establishment. It could therefore be argued that this identification would be incompatible with the new article 284, paragraph 3, first subparagraph, b), new, of the VAT directive, at least as regards the application of the exemption in the Member State in which the taxable person would have to identify himself for VAT purposes for his intra-Community acquisitions of goods.

This interpretation therefore raises the question as to whether the special scheme can still be applied in cases where identification for the purposes of intra-Community acquisitions would be required on the basis of article 214, paragraph 1, b) of the VAT Directive in another Member State than the one in which the small enterprise is established. In that respect, it has to be taken into account that article 284, paragraph 3 only refers to the situation where a small enterprise avails itself of the special scheme in another Member State than the one in which it is established. That article leaves therefore apparently unaffected the situation where the small enterprise avails itself of the special scheme in its Member State of establishment, in which case the current rules as described above would in any case still continue to apply. However, that would mean that Member States would have to manage two VAT identifications for the same small enterprise, which would normally not be the same (one with a "EX"-suffix, and another without such a suffix).

Consequently, should this interpretation prevail, there would be, on the one hand, taxable persons subject to the special scheme in their Member State of establishment who could still benefit from this scheme while filing special returns for intra-Community acquisitions subject to tax whereas, on the other hand, taxable persons availing themselves of the special regime in a Member State in which they are not established, who could or should, according to this literal interpretation, be excluded from the special scheme as soon as they are provided with a VAT number for their intra-Community acquisitions subject to VAT.

*b) More conceptual interpretation*

The second possible interpretation is based on the operational application and approach of the special scheme.

This approach is in line with the current application of the special regime although the territorial scope is not the same.

Article 284, new, of the VAT directive only refers to an identification for the purposes of the application of the special scheme, only taking into account the outgoing transactions as opposed to the VAT identification referred to in article 214, paragraph 1, b), of the VAT directive. As indicated in article 284, paragraph 3, second subparagraph, Member States may, for the purpose of identification under the special scheme, use the individual VAT identification number already allocated to the taxable person in respect of that person's

obligations under the internal system or apply the structure of a VAT number or any other number for the purpose of that identification.

As such, even though it might not be ideal from a practical point of view, a specific identification for the application of the special scheme on the one hand (with a suffix "EX") in the Member State of establishment and an identification for VAT purposes in accordance with article 214 of the VAT directive in the Member State where the small enterprise avails itself of the special scheme and makes an intracommunity acquisition subject to VAT can be combined.

As a result, although a small enterprise would carry out some incoming transactions for which it is liable to pay the amount of VAT due (as is the case for intra-Community acquisitions of goods) in a Member State other than his Member State of establishment (or even in its Member State of establishment) would not be excluded from the special regime in that other Member State provided all other conditions are met.

This means that, in practice, a taxable person subject to the special scheme in his Member State of establishment who makes intra-Community acquisitions subject to VAT in another Member State where he avails himself of the special scheme for small enterprises would declare the VAT due on the intracommunity acquisition in a special (non-periodical) return, while continuing to benefit from the special scheme for his outgoing transactions in all Member States where he avails himself of the special scheme.

We note however that practical issues might arise in Member States who grant small enterprises a VAT identification number referred to in article 214 of the VAT directive as of the beginning of their economic activities, as is the case in Belgium.

Belgium is nevertheless in favour of such a more conceptual interpretation of the condition laid down in the new article 284, paragraph 3, b), of the VAT directive, which would in any case be more closely linked with the current application of the special regime (albeit that the territorial scope is not the same). In any case, this approach would avoid that a small enterprise availing itself of the application of the special regime would be excluded from the application of that special regime by the mere fact that it would have carried out an intracommunity acquisition of goods subject to tax in another Member State than the one in which he is established.

We would be most grateful if the European Commission and the other Member States would be willing to share its views on this matter during an upcoming meeting of the VAT Committee.