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THE EUROPEAN UNION**

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**LIMITE**

**FISC 123**

**NOTE**

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from: Presidency  
to: Working Party on Tax Questions - Indirect Taxation (VAT)  
Subject: Proposal for a Council Regulation laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services

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Delegations will find attached a new compromise text for a Council Regulation on the VAT treatment of insurance and financial services, which has been drawn up on the basis of the earlier compromise (doc. 12291/11 FISC 99).

## CHAPTER I

### Subject

#### *Article 1*

This Regulation lays down measures for the implementation of Article 135(1) (a) to (gd) and (1a) of Directive 2006/112/EC.

## CHAPTER II

### Exempt insurance and financial services

#### *Article 2*

1. The definition of "insurance and reinsurance" provided for in point (a) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) life insurance, whether individual or group life policies, and insured pensions and annuities where the insurance, pension or annuities cover mortality or longevity risks, including diagnosis of a terminal illness, diagnosis of a critical illness, disability due to ill health, permanent disability, accidental death, and requirement for long term care;
- (b) sickness disability, personal accident and unemployment insurance;
- (c) health insurance;

- (d) loss or damage insurance, including coverage against fire, flooding, natural disasters, accidents, breakdown of machinery, crime and terrorism;
- (e) liability insurance and legal expenses insurance;
- (f) insurance against financial loss;
- (g) pooling of insurance or reinsurance or retrocession;
- (h) insurance provided by two or more direct insurance service providers on a joint basis.

2. The definition of "insurance and reinsurance" provided for in point (a) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) warranties or guarantees provided in relation to a supply of goods or services by the supplier or manufacturer of those goods or services.

### *Article 3*

1. The definition of "granting of credit and management of credit by the ~~person granting it~~ **creditor**" provided for in point (b) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) the granting of loans, whether syndicated or not, including loans granted as a financing element in conjunction with goods or services supplied, provided that the consideration for granting the credit **and the grounds for determination of the consideration** ~~is~~ **are** separately identified ~~and financing is granted after supply of goods or services is made;~~

- (b) the granting of loans secured on tangible or intangible assets, such as mortgage loans and pawn broking, the granting of loans secured on receivables, including discounting bills of exchange and promissory notes, the advance of monies included in a debt recovery agreement;
- (c) the granting of credit arrangements under which a person is entitled to dispose of monies up to a fixed amount;
- (d) management of the credit by a party assuming the credit position after the transfer of credit contract.

2. The definition of "granting of credit and management of credit by the ~~person granting it~~ **creditor**" provided for in point (b) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) the granting of deferral of payment by the supplier of the goods or services, in return for payment of interest, before delivery of the goods or services;
- (b) the granting of the right to use a good for a specified period of time in return for periodic payments, accompanied or not by additional services such as the maintenance or insurance of the good, where the power to dispose of the good as an owner is not automatically transferred at the end of the agreement.

*Article 4*

1. The definition of "guaranteeing of debts and provision of any other ~~securities for debt~~ **surety bonds**" provided for in point (c) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

**(a) the provision of fiscal and customs guarantees;**

(b) the provision of guarantees as security for any outstanding rental payment or payment resulting from defaults on rental payments;

(c) the provision of export credit guarantees;

(d) the provision of guarantees where the guarantor assumes a legally independent obligation to pay a monetary debt which is not accessory to an underlying obligation;

~~{ (e) guarantee against debtor's default included in a debt recovery agreement. }~~

(f) the provision of guarantees by a third party where a party ~~of a construction~~ **to an** agreement is guaranteed a compensation up to the amount of the guarantee for any monetary loss caused by a ~~contractor~~ **supplier** in cases **where** he does not fulfil his contractual obligations.

2. The definition of "guaranteeing of debts and provision of any other securities for debt ~~surety~~ **bonds**" provided for in point (c) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) the provision of warranties for the repair and replacement of faulty goods;
- (b) the assumption of obligations of a non-pecuniary nature.

#### *Article 5*

1. The definition of "transfer of a credit position and assumption of a debt position" provided for in point (d) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) the transfer of credit contracts.

2. The definition of "transfer of a credit position and assumption of a debt position" provided for in point (d) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) the transfer of a credit position carried out as a preliminary act to the supplier of a debt recovery service in order to allow the supply of the debt recovery service to the transferor. Such transfer is outside the scope of VAT;

- (b) the transfer of a credit position, if the transfer serves only as a security for the main transaction between the parties, and the credit position is eventually transferred back to its initial owner. Such transfer is outside the scope of VAT;
- (~~c~~) collecting any payments, whether or not overdue, on behalf of the person to whom they are due.

#### *Article 6*

1. The definition of "financial transfer" provided for in point (e) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) the execution of electronic transfers;
- (b) the execution of payments by means of a telecommunication network;
- (c) the execution of payments based on cheques, bills of exchange, promissory notes, letters of credit and any other means of payments;
- (d) the execution of transfers of monies into other money media allowing temporary storage of the value of these monies and subsequent payment for goods and services, such as smart card based electronic purse systems, telephone cards and credits for mobile phones;
- (e) the execution of clearance or transfer of monies or settlement services between financial operators;

- (f) the execution of transfer of money between bank accounts;
- (g) -
- (h) the execution of payments resulting from direct debits;
- (i) the execution of transfers of monies resulting from standing orders.

2. The definition of "financial transfers" provided for in point (e) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) safekeeping of money;
- (b) the electronic transport of messages between financial service providers;**
- (c) provision of information about specific monetary transfers.

#### *Article 7*

1. The definition of "financial deposit taking" provided for in point (f) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) sight deposits (deposits on call);
- (b) saving deposits;
- (c) time and term deposits;



- (d) deposits evidenced by saving certificates or certificates of deposit;
- (e) saving bonds;
- (f) deposits made in return for an accumulated cash balance or a guaranteed annuity where not covered under point (a) of Article 135 (1), including deposits made under a pension saving plan;
- (g) capital redemption bonds.
- (h) -

2. The definition of "financial deposit taking" provided for in point (f) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) the deposit for safekeeping of collectors' items or of instruments evidencing rights, claims or titles;
- (b) the hire of security boxes and other safe storage.

3. The definition of "account operation" provided for in point (f) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

**(a) the operation of deposit accounts;**

**(b) the operation of current and payment accounts;**

- (c) effecting the withdrawal of money from a bank account;
- (d) effecting the deposit of money to a bank account;
- (e) -
- (f) setting up of standing orders;
- (g) setting up of direct debits;
- ~~(h) issuing of bank statements;~~
- ~~(i) confirming of balances and transactions on the account.~~

4. The definition of "account operation" provided for in point (f) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) technical services relating to the provision of internet or telephone based account operations.

#### *Article 8*

1. The definition of "currency exchange" provided for in point (g) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) exchange of bank notes or coins used as legal tender;
- (b) exchange of amounts entered as credits or debits in a monetary account;
- (c) the issue and encashment of travellers' cheques in foreign currency.

2. The definition of "currency exchange" provided for in point (g) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) transactions involving collectors' items, such as gold, silver or other metal coins or bank notes normally not used as legal tender or coins of numismatic interest;
- (b) the exchange of currencies not of legal tender.

3. The "provision of cash" as referred to in point (g) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) cash dispensing, whether manual or automatic;
- (b) the issue and the encashment of ~~cheques and~~ travellers' cheques;

**(bb) the encashment of cheques;**

- (c) the exchange of bank notes and coins within the same currency.

4. The "provision of cash" as referred to in point (g) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) transactions involving collectors' items, such as gold, silver or other metal coins or bank notes normally not used as legal tender or coins of numismatic interest;

- (b) provision of currencies not of legal tender;
- (c) transport, storage and safekeeping of cash;
- (d) loading of money into cash dispensers.

*Article 9*

1. The definition of "securities" provided for in point (ga) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) equity securities, including shares;
- (b) instruments recording the promise of repayment of a debt, including debentures, bonds and corporate bonds, ~~euro-debt securities or other currencies debt securities~~ **and other transferable commercial papers**;
- (c) hybrid securities, including preference shares, equity warrants, convertible instruments in the form of bonds or preferred stock which may be converted into the common stock of the issuing company;
- (d) instruments recording unit ownership in undertakings for collective investment such as open and closed-ended funds, exchange traded funds, hedge funds and real estate investment funds.

2. The definition of "transactions in securities" provided for in point (ga) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) supply of **and trade in** securities;
- (b) clearing and settlement services;
- (c) underwriting guarantee in respect of the issue of new securities **where under that guarantee the guarantor undertakes to acquire any securities which are not subscribed within the period for subscription.**

3. The definition of "transactions in securities" provided for in point (ga) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) changes in evidence of ownership of securities from paper into electronic form and vice versa;
- (b) maintenance of share register.

*Article 9a*

The definition of " interests in companies and associations" provided for in point (gaa) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- a) transactions in interests in limited partnerships;
- b) transactions in interests in general partnerships;

- [c) transactions in interests in ~~civil-law~~ partnerships **set up for business purposes by two or more natural persons bound by a civil contract**];
- d) transactions in interests in silent partnerships;
- e) transactions in interests in private limited companies.

*Article 10*

1. The definition of "financial derivatives" provided for in point (gb) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) currency and interest rate swaps;
- (b) financial futures, forwards and options;
- [(c) contracts for differences;]
- (d) credit default swaps.

2. The definition of "transactions in financial derivatives" provided for in point (gb) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) ~~supply~~ **sale** of financial derivatives whether in own name ~~or~~ on behalf of a customer **or on own behalf**;
- (b) clearing and settlement services, such as by a clearing house.

3. The definition of "transactions in financial derivatives" provided for in point (gb) of Article 135(1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) ~~physical~~ trading in commodities and emission allowances .

### **CHAPTER III**

#### **Exempt management and intermediation services**

##### *Article 11*

1. The definition of "investment funds" in Article 135(1) (gc) of Directive 2006/112/EC shall cover at least the following:

- (a) open-ended investment funds;
- (b) closed-ended investment funds.

2. The definition of "pension funds" in Article 135(1) (gc) of Directive 2006/112/EC shall cover at least the following:

- (a) pension funds including private and public open pension funds with no restriction on membership and closed pension funds limited to certain categories of members.

3. The definition of "management of investment funds and pension funds" provided for in Article 135(1) (gc) of Directive 2006/112/EC shall cover at least two of any of the following:

- (a) strategic asset management;
- (b) operational asset management;
- (c) legal and fund management accounting services;
- (d) regulatory compliance monitoring excluding control and supervisory activity of the depositary;
- (e) maintenance of unit-holder registers;
- (f) contract settlements (including certificate dispatch);
- (g) record keeping;
- (h) unit issues and redemptions;
- (i) valuation and pricing.

4. The definition of "management of investment funds and pension funds" contained in Article 135(1) (gc) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) oversight of the fund by the depositary;



- (b) safe custody, security safe-keeping and control;
- (c) internal and external fund auditing;
- (d) development of systems, such as planning and implementation of new technology, enhancements to existing systems and systems maintenance;
- (e) fund advertising;
- (f) investment advice.

5. The concept of "financial assets" contained in the definition of "investment funds" in Article 135(1) (gc) of Directive 2006/112/EC shall cover at least the following:

- (a) money-market instruments;
- (b) deposits with credit institutions;
- (c) financial derivatives.

#### *Article 12*

1. The definition of "intermediation in insurance and financial transactions" provided for in point (gd) of Article 135 (1) of Directive 2006/112/EC shall cover at least the following:

- (a) intermediation in transactions whose nature corresponds to the services mentioned in Article 135 (1) (a) to (gb) but which are outside the scope of VAT;

- (b) intermediation in insurance and financial transactions in cases where a contract is not subsequently entered into, maintained, renewed or altered;
- (c) intermediation in insurance and financial transactions provided by sub-agents;
- (d) intermediary services of insurance brokers and insurance agents;
- (e) negotiation on behalf of a party to a contract of the terms of that contract **within the intermediary services**;
- (f) stock and mortgage brokering;
- (g) insurance cover provided by a taxable person who is not himself an insurer but, under a block policy, procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured;
- (h) intermediation in **termination of a contract concerning purchase of** insurance and financial **services** ~~transactions involving termination of such an existing contract~~ **on behalf of a client in connection to a new contract on purchase of such a service on behalf of that client.**

2. The definition of "intermediation in insurance and financial transactions" provided for in point (gd) of Article 135 (1) of Directive 2006/112/EC shall not, in particular, cover the following:

- (a) technical web-services or hosting service;

- (b) advertising, marketing and other information services;
- (c) maintaining the client relationship during the contract, such as provision of loyalty gifts.

*Article 13*

1. The exemption provided for in Article 135(1a) of Directive 2006/112/EC shall not, in particular, cover the following:

- a) safekeeping;
- b) administrative tasks;
- c) legal, accounting and auditing;
- d) services related to regulatory compliance;
- e) identity verification, money laundering and anti-fraud checks;
- f) data collection services for the recycling of bank notes and coins;
- g) marketing, research, identification and development of new products or opportunities;
- h) the supply and design of software;

- i) hire of security boxes and other secured spaces;
- j) .
- k) internet hosting;
- l) providing general information about financial and insurance services.

2. In the case of insurance and reinsurance services, as defined in Article 135 (1) (a) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall cover at least the following:

- a) underwriting of risk;
- b) processing of insurance and reinsurance claims.

3. In the case of insurance and reinsurance services, as defined in Article 135 (1) (a) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall not, in particular, cover the following:

- a) damage assessment;
- b) ~~claims settlement~~ **services bought in by insurers in settlement of insurance claims such as the provision of car hire, care home services, replacing damaged goods, replacing stolen items;**
- c) collecting of insurance premiums.

4. In the case of granting of credit, as defined in Article 135 (1) (b) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall cover at least the following:

- a) underwriting of credits;
- b) credit rating.

5. In the case of guaranteeing of debt and provision of any other security for money, as defined in Article 135 (1) (c) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall not, in particular, cover the following:

- a) the sale of repossessions after mortgage default.

6. In the case of financial transfer, as defined in Article 135 (1) (e) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall cover at least the following:

- a) authorisation [and verification] of payments.

7. In the case of transactions concerning financial deposit and account operation, as defined in Article 135 (1) (f) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall cover at least the following:

- a) automated acceptance of money for deposits;
- b) authorisation [and verification] of payments.

8. In the case of transactions concerning financial deposit and account operation, as defined in Article 135 (1) (f) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall not, in particular, cover the following:

- a) general printing of cheque books;
- b) the supply of blank cards;
- c) -
- d) the rental of terminals and other machinery for the processing of card payments;
- e) sorting and counting of money for the purpose of making a deposit.

9. In the case of currency exchange and provision of cash, as defined in Article 135 (1) (g) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall not, in particular, cover the following:

- a) storage of money;
- b) courier and security transport services;
- c) the publication of information on exchange rates;
- d) the installation and maintenance of cash machines.

10. In the case of transactions in securities, as defined in Article 135 (1) (ga) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall, in particular, cover the following:

a) clearing services in transactions in securities.

11. In the case of transactions in financial derivatives, as defined in Article 135 (1) (gb) of Directive 2006/112/EC, the exemption provided for in Article 135(1a) of that Directive shall, in particular, cover the following:

a) clearing services in transactions in financial derivatives.

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