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2017/0183 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹ ('the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 26 April 2017, Lithuania requested an authorisation to continue to exempt taxable persons whose annual turnover is no higher than EUR 45 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 8 May 2017 and 10 May 2017 of the request made by Lithuania. By letter dated 11 May 2017, the Commission notified Lithuania that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Chapter 1 of Title XII of the VAT Directive allows for the possibility for Member States to apply special schemes for small enterprises, including the possibility of exempting taxable persons below a certain annual turnover. This exemption implies that a taxable person does not have to charge VAT on his or her supplies and, consequently, he or she cannot deduct VAT on the inputs.

Under Article 287(11) of the VAT Directive, Lithuania may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 29 000 at the conversion rate on the day of its accession. By virtue of Council Implementing Decision 2011/335/EU², Lithuania is authorised to apply a higher threshold and thus to exempt from VAT taxable persons whose annual turnover is no higher than EUR 45 000. This measure was extended by Council Implementing Decision 2014/795/EU³ which expires on 31 December 2017. Lithuania requested to extend the measure for a further limited period.

The higher threshold reduces significantly administrative burden and tax compliance costs for small enterprises. According to Lithuania, the EUR 45 000 threshold has not had any substantial impact on the collection of VAT revenues. Furthermore, the data shows that the bulk of taxable persons (approximately 80-90%) who have registered for VAT and who pay VAT did so on a voluntary basis.

Persons whose turnover does not exceed the threshold will still have the option to be registered for VAT purposes.

It is therefore requested to extend the derogation until 31 December 2020.

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Decision 2011/335/EU of 30 May 2011 authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 150, 9.6.2011, p.6).

³ Council Implementing Decision 2014/795/EU of 7 November 2014 extending the application of Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p.44).

- **Consistency with existing policy provisions in the policy area**

Similar derogations have been granted to other Member States. Luxembourg⁴ was granted a threshold of EUR 40 000, Belgium⁵ was granted a threshold of EUR 25 000, Poland⁶ a threshold of EUR 40 000, Latvia⁷ and Slovenia⁸ a threshold of EUR 50 000, Italy⁹ and Romania¹⁰ a threshold of EUR 65 000.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. Moreover, the provisions of Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan¹¹, and the 2017 Commission Work Programme¹², the Commission's proposal in the form of a comprehensive simplification package is due to be presented by the end of 2017.

It is therefore proposed to extend the measure until 31 December 2020 or until the entry into force of a Directive amending the provisions of the VAT Directive on a special scheme for small enterprises.

- **Consistency with other Union policies**

The measure is in line with the Union's objectives for small businesses, as laid out in Commission Communication "Think small first" – a "Small Business Act" for Europe¹³ which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing regulatory environment.

⁴ Council Implementing Decision (EU) 2017/319 of 21 February 2017 amending Implementing Decision 2013/677/EU authorising Luxembourg to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 47, 24.2.2017, p. 7-8).

⁵ Council Implementing Decision (EU) 2015/2348 of 10 December 2015 amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 16.12.2015, p. 51).

⁶ Council Implementing Decision (EU) 2016/2090 of 21 November 2016 amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 324, 30.11.2016, p.7).

⁷ Council Implementing Decision 2014/796/EU of 7 November 2014 authorising the Republic of Latvia to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 46).

⁸ Council Implementing Decision (EU) 2015/2089 of 10 November 2015 amending Implementing Decision 2013/54/EU authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 302, 19.11.2015, p.107).

⁹ Council Implementing Decision (EU) 2016/1988 of 8 November 2016 amending Implementing Decision 2013/678/EU authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 306, 15.11.2016, p. 11).

¹⁰ Council Implementing Decision 2014/931/EU of 16 December 2014 extending the application of Implementing Decision 2012/181/EU authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 365, 19.12.2014, p. 145).

¹¹ Communication from the Commission to the European Parliament, the Council and the European and Social Committee on an action plan on VAT, Towards a single EU VAT area – Time to decide, Brussels, 7.4.2016, COM(2016)148 final.

¹² Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends, Strasbourg, 25.10.2016, COM(2016)710 final

¹³ COM(2008) 394 of 25 June 2008.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

- **Subsidiarity (for non-exclusive competence)**

Considering the provision of the VAT Directive on which the proposal is based, the subsidiarity principle does not apply.

- **Proportionality**

The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. simplification for an additional number of small taxable persons and for the tax administration.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, derogation from the common VAT rules is only possible upon authorisation of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by Lithuania and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision authorises Lithuania to continue to exempt from VAT taxable persons whose annual turnover does not exceed EUR 45 000. Persons whose taxable turnover does not exceed the threshold do not have to register for VAT purposes, and thus the administrative burden on them will reduce as a result of the measure, since they will not need to keep VAT records or submit a VAT return.

According to Lithuania, the EUR 45 000 threshold has not had any substantial impact on the collection of VAT revenues.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Lithuania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

5. OTHER ELEMENTS

The proposal includes a sunset clause.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹, and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By a letter registered with the Commission on 26 April 2017, Lithuania requested authorisation for a measure derogating from Article 287(11) of the VAT Directive in order to continue to exempt certain taxable persons whose annual turnover is no higher than EUR 45 000. Through that measure, those taxable persons would be exempt from certain or all of the obligations in relation to value added tax (VAT) referred to in Chapters 2 to 6 of Title XI of the VAT Directive.
- (2) The Commission informed the other Member States by letters dated 8 May 2017 and 10 May 2017 of the request made by Lithuania. By letter dated 11 May 2017, the Commission notified Lithuania that it had all the information necessary to consider the request.
- (3) A special scheme for small enterprises is already available to Member States under Title XII of the VAT Directive. The extended measure derogates from Title XII of the VAT Directive only in so far as the taxable person's annual turnover threshold for the special scheme is higher than that allowed for Lithuania under Article 287(11) of the VAT Directive, which is EUR 29 000.
- (4) By Council Implementing Decision 2011/335/EU², Lithuania was authorised, as a derogating measure, to exempt taxable persons whose annual turnover is no higher than EUR 45 000 until 31 December 2014. By Council Implementing Decision 2014/795/EU³ the derogating measure was extended until 31 December 2017.
- (5) Given that the fixed threshold resulted in reduced VAT obligations and thus reduction of administrative costs for small enterprises, Lithuania should be authorised to apply

¹ OJ L 347, 11.12.2006, p.1.

² Council Implementing Decision 2011/335/EU of 30 May 2011 authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 150, 9.6.2011, p.6).

³ Council Implementing Decision 2014/795/EU of 7 November 2014 extending the application of Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC (OJ L 330, 15.11.2014, p.44).

the measure for a further limited period, until 31 December 2020. Taxable persons may still opt for normal VAT arrangements.

- (6) The provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review and a Directive, amending these provisions of the VAT Directive, might therefore enter into force before the above-mentioned date.
- (7) From information provided by Lithuania, the extension of the derogation will only have a negligible impact on the overall amount of tax revenue collected at the final stage of consumption.
- (8) The derogation has no impact on the Union's own resources accruing from value added tax because Lithuania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89,

HAS ADOPTED THIS DECISION:

Article 1

In the second paragraph of Article 2 of Implementing Decision 2011/335/EU the terms 'the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2017' are replaced by '31 December 2020 or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC'.

Article 2

This Decision shall apply from 1 January 2018.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

*For the Council
The President*