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2017/0192 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Romania to apply a special 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 tax[1] ('the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating 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, Romania requested to continue the application of the measure derogating from Article 287 of the VAT Directive allowing the exemption from VAT of taxable persons with an annual turnover not exceeding a specific threshold. At the same time Romania requested to increase the exemption threshold from the equivalent in national currency of EUR 65 000 to the equivalent in national currency of EUR 88 500.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 9 June 2017 of the request made by Romania. By letter dated 12 June 2017, the Commission notified Romania 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.

Based on Article 287(18) of the VAT Directive, Romania may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession. By virtue of Council Implementing Decision 2012/181/EU[2] Romania is authorised to apply a higher threshold and thus to exempt from VAT taxable persons with an annual turnover not exceeding EUR 65 000. This measure was extended by Council Implementing Decision 2014//931/EU[3] which expires on 31 December 2017. Romania requested to extend the measure for a further limited period and at the same to increase the exemption threshold to EUR 88 500.

Raising the threshold is expected to reduce VAT-related obligations for a number of small enterprises with reduced economic activity and to stimulate the activity of these small enterprises, as they will be relieved from a number of tax obligations such as filing of VAT returns or keeping VAT records. It is also anticipated that the increase of the threshold will reduce the burden of the tax authorities by removing the need to monitor the collection of a small volume of revenues from a larger number of small enterprises.

According to Romania, the increase of the threshold will have no important impact on state revenues. It is estimated that the increase of the threshold would lead to the reduction of state budget revenues of approximately 0.60% of total VAT receipts.

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

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1 OJ L 347, 11.12.2006, p. 1.
2 OJ L 92, 30.3.2012, p. 26.
3 OJ L 365, 19.12.2014, p. 145.

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

Similar derogations have been granted to other Member States. Belgium[4] was granted a threshold of EUR 25 000, Luxembourg[5] was granted a threshold of EUR 30 000, Poland[6] and Estonia[7] a threshold of EUR 40 000, Lithuania[8] a threshold of EUR 45 000, Latvia[9] and Slovenia[10] a threshold of EUR 50 000 and Italy[11] 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 Plan[12], and the 2017 Commission Work Programme[13], 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 allow for the raising of the threshold by Romania up to the equivalent in national currency of EUR 88 500 as from 1 January 2018 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**

Although the threshold is rather high compared to the level of thresholds granted to the other Member States, 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

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4 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).

5 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).

6 Council Implementing Decision 2016/2090//EU 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 (EU) 2017/563 of 21 March 2017 authorising the Republic of Estonia to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 80, 25.3.2017, p. 33).

8 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).

9 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).

10 Council Implementing Decision (EU) 2015/2089/EU 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).

11 Council Implementing Decision (EU) 2016/1988/EU 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).

12 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.

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

Europe"[14] 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.

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, derogating 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 Romania 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 increases the threshold of annual turnover below which taxable persons may be exempted from VAT. It therefore extends the scope of the simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than the equivalent in the national currency of EUR 88 500.

Persons whose taxable turnover does not exceed the threshold will not have to be identified for VAT purposes and will not need to keep VAT records or submit VAT returns. The administrative burden on them will thus reduce as a result of the measure. There will also be a

[14] COM(2008) 394 of 25 June 2008.

reduction in the workload for the tax authorities which will not need to monitor the collection of a small volume of revenues from an additional number of small enterprises.

The budgetary impact of the increase of the ceiling in terms of VAT revenue for Romania is estimated at around 0.60% of total VAT receipts.

4. BUDGETARY IMPLICATIONS

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

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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 tax[15], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Under Article 287(18) of Directive 2006/112/EC, Romania may exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession.

(2) By virtue of Council Implementing Decision 2012/181/EU[16] Romania is authorised to apply a higher threshold and to exempt from VAT taxable persons with annual turnover not exceeding EUR 65 000. This measure was extended by Council Implementing Decision 2014/931/EU[17] which expires on 31 December 2017.

(3) By letter registered with the Commission on 26 April 2017 Romania requested the authorisation to continue derogating from Article 287 (18) of Directive 2006/112/EC and at the same time to increase the exemption threshold to the equivalent in national currency of EUR 88 500.

(4) A higher threshold for the special scheme for small enterprises is a simplification measure, as it may significantly reduce the VAT obligations of small enterprises.

(5) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 9 June 2017 of the request made by Romania. The Commission notified Romania by letter dated 12 June 2017 that it had all the information necessary to consider the request.

(6) Romania expects that the measure reduces VAT-related obligations for a number of small enterprises. It should also reduce the burden on the tax authorities by removing

[15] OJ L 347, 11.12.2006, p. 1.

[16] Council Implementing Decision 2012/181/EU of 26 March 2012 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 92, 30.3.2012, p. 26).

[17] 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).

the need to monitor the collection of a small volume of revenues from larger number of small enterprises.

(7) Given that this derogating measure is to result in reduced VAT obligations for small enterprises, Romania should be authorised to apply the measure for a limited period. Taxable persons should still be able to opt for the normal VAT arrangements.

(8) As Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises are subject to review, it is possible that a directive amending those provisions of Directive 2006/112/EC will enter into force before the period of validity of the derogation expires.

(9) Based on information provided by Romania, the increased threshold will have a negligible impact on the overall amount of tax revenue collected at the stage of final consumption.

(10) The derogation has no impact on the Union's own resources accruing from VAT, because Romania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89[18],

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287(18) of Directive 2006/112/EC, Romania is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 88 500 at the conversion rate on the day of its accession.

Article 2

This Decision shall apply from 1 January 2018 until 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, whichever date is the earlier.

Article 3

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President

[18] Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).