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2017/0233 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2012/232/EU authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 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 for 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 5 April 2017, Romania requested an extension of the derogation from Article 168 of the VAT Directive in order to continue to restrict the right to deduct the input VAT on expenditure connected with motor vehicles. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 28 June 2017 of the request made by Romania. By letter dated 29 June 2017, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Articles 168 VAT Directive provides that a taxable person is entitled to deduct VAT charged on purchases made for the purpose of taxed transactions. Article 26(1)(a) of the same Directive requires the use of goods forming part of the assets of a business for private purposes to be a supply of services for consideration if the VAT on the goods was eligible for deduction. This system allows for the recovery of initially deducted VAT in relation to the private use.

In the case of passenger cars, this system is difficult to apply, in particular because it is difficult to identify the split between private and business use. Where records are kept, they add an additional burden to both the business and the administration in maintaining and checking them.

Romania is currently authorised on the basis of Council Implementing Decision 2012/232/EU[2] to restrict to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as expenditure related thereto. Some categories of vehicles were specifically excluded from this restriction, such as vehicles used exclusively for emergency, security or courier services, vehicles used by agents and taxis, vehicles used for instruction by driving schools, used for hire or leasing or used as commodities for trading purposes. At the same time, businesses would be relieved from accounting from tax on the private use. The period of validity of this decision was extended by Council Implementing Decision (EU) 2015/156[3] until 31 December 2017.

Romania has requested to prolong the authorisation to limit the initial deduction to a set percentage and in turn to relieve the business from accounting for tax on the private use. Romania informed the Commission that the grounds for the prolongation of the measure are largely the same as described in the initial request. In accordance with Article 4(2) of Council Implementing Decision 2012/232/EU Romania has presented a report on the deduction limit

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision 2012/232/EU of 26 April 2012 authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 117, 1.5. 2012, p. 7).

3 Council Implementing Decision (EU) 2015/156 of 27 January 2015 extending the period of validity of Implementing Decision 2012/232/EU authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 26, 31.1.2015, p. 27).

applied by Romania. Romania submits that the measure fulfilled its role and that if the measure were not prolonged, the tax evasion recorded in this area before the introduction of the measure would most probably re-appear. It also appears from the information provided by Romania that the limitation of 50% still corresponds to the actual circumstances and that this limit therefore should still be regarded as appropriate.

The derogation should be limited in time to 31 December 2020, so that it can be assessed whether the 50% restriction is still a correct reflection of the overall apportionment between business and private use. Any extension request should be accompanied by a report which includes a review of the percentage applied and should be sent to the Commission with that request by 31 March 2020.

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

Similar derogations in relation to the right of deduction have been granted to other Member States.

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions which were in place on 1 January 1979. There are therefore a number of 'stand still' provisions restricting the right to deduct VAT in relation to passenger cars.

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 proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore 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. to prevent certain forms of tax evasion or avoidance. In particular, given the potential for businesses to under declare their liability and the burdensome check of mileage data for tax authorities, the 50% restriction would simplify the VAT collection in a specific sector.

• **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 Romania and concerns only this Member State.

• Collection and use of expertise

There was no need for external expertise.

• Impact assessment

The proposal is designed to counter VAT evasion and to simplify the procedure for charging tax and has, therefore, a potential positive impact for both businesses and administrations. The solution has been identified by Romania as a suitable measure and is comparable to other past and present derogations.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implication for the EU budget.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2020.

In case Romania would consider another extension of the derogating measure beyond 2020, a report including a review of the percentage limit should be submitted to the Commission together with the extension request no later than 31 March 2020.

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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[1], and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by him for the purposes of his taxed transactions. Article 26(1)(a) of that Directive contains a requirement to account for VAT when a business asset is put to use for private purposes of the taxable person or his staff or, more generally, for purposes other than those of his business.

(2) Council Implementing Decision 2012/232/EU[2] authorised Romania, until 31 December 2014, to apply derogating measures pursuant to Article 395(1) of Directive 2006/112/EC in order to implement a measure to limit the right of deduction of input VAT to 50% as regards purchase, intra-Community acquisition, importation, hire and lease of motor vehicles, and VAT on expenditure related to such vehicles, including fuel, when the vehicles are not used exclusively for business purposes. The period of validity of Council Implementing Decision 2012/232/EU was extended by Council Implementing Decision (EU) 2015/156[3] until 31 December 2017.

(3) By letter registered with the Commission on 5 April 2017, Romania requested authorisation to continue to apply a measure derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC in order to restrict the right of deduction in relation to expenditure on certain motorised road vehicles not wholly used for business purposes.

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

[2] Council Implementing Decision 2012/232/EU of 26 April 2012 authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 117, 1.5. 2012, p. 7).

[3] Council Implementing Decision (EU) 2015/156 of 27 January 2015 extending the period of validity of Implementing Decision 2012/232/EU authorising Romania to apply measures derogating from Articles 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 26, 31.1.2015, p. 27).

(4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 28 June 2017 of the request made by Romania. By letter dated 29 June 2017, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request.

(5) In accordance with Article 4(2) of Council Implementing Decision 2012/232/EU Romania submitted, together with the extension request, a report to the Commission on the application of that Council Implementing Decision. Based on currently available information, Romania submits that the limit of 50% is still justifiable and remains appropriate.

(6) The extension of these derogating measures should be limited in time to allow for an evaluation of their effectiveness and of the appropriate percentage. Romania should therefore be authorised to continue to apply the measures for a limited period, until 31 December 2020.

(7) Where Romania considers that an extension of the authorisation beyond 2020 is necessary, it should submit to the Commission a report which includes a review of the percentage limit applied together with the request for an extension by 31 March 2020.

(8) The derogation will only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union’s own resources accruing from VAT.

(9) Council Implementing Decision 2012/232/EU should, therefore, be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 4 of Council Implementing Decision 2012/232/EU is replaced by the following:

'Article 4

1. 1. This Decision shall expire on the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles that is not eligible for full deduction of VAT, or on 31 December 2020, whichever is the earlier.

2. 2. Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 31 March 2020.

   Such request shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision.'

Article 2

This Decision shall apply from 1 January 2018.

Article 3

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President