EUROPEAN
COMMISSION

Brussels, 10.1.2018
COM(2018) 5 final

2017/0361 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Malta 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[1] of 28 November 2006 on the common system of value added tax (hereafter 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 Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

By letter registered with the Commission on 22 September 2017, Malta requested an authorisation to apply, as of 1 January 2018, a measure derogating from Article 287 of the VAT Directive, allowing Malta to exempt from VAT taxable persons whose economic activity consists principally in supplies of services with a high value added (low inputs) and whose annual turnover is no higher than EUR 20 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 3 November 2017 of the request made by Malta. The Commission notified Malta by letter dated 7 November 2017 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 supplies and, consequently, he or she cannot deduct the VAT on his inputs.

Under Article 287 of the VAT Directive, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision. Malta joined the euro on 1 January 2008.

Under point 13 of Article 287 of Directive 2006/112/EC Malta, may exempt from VAT three categories of taxable persons: taxable persons whose annual turnover is no higher than EUR 37 000 if the economic activity consists principally in the supply of goods; EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs); and EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs).

Since its accession, Malta has made use of this provision to assist small businesses and to encourage new businesses to start operating. This has proved to be a useful simplification measure as it removes many of the VAT obligations for businesses operating below certain annual turnovers, which reduced the operating costs of these businesses. At the same time, the effect on revenue was insignificant. The Maltese government is committed to continue to apply measures to simplify the obligations of small operators, in line with the European Union's objectives for small businesses, as laid out in the Commission Communication "Think small first" - a "Small Business Act" for Europe"[2].

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

[2] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, Brussels, 25.6.2008, COM(2008)394 of 25 June 2008.

For this purpose, Malta wishes to increase the current applicable threshold for the category with the lowest turnover, that is EUR 14 600, to EUR 20 000.

According to the Maltese Authorities, such increased threshold is expected to potentially increase the number of small operators registered under the simplification scheme for SMEs in the lowest category from 15,615 to approximately 16,504, an increase of about 5.3%. At the same time, it would enable the Maltese Revenue Authorities to allocate more staff to the fight against VAT fraud.

By raising the threshold for a person to be identified for VAT purposes from EUR 14 600 to EUR 20 000, it is anticipated that the administrative burdens on businesses eligible for the scheme, and in particular on micro-enterprises, will reduce as a result of the measure, by releasing them from many of the VAT obligations under the normal VAT arrangements, such as keeping VAT records or submitting VAT returns.

The Maltese Authorities have estimated that the increase in such threshold would lead to a potential reduction in VAT revenue of approximately 0.24% of total VAT receipts and therefore, has no significant impact on state revenues. It is expected that such insignificant reduction in revenue would be compensated through increased general enforcement and audits.

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

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

Similar derogations have been granted to other Member States. Belgium[3] was granted a threshold of EUR 25 000, Luxembourg[4] was granted a threshold of EUR 30 000, Poland[5] and Estonia[6] a threshold of EUR 40 000, Lithuania[7] a threshold of EUR 45 000, Latvia[8] and Slovenia[9] a threshold of EUR 50 000, Italy[10] a threshold of EUR 65 000 and Romania[11] a threshold of EUR 88 500.

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3 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).

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).

5 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).

6 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).

7 Council Implementing Decision (EU) 2017/1853 of 10 October 2017 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 (OJ L 265, 14.10.2017, p. 15).

8 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).

9 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).

10 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

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 of small enterprises, whose economic activity consists principally in the supply of services with a high value added, up to EUR 20 000 as of 1 January 2018 until the earliest of 31 December 2020 or 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 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.

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).

11 Council Implementing Decision (EU) 2017/1855 of 10 October 2017 authorising Romania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 265, 14.10.2017, p. 19).

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

14 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, Brussels, 25.6.2008, COM(2008)394 of 25 June 2008.

Other means would not be adequate because under Article 395 of the VAT Directive, 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 thus 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 Malta 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 Decision aims at introducing a simplification measure which removes many of the VAT obligations for businesses whose economic activity consists principally in the supplies of services with a high value added and low inputs, operating with an annual turnover no higher than EUR 20 000. It will therefore have a potential positive impact on the reduction of administrative burden for a number of taxable persons and, subsequently, on the tax administration.

Because of the narrow scope of the derogation, and its limited application in time, the impact will, in any case, be limited.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Malta will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) No 1553/89[15].

5. OTHER ELEMENTS

The proposal includes a sunset clause.

[15] OJ L 155, 7.6.1989, p. 9–13.

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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(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Under Article 287(13) of Directive 2006/112/EC, Malta may exempt from value added tax (VAT) three categories of taxable persons: those whose annual turnover is no higher than EUR 37 000, if the economic activity consists principally in the supply of goods; EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs), and EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs).

(2) By letter registered with the Commission on 22 September 2017, Malta requested an authorisation to increase the level of the lowest threshold from EUR 14 600 to EUR 20 000 for supplies of services with a high value added (low inputs) as of 1 January 2018. Through that measure, those taxable persons would be exempt from certain or all of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(3) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 3 November 2017 of the request made by Malta. The Commission notified Malta by letter dated 7 November 2017 that it had all the information necessary to consider the request.

(4) The requested derogation is in line with the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe" 25 June 2008)[2].

(5) Given that this derogating measure should result in reduced VAT obligations and thus a reduction in the administrative burdens and costs for small enterprises, Malta should be authorised to apply the measure for a limited period, until 31 December 2020. The special scheme is optional for taxable persons.

(6) 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

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

[2] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - “Think Small First” - A “Small Business Act” for Europe, Brussels, 25.6.2008, COM(2008)394 final.

provisions of Directive 2006/112/EC will enter into force before the period of validity of the derogation expires, in which case this Decision will cease to apply.

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

(8) The derogation has no impact on the Union's own resources accruing from value added tax because Malta will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, EURATOM) No 1553/89[3],

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287(13) of Directive 2006/112/EC, the Republic of Malta is authorised to exempt from VAT taxable persons whose economic activity consists principally in supplies of services with a high value added (low inputs) and whose annual turnover is no higher than EUR 20 000.

Article 2

This Decision shall apply from 1 January 2018 until 31 December 2020, or until the entry into force of a directive amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises, whichever date is earlier.

Article 3

This Decision is addressed to the Republic of Malta.

Done at Brussels,

For the Council
The President

[3] 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).