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2018/0023 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**authorising Hungary to apply a special measure derogating from Article 193 of Council 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<sup>1</sup> (hereafter ‘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 June 2017, Hungary requested authorisation to prolong Council Implementing Decision (EU) 2015/2349<sup>2</sup> of 10 December 2015 and thus to continue the application of a measure derogating from Article 193 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive and after it has received from Hungary further details on the justification of the request, the Commission informed the other Member States by letter dated 11 December 2017 of the request made by Hungary. By letter dated 12 December 2017, the Commission notified Hungary 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**

Hungary informed the Commission of fraud schemes in the sector of supply of staff, in particular as regards temporary employment agencies and organisations providing similar services, such as school cooperatives whose members perform work for third parties.

One of the characteristics of supplying this type of services is that large investments or specialised knowledge is not really required. It is therefore relatively easy to establish such a business which then disappears after a short period. Because of limited investments, the VAT received from clients often largely exceeds the deductible VAT on these investments or, more general, on the input. The non-deducted VAT on the input constitutes therefore only a small cost element when these undertakings, with little or no assets, disappear. The overall amount of unpaid VAT becomes difficult or impossible to recover.

In order to fight VAT fraud in the sector of temporary employment agencies, Hungary requested in 2014 a derogation from Article 193 of the VAT Directive to be authorised to provide that for supplies of staff engaged in activities other than those covered by point (a) of Article 199(1) of the VAT Directive, the person liable for payment of VAT is the taxable person to whom the supplies are made (the reverse charge mechanism). The authorisation was granted by Council Implementing Decision (EU) 2015/2349<sup>3</sup> which expired on 31 December 2017.

Hungary requested the authorisation to continue to apply the special measure derogating from Article 193 of the VAT Directive and at the same time to extend its scope to pensioners' cooperatives.

According to information submitted by Hungary, the reverse charge mechanism has proven to be an appropriate and effective tool in combating corrupt practices in the temporary employment agencies sector. Hungary namely submits that once the reverse charge was introduced, the number of temporary agencies dropped. At the same time the data show that

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1.

<sup>2</sup> OJ L 330, 16.12.2015, p. 53.

<sup>3</sup> OJ L 330, 16.12.2015, p. 53.

while the number of taxpayers in the given sector decreased, there was a sharp increase in the taxable amount of domestic supplies in 2016.

Hungary submits that a significant number of measures were introduced to combat the VAT fraud (e.g. increased supervision and controls of new registering companies, legislative changes to increase the efficiency of control activities, monthly VAT returns for newly registered companies, the introduction of a minimum services fee for school cooperatives, monitoring of receipts from cash registers on-line, domestic VAT recapitulative statements in certain cases, etc.). Other anti-fraud measures with particular focus on temporary employment agencies are planned by Hungary (e.g. narrowing the scope of the temporary agency work sector, introduction of a guarantee linked to the activities in this sector, extension of an employment security). Notwithstanding these measures, Hungary considers that to further reduce the damage done to the sector the protective reverse charge mechanism needs to be maintained.

Hungary also informed the Commission that a new legal institution was to be introduced in Hungary, namely the pensioners' cooperatives. Similarly to school cooperatives, employment by pensioners' cooperatives is to be considered analogous to temporary agency work. Hungary therefore requests the reverse charge mechanism to apply also to the latter cooperatives.

It is to be noted that the VAT Directive already foresees in an optional application of the reverse charge mechanism in relation to the supply of staff (Article 199(1)(b) of the VAT Directive). This possibility is limited to, essentially, the immovable property sector (Article 199(1)(a) of the VAT Directive). The proposed derogating measure should therefore only be applicable to situations not already covered by the VAT Directive.

Finally, as the adoption of the derogating measure will take place after the expiry of Council Implementing Decision (EU) 2015/2349 (i.e. after 31 December 2017), this proposal cannot extend the previous measure.

It is proposed to grant the derogation until 31 December 2020. As until the expiry of the derogation, the measures undertaken and to be introduced by Hungary should be effective in the fight against fraud in the sector concerned, Hungary should not need any longer period to derogate from Article 193 of the VAT Directive with regards to supplies of staff by temporary employment agencies. A renewal of the derogation should therefore not be necessary.

## **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 proposal complies with the proportionality principle for the following reasons.

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 combat tax evasion. It goes not beyond what is required to combat fraud in a specific sector.

- **Choice of the instrument**

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

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

- **Stakeholder consultations**

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

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for Implementing Decision aims at preventing certain forms of tax evasion or avoidance in the sector of supplies of staff in Hungary. The reverse charge mechanism should help Hungary to further combat the VAT fraud in this sector. Consequently, the derogating measure will have a potential positive impact.

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

### **4. BUDGETARY IMPLICATIONS**

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

### **5. OTHER ELEMENTS**

The proposal includes a sunset clause set at 31 December 2020.

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

**authorising Hungary to apply a special measure derogating from Article 193 of Council Directive 2006/112/EC on the common system of value added tax**

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<sup>1</sup> and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article 193 of Directive 2006/112/EC, any taxable person carrying out a taxable supply of goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.
- (2) In order to combat VAT fraud in the sector of temporary employment agencies, Hungary requested in 2014 an authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC to provide that, for supplies of staff engaged in activities other than those covered by point (a) of Article 199(1) of the that Directive, the person liable for payment of VAT is the taxable person to whom the supplies are made ("reverse charge mechanism"). The authorisation was granted by Council Implementing Decision (EU) 2015/2349<sup>2</sup> and expired on 31 December 2017.
- (3) By letter registered with the Commission on 26 June 2017, Hungary has requested an authorisation to apply a measure derogating from Article 193 of that Directive in order to make the recipient liable for the payment of VAT for the supply of staff.
- (4) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 11 December 2017, of the request made by Hungary. By letter dated 12 December 2017, the Commission notified Hungary that it had all the information necessary to consider the request.
- (5) According to information provided by Hungary, a number of traders in the sector of temporary employment agencies engage in fraudulent activities by supplying services without paying the VAT over to the tax authorities. Since this type of activity does not necessarily require important input or investment, the VAT these agencies receive often exceeds largely the deductible VAT they have paid to their suppliers. A number of these agencies, often with little or no assets, disappear subsequently after a short period of only a few months, making the recovery of unpaid VAT difficult or impossible.

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<sup>1</sup> OJ L 347, 11.12.2006, p.1.

<sup>2</sup> Council Implementing Decision (EU) 2015/2349 of 10 December 2015 authorising Hungary to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 16.12.2015, p. 53).

- (6) By designating the person to whom these services are supplied as the person liable for the payment of VAT in such cases, the derogation would eliminate the opportunity to engage in that form of tax evasion. Hungary submitted that after the introduction of the reverse charge mechanism for the supply of staff in Hungary, the number of employment agencies decreased suggesting a cleansing of the market. According to Hungary, the reverse charge mechanism has proven to be an appropriate and effective tool in combating corrupt practices in the temporary employment agencies sector.
- (7) Based on information provided by Hungary, a significant number of measures were introduced to combat VAT fraud, and other anti-fraud measures with particular focus on temporary employment agencies are planned by Hungary. Notwithstanding those measures, Hungary considers that to further reduce the damage done to the sector the protective reverse charge mechanism should continue to apply.
- (8) For a number of situations involving the supply of staff, listed in point (a) of Article 199(1) of Directive 2006/112/EC, it is already possible to indicate the recipient as the person liable for the payment of VAT. Hungary should therefore be authorised to apply the reverse charge mechanism to supplies of staff not already covered by Directive 2006/112/EC.
- (9) The derogation should be limited in time.
- (10) The measures to be undertaken by Hungary should eliminate fraud in the sector concerned and therefore no further derogation from Article 193 of Directive 2006/112/EC should be required with regard to the supply of staff.
- (11) The derogation has no impact on the Union's own resources accruing from VAT,
- HAS ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 193 of Directive 2006/112/EC, Hungary is authorised to provide that the person liable for payment of VAT is the taxable person to whom supplies of staff, engaged in activities other than those covered by point (a) of Article 199(1) of Directive 2006/112/EC, are made.

#### *Article 2*

This Decision shall take effect on the day of its notification.

This Decision shall expire on 31 December 2020.

#### *Article 3*

This Decision is addressed to Hungary.

Done at Brussels,

*For the Council  
The President*