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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.9.2007  
COM(2007) 491 final

Proposal for a

**COUNCIL DECISION**

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

**(Only the Dutch version is authentic)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Pursuant to Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, 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 Secretariat-General of the Commission on 24 November 2006, the Kingdom of the Netherlands requested authorisation to apply a derogating measure in the ready-to-wear clothing industry, as previously granted for a limited period by Decision 1998/20/EC (as amended). In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 10 July 2007 of the request made by the Kingdom of the Netherlands. By letter dated 17 July 2007, the Commission notified the Kingdom of the Netherlands that it had all the information necessary to consider the request.

- **General context**

The requested measure is essentially to be considered as a measure to prevent certain types of tax evasion in the ready-to-wear clothing industry. Subcontractors in the ready-to-wear clothing industry are sometimes small companies, which have often proved to be transitory businesses, difficult for the tax administration to control and vehicles for tax evasion. A common form of evasion is the non-payment to the tax authorities of invoiced VAT by subcontractors, who subsequently become untraceable but leaving the customer (contractor) in receipt of a valid invoice for tax deduction. The Decision authorises the Kingdom of the Netherlands to apply in the ready-to-wear clothing industry, a scheme for shifting the obligation to pay over the VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

Previously, Council Directive 1998/20/EC authorised the Kingdom of the Netherlands to apply this scheme which derogates from Article 193 of the VAT Directive 2006/112/EC. The initial validity until 31 December 1999 was extended until 31 December 2003 by Council Decision 2000/435/EC and again until 31 December 2006 by Council Decision 2004/516/EC.

The Kingdom of the Netherlands has argued that the previous derogations have led to a decrease of fraud by subcontractors in the ready-to-wear clothing industry.

However, the Commission is not entirely sure to what extent the derogation has led to this decrease and to what extent changes in the sector itself are responsible. The ready-to-wear clothing industry is continually changing whereby subcontractors move from one country to another, inter alia, because of labour costs. It can therefore not be excluded that certain subcontractors have simply left the Kingdom of the Netherlands for economic reasons.

In order to assess the impact of the current derogation on the one hand and other

factors on the other hand, the Kingdom of the Netherlands is requested to submit a report to the Commission on the effectiveness of the measure.

- **Existing provisions in the area of the proposal**

Council Decision 98/20/EC of 19 December 1997 authorising the Kingdom of the Netherlands to extend the application of a measure derogating from Article 21 of the Sixth Council Directive 77/388/EC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 8, 14.1.1998, p. 16. Decision amended by Decision 2000/435/EC (OJ L 172, 17.2.2000, p. 24) and Decision 2004/516/EC (OJ L 221, 21.6.2004, p. 17).

- **Consistency with the other policies and objectives of the Union**

Not applicable.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Decision proposal aims at combating possible VAT evasion in the ready-to-wear clothing industry and has therefore a potential positive economic impact.

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

## 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Authorisation for the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC as regards the use of a reverse charge mechanism for certain transactions in the ready-to-wear clothing industry.

- **Legal basis**

Article 395 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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

Given the very limited scope of the derogation, the special measure is proportionate to the aim pursued.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

Under Article 395 of the VAT Directive 2006/112/EC on the common system of the value added tax system, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. A Council Decision is therefore the most suitable instrument since it can be addressed to individual Member States.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5) ADDITIONAL INFORMATION**

- **Review/revision/sunset clause**

The proposal includes a sunset clause.

Proposal for a

## COUNCIL DECISION

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

**(Only the Dutch version is authentic)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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 Commission<sup>2</sup>,

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 24 November 2006, the Kingdom of the Netherlands requested authorisation to apply special tax measures in the ready-to-wear clothing industry as previously authorised for a limited period by Decision 1998/20/EC<sup>3</sup>.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 10 July 2007 of the request made by the Kingdom of the Netherlands. By letter dated 17 July 2007, the Commission notified the Kingdom of the Netherlands that it had all the information necessary to consider the request.
- (3) The arrangement would authorise the Kingdom of the Netherlands to apply in the ready-to-wear clothing industry a scheme for shifting the subcontractor's obligation to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).
- (4) These arrangements have proven in the past to be an effective prevention measure in a sector in which collecting VAT is made difficult by the problems of identifying and supervising the activities of subcontractors. The requested measure is therefore to be considered as a measure to prevent certain types of tax evasion and avoidance in the ready-to-wear clothing industry.

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1. Directive amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92)

<sup>2</sup> OJ C, , p.

<sup>3</sup> OJ L 8, 14.1.1998, p. 16. Decision amended by Decision 2000/435/EC (OJ L 172, 12.7.2000, p. 24) and Decision 2004/516/EC (OJ L 221, 21.6.2004, p. 17)

- (5) Since, however, the location for the manufacture of ready-to-wear clothes is influenced by low labour costs and subcontractors relocate easily from one country to another, the Kingdom of the Netherlands should monitor and evaluate the impact of these factors on the effectiveness of the derogation and inform the Commission accordingly.
- (6) It is appropriate that the measure is limited in time in order to allow the Commission to evaluate the measure on the basis of the report provided by the Netherlands.
- (7) The derogation will not have an adverse effect on the European Communities' own resources accruing from value added tax nor does it affect the amount of VAT charged at the final stage of consumption.

HAS ADOPTED THIS DECISION:

*Article 1*

By way of derogation from Article 193 of Council Directive 2006/112/EC, the Kingdom of the Netherlands is hereby authorised to apply until 31 December 2009 in the ready-to-wear clothing industry a scheme for shifting the subcontractors' obligations to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

*Article 2*

The Kingdom of the Netherlands shall by 31 July 2009, submit a report to the Commission on the overall evaluation of the operation of the measure concerned, in particular as regards the effectiveness of the measure and any other evidence of relocations of subcontractors in the ready-to-wear clothing industry to other countries.

*Article 3*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

*For the Council  
The President*