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EUROPEAN COMMISSION

Brussels, 17.6.2010
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2010/0174 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter '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 that 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 Secretariat-General of the Commission on 23 September 2009, Romania has requested to be authorised to introduce measures derogating from Article 193 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 14 December 2009 of the request made by Romania. By letter dated 17 December 2009, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request

General context

As a general rule, Article 193 of the VAT Directive stipulates that the taxable person supplying goods or services is normally liable to pay value added tax (VAT).

The Romanian Government would like to apply a reverse charge procedure, whereby the taxable person, to whom the supplies of goods or services are made, becomes liable for the payment of the VAT in the following situations:

- supplies of goods and the provision of services by taxable persons while under an insolvency procedure, excluding retailers
- supplies of wood products by taxable persons – specifically, standing timber, round or cleft working wood, fuel wood, timber products, as well as square-edged or chipped wood and wood in the rough, processed or semi-manufactured wood.

As regards taxable persons under an insolvency procedure and supplying goods and services, they may be prevented by financial difficulties from paying the VAT received on their supplies to the competent authorities. On the other hand, the purchaser, if a taxable person, can still deduct the VAT incurred. The reverse charge is not intended to be applied to supplies made by retailers while under an insolvency procedure due to the practical difficulties they would have in applying such a measure, in particular those they would have in identifying the taxable status of their customers at the point of sale.

The forestry sector in Romania is of particular economic importance. The sector accounts for a considerable amount of traders, often small resellers and intermediaries, which frequently fail to comply with their VAT obligations. The customers of these suppliers are generally larger, well established businesses.

The present request will be granted until 31 December 2013.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

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 or avoidance and has therefore a potential positive economic impact.

Impact will in any case be limited because of the narrow scope of the derogation.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Romania to apply a measure derogating from Article 193 of the VAT Directive as regards the use of a reverse charge mechanism in case of supplies of goods and services by taxable persons under an insolvency procedure, excluding retailers, and supplies of wood products.

Legal basis

Article 395 of the VAT Directive

Subsidiarity principle

In accordance with Article 395 of the VAT Directive, a Member State wishing to introduce measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Therefore, the proposal complies with the subsidiarity principle.

Proportionality principle

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

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

4. BUDGETARY IMPLICATION

BUDGETARY IMPLICATION

The proposal has no implication for the Union's budget.

5. OPTIONAL ELEMENTS

Review/revision/sunset clause

The proposal includes a sunset clause.

Proposal for a

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authorising Romania to introduce a special measure derogating from Article 193 of 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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 23 September 2009, Romania requested authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC.
- (2) The Commission informed the other Member States by letters dated 14 December 2009 of the request made by Romania. By letter dated 17 December 2009, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request.
- (3) Article 193 of Directive 2006/112/EC provides that the taxable person supplying the goods or services is, as a general rule, liable for the payment of the value added tax (VAT) to the tax authorities.
- (4) The purpose of the derogation requested by Romania is to make the recipient of supplies of goods or services liable for VAT in two specific types of circumstances. The first case covered is where taxable persons supply wood products as defined in the national legislation. The second is where goods and/or services are supplied by taxable persons, with the exception of retailers, while under an insolvency procedure.
- (5) Insolvent businesses are often prevented by financial difficulties from paying the VAT to the competent authorities on their supplies of goods or services. The recipient can nonetheless in principle deduct the VAT even though it has not been paid to the competent authorities by the supplier.

¹ OJ L 347, 11.12.2006, p. 1.

- (6) Since retailers would find it difficult to ascertain the tax status of their customers at the point of sale, the reverse charge should not apply to retailers while under an insolvency procedure.
- (7) Romania also encounters problems in the timber market because of the nature of the market and the businesses involved. The market has a large number of small enterprises which the Romanian authorities have found difficult to control. The most common form of tax evasion involves the supplier invoicing for supplies then disappearing without paying the tax to the competent authorities but leaving the customer in receipt of a valid invoice for the right of tax deduction.
- (8) By designating the recipient as the person liable for the payment of the VAT in the case of supplies of wood products by taxable persons and in the case of supplies of goods and the provision of services by taxable persons, with the exception of retailers, while under an insolvency procedure, the derogation removes the difficulties encountered without affecting the amount of tax due. This has the effect of preventing certain types of evasion or avoidance.
- (9) The measure is proportionate to the objectives pursued since it is not intended to apply generally, but only to specific operations and sectors which pose considerable problems in charging the tax or of tax evasion or avoidance.
- (10) The authorisation should be valid for a limited period and should therefore expire on 31 December 2013. In light of the experience gained up to that date an assessment may be made whether or not the derogation remains justified.
- (11) The derogation has no adverse 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, Romania is authorised to designate the taxable person to whom the supplies of goods or services referred to in Article 2 of this Decision are made as the person liable for the payment of the tax.

Article 2

The derogation provided for in Article 1 shall apply to:

- (1) Supplies of wood products by taxable persons;
- (2) Supplies of goods and the provision of services by taxable persons, with the exception of retailers, while under an insolvency procedure.

Wood products as referred to in point (1) of the first subparagraph shall include standing timber, round or cleft working wood, fuel wood, timber products, as well as square edged or chipped wood and wood in the rough, processed or semi-manufactured wood.

Article 3

This Decision shall expire on 31 December 2013.

Article 4

This Decision is addressed to Romania.

Done at Brussels,

*For the Council
The President*