EUROPEAN
COMMISSION

Brussels, 6.1.2017
COM(2016) 833 final

2016/0417 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Decision 2013/677/EU authorising Luxembourg to apply a measure derogating from Article 285 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] (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 September 2016, Luxembourg requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is below a certain threshold and to increase this threshold up from EUR 25 000 to EUR 30 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 4 October 2016 of the request made by Luxembourg. By letter dated 5 October 2016, the Commission notified Luxembourg 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 or her inputs.

This measure was first introduced in accordance with the provisions of Article 14 of Council Directive 67/228/EEC[2]. However, those Member States which did not make use of the option provided for under that provision could subsequently, according to Article 24(2)(b) of Directive 77/388/EEC now recast as the first paragraph of Article 285 of the VAT Directive, only exempt taxable persons from VAT whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency. Pursuant to the second paragraph of Article 285 of the VAT Directive , those Member States may also grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.

Until the end of 2012, Luxembourg exempted from VAT taxable persons whose annual turnover was no higher than EUR 10 000. Furthermore, Luxembourg informed the Commission that it made use of the option pursuant to the second paragraph of Article 285 of Directive 2006/112/EC by granting graduated tax relief to taxable persons whose annual turnover was between EUR 10 000 and EUR 25 000.

The application of the increased exemption threshold was appropriate to simplify the VAT system for small enterprises by significantly reducing the burdens on those businesses eligible for the scheme by releasing them from many of the VAT obligations under the normal VAT arrangements So Luxembourg requested and obtained a derogation to apply a turnover threshold of EUR 25 000 as regards the exemption scheme for small businesses whilst at the same time abolishing the application of the graduated tax relief.

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1 OJ L 347, 11.12.2006, p. 1.

2 Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p. 1303).

This derogation was authorised by Council Decision 2013/677/EU[3] until 31 December 2016.

In order to maintain its value in real terms and, therefore, the full benefit of its simplifying effect in time, Luxembourg is also seeking permission to revise the current threshold upwards in accordance with an indexing system.

Therefore, Luxembourg has now requested that the measure be extended as of 1 January 2017 and in addition, that the maximum authorised exemption threshold would be increased up to EUR 30 000 of annual turnover.

According to the Luxembourg authorities, in line with Article 395(1) second subparagraph of the VAT Directive, the special measure pursued would only have a negligible effect on the overall amount of VAT revenue collected at the stage of final consumption (not more than 0.12%). Via this demand, Luxembourg wants to simplify the burden on business as well as to stimulate the development of such small businesses. At the same time, Luxembourg wants to reduce the burden on the tax administration, by limiting the need to control small taxable persons, which is relatively costly in comparison to the amount of VAT at stake, and to strengthen its control activities towards larger taxable persons. That is in accordance with Article 395(1) first subparagraph of the VAT Directive which states that Member States may be authorised to introduce special measures for derogation from the provisions of the VAT Directive in order to simplify the procedure for collecting VAT.

In this context, it is to be noted that the measure is and will remain optional for taxable persons.

Luxembourg did not mention a deadline for this derogation. However, 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 on special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan[4], the Commission's proposal in the form of a comprehensive simplification package, including a Directive, amending the provisions of the VAT Directive on a special scheme for small enterprises, is due to be presented by the end of 2017.

It is therefore proposed to extend the derogation for another period until the earliest of 31 December 2019 or the entry into force of a Directive amending the provisions of the VAT Directive on a special scheme for small enterprises. It is within the discretion of the Luxembourgish authorities to decide to what extent and whether or not to use an indexation system, in respect of the derogation applying up to EUR 30 000.

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

Similar derogations have been granted to other Member States. Belgium[5] was granted a threshold of EUR 25 000, Poland[6] a threshold of EUR 30 000, Lithuania[7] a threshold of EUR

[3] Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

[4] 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.

[5] 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).

[6] Council Implementing Decision 2015/1173/EU of 14 July 2015 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 189, 17.7.2015, p. 36).

45 000, Latvia[8] and Slovenia[9] a threshold of EUR 50 000, Italy[10] and Romania[11] a threshold of EUR 65 000.

- **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"[12] 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.

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.

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7 Council Implementing Decision 2014/795/EU of 7 November 2014 extending the application of 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 330, 15.11.2014, p. 44).

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 2013/54/EU of 22 January 2013 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 22, 25.1.2013, p.15).

10 Council Implementing Decision 2016/1988/EU of 8 November 2016 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 306, 15.11.2016, p. 1).

11 Council Implementing Decision 2014/931/EU of 16 December 2014 extending the application of Implementing Decision 2012/181/EU authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 365, 19.12.2014, p. 145).

12 COM(2008) 394 of 25 June 2008.

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

• **Stakeholder consultations**

This proposal is based on a request made by Luxembourg 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 Implementing Decision aims at extending a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 30 000. This will have a potential positive impact on the reduction of administrative burden for an additional 970 taxable persons, which represents 1.2% of the taxable persons currently registered for VAT and, subsequently, on the tax administration. The budgetary impact in terms of VAT revenue for Luxembourg is estimated at not more than 0.12% of VAT revenue collected.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Luxembourg will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89[13].

[13] 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[14], and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Under Article 285 of Directive 2006/112/EC, Member States, which have not exercised the option under Article 14 of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, structure and procedures for application of the common system of value added tax[15], may exempt from VAT taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency. They may also grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.

(2) By Council Decision 2013/677/EU[16], Luxembourg was authorised, as a derogating measure, to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000 until 31 December 2016.

(3) By letter registered with the Commission on 26 September 2016, Luxembourg requested an authorisation for a measure derogating from Article 285 of Directive 2006/112/EC in order to extend that exemption as of 1 January 2017 and, at the same time, to increase the threshold from EUR 25 000 to EUR 30 000.

(4) The Commission informed the other Member States by letters dated 4 October 2016 of the request made by Luxembourg. By letter dated 5 October 2016, the Commission notified Luxembourg that it had all the information necessary to consider the request.

(5) From the information provided by Luxembourg, potentially 970 additional taxable persons could make use of this measure in order to reduce their VAT obligations referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC. The burden on the tax administration to collect tax and audit small businesses would therefore also be decreased.

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14 OJ L 347, 11.12.2006, p.1.

15 OJ 71, 14.4.1967, p. 1303/67

16 Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

(6) Given that the derogation granted to Luxembourg will result in reduced VAT obligations for the small businesses, whilst the latter may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Luxembourg should be authorised to apply the increased threshold until 31 December 2019.

(7) Derogations are normally granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. The derogation requested should, therefore, be limited in time and accompanied by a sunset clause. Moreover, the provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review and a directive, amending these provisions of the VAT Directive, might therefore enter into force before 31 December 2019.

(8) According to information provided by Luxembourg, the increased threshold will have a negligible impact on the overall amount of the tax revenue collected at the stage of final consumption.

(9) The derogation requested is in line with the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe" of 25 June 2008[17].

(10) The derogation has no impact on the Union's own resources accruing from VAT because Luxembourg will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89[18].

(11) Decision 2013/677/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 and 2 of Decision 2013/677/EU are replaced by the following:

'Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Luxembourg is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 30 000.

Article 2

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

This Decision shall apply until 31 December 2019, or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises, whichever is the earlier.'.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

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17 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.

18 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).

Done at Brussels,

For the Council
The President