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2017/0296 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Latvia 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 of 28 November 2006 on the common system of value added tax[1] ('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 3 July 2017, Latvia requested an authorisation to continue the application of the measure derogating from Article 287 of the VAT Directive allowing the exemption from VAT of taxable persons with an annual turnover not exceeding a specific threshold. After a reassessment of the application of the previous threshold, Latvia requests to decrease the exemption threshold from EUR 50 000 to EUR 40 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 13 September 2017of the request made by Latvia. By letter dated 14 September 2017, the Commission notified Latvia 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 or her supplies and, consequently, he or she cannot deduct VAT on the inputs.

Under Article 287(10) of the VAT Directive, Latvia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 17 200 at the conversion rate on the day of its accession. By virtue of Council Implementing Decision 2010/584/EU[2] Latvia was authorised to apply a higher threshold and thus to exempt from VAT taxable persons with an annual turnover not exceeding EUR 50 000. This measure was extended by Council Implementing Decision 2014/796/EU[3], which expires on 31 December 2017. Latvia requests to extend the measure as of 1 January 2018 and, at the same time, to decrease the exemption threshold from EUR 50 000 to EUR 40 000.

From the information provided by Latvia, lowering the VAT threshold from EUR 50 000 to EUR 40 000 would result in an increase of around 650 registered VAT taxable persons, mainly in the sectors of providing legal and accounting services, retail trade operators excluding cars and motorcycles and taxpayers engaged in crop and animal production, hunting and related service activities.

The input tax of VAT payers whose annual turnover was no greater than EUR 40 000 in 2015 generally exceeded the VAT payable into the national budget, so the cost to the State of collecting VAT from these persons would exceed the expected amount of revenue to be received.

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision 2010/584/EU of 27 September 2010 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 256, 30.9.2010, p. 29).

3 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).

Moreover, as Latvia's current threshold of EUR 50 000 is rather higher than in all benchmark countries, in particular compared to neighbouring countries (EUR 45 000 in Lithuania and EUR 40 000 in Estonia) the VAT thresholds have been re-evaluated. Gains from reducing tax administration and compliance costs were carefully assessed against the competitive distortions stemming from the difference in treatment among taxpayers on both sides of the VAT threshold.

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

Considering that Latvia has been authorised to exempt from VAT taxable persons with an annual turnover not exceeding a threshold of EUR 50 000 for seven years and that it has re-evaluated the situation, a lower threshold seems to be acceptable. It is therefore proposed to allow Latvia to lower the exemption threshold for SMEs from EUR 50 000 to EUR 40 000 until the earliest of 31 December 2020 or the entry into force of a Directive on the annual turnover thresholds below which taxable persons may be exempt from VAT.

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

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

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[11], and the 2017 Commission Work Programme[12], the Commission's

[4] 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).

[5] 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).

[6] 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).

[7] 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).

[8] 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).

[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 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] 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.

proposal in the form of a comprehensive simplification package is due to be presented by the end of 2017.

It is therefore proposed to extend the measure until 31 December 2020 or until 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"[13] 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.

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

- **Stakeholder consultations**

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

- **Collection and use of expertise**

There was no need for external expertise.

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[12] Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends, Strasbourg, 25.10.2016, COM(2016)710 final

[13] COM(2008)394 of 25 June 2008.

- **Impact assessment**

The proposal for a Council Implementing Decision authorises Latvia to continue to exempt from VAT taxable persons whose annual turnover does not exceed EUR 40 000. Persons whose taxable turnover does not exceed the threshold do not have to register for VAT purposes, and thus the administrative burden on them will reduce as a result of the measure, since they will not need to keep VAT records or submit a VAT return.

According to Latvia, the EUR 40 000 threshold will not have any substantial impact on the collection of VAT revenues. On the contrary, an analysis of the VAT declarations submitted by economic operators with an annual turnover of between EUR 40 000 and EUR 50 000 shows that introducing a EUR 40 000 threshold for VAT registration will increase total VAT revenue by EUR 5.9 million.

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

The proposal includes a sunset clause.

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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(10) of Directive 2006/112/EC, Latvia may exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 17 200 at the conversion rate on the day of its accession.

(2) By virtue of Council Implementing Decision 2010/584/EU[2], Latvia was authorised, as a derogating measure, to exempt taxable persons whose annual turnover was no higher than EUR 50 000 until 31 December 2013. This measure was extended by Council Implementing Decision 2014/796/EU[3] and expires on 31 December 2017.

(3) By letter registered with the Commission on 3 July 2017, Latvia requested authorisation for a measure derogating from Article 287(10) of Directive 2006/112/EC in order to continue derogating from Article 287(10) of Directive 2006/112/EC and also to decrease the exemption threshold to EUR 40 000. 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.

(4) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 13 September 2017, of the request made by Latvia. By letter dated 14 September 2017, the Commission notified Latvia that it had all the information necessary to consider the request.

(5) Given that the decreased threshold should result in reduced VAT obligations and thus a reduction in the administrative costs for small enterprises, Latvia should be authorised to apply the measure for a limited period. Taxable persons should still be able to opt for the normal VAT arrangements.

1 OJ 347, 11.12.2006, p.1.

2 Council Implementing Decision 2010/584/EU of 27 September 2010 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 256, 30.9.2010, p. 29).

3 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).

(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 provisions of Directive 2006/112/EC will therefore enter into force before the period of validity of the derogation expires.

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

(8) The derogation has no impact on the Union's own resources accruing from value added tax because Latvia will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89[4],

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287(10) of Directive 2006/112/EC, the Republic of Latvia is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 40 000.

Article 2

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

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 Latvia.

Done at Brussels,

For the Council
The President

[4] 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).