



Brussels, 14.3.2018
COM(2018) 126 final

2018/0057 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising Hungary to introduce a special measure derogating from Article 193 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 tax¹ (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 13 July 2017, Hungary requested authorisation to introduce a measure to derogate 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 15 January 2018 of the request made by Hungary. By letter dated 16 January 2018 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

Based on Article 199(1)(g) of the VAT Directive, Member States may provide that the person liable for the payment of VAT is the taxable person to whom the supply of immovable property sold by a judgement debtor in a compulsory sale procedure is made (the reverse charge mechanism). Hungary would like to extend the application of the reverse charge mechanism to supplies of capital goods of the company and to supplies of goods or services of the open market value exceeding HUF 100 000 (approximately 320EUR), if the taxable person supplying the goods or services is the subject of liquidation or any other proceedings legally establishing its insolvency.

According to Hungary, capital goods are typically high value tools, machinery and objects and there are a large number of transactions exceeding the threshold of HUF 100 000 carried out by insolvent taxable persons. The liquidator frequently fails to pay the VAT due since the amount has to be used to settle earlier claims. At the same time, the purchaser, being taxable person with the right of deduction, can still deduct the VAT incurred negatively impacting the budget and basically financing the liquidation. Hungary also registered cases of fraud whereby companies in liquidation would issue fictitious invoices to active companies greatly reducing their payable tax without the guarantee that the issuer would pay the VAT due.

Hungary therefore submits that there is a real need to safeguard the tax revenue and the budgetary interests on account of the number of taxable persons in financial difficulties performing the above supplies. The reverse charge mechanism is, according to Hungary, an appropriate tool to this aim. The taxable person in liquidation would not be liable to pay the VAT due and the customer would not be penalised while losses to the public budget would be avoided.

It is proposed to grant the derogation until 31 December 2021.

In case Hungary would consider an extension of the derogating measure beyond 2021, a report including a review of the measure should be submitted to the Commission together with the extension request and this no later than 31 December 2020.

¹ OJ L 347, 11.12.2006, p. 1.

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 simplify tax collection and combat tax evasion. It does not go beyond what is required to fulfil these aims.

- **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 safeguarding tax revenues and budgetary interests on account of companies under insolvency procedure in case they carry out supplies of capital goods or supplies of goods or services with an open market value exceeding HUF 100 000. According to Hungary, applying the reverse charge mechanism to these types of transactions will simplify tax collection and prevent tax evasion. It would limit losses to public revenues and generate additional budget revenue of approximately HUF 4-5 billion (approximately 13–14 million EUR) each year. 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 2021.

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Hungary 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 tax², and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 value added tax (VAT) to the tax authorities.
- (2) By letter registered with the Commission on 13 July 2017, Hungary requested an authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC regarding the person liable for payment of VAT in case of certain supplies carried out by taxable persons subject to liquidation or any other proceedings legally establishing its insolvency.
- (3) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Hungary by letters dated 15 January 2018. By letter dated 16 January 2018, the Commission notified Hungary that it had all the information necessary to consider the request.
- (4) Hungary claims that taxable persons in liquidation or under insolvency procedure frequently do not pay the VAT due to the tax authorities. At the same time the purchaser, being a taxable person with the right of deduction, can still deduct the VAT incurred, thus negatively impacting the budget and financing the liquidation. Hungary also registered cases of fraud whereby companies in liquidation would issue fictitious invoices to active companies and greatly reduce their payable tax without the guarantee that the issuer would pay the VAT due.
- (5) In accordance with point (g) of Article 199(1) of Directive 2006/112/EC, Member States may provide that the person liable for the payment of VAT is the taxable person to whom the supply of immovable property sold by a judgement debtor in a compulsory sale procedure is made ("the reverse charge mechanism"). To remedy the losses to public revenues, Hungary requests a derogation from Article 193 of Directive 2006/112/EC to be authorised to introduce the reverse charge mechanism to other supplies by taxable persons under insolvency procedure, namely supplies of capital goods and supplies of other goods or services with an open market value exceeding HUF 100 000.

² OJ 347, 11.12.2006, p. 1.

- (6) Based on information provided by Hungary, designating the recipient being a taxable person as the person liable for the payment of VAT in those particular cases will simplify the procedure for collecting VAT and prevent tax evasion and avoidance. Hungary considers that the derogating measure will also limit losses to public revenues and will result in generating additional revenues.
- (7) The derogation should be limited in time.
- (8) Given the scope and novelty of the derogation it is important to evaluate its impact. Therefore, if Hungary would consider an extension of the derogating measure beyond 2021, it should submit to the Commission a report including a review of the derogating measure together with the extension request by 31 December 2020 at the latest.
- (9) 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, Hungary is authorised to provide that the person liable for payment of VAT is the taxable person to whom the following supplies are made:

- (1) supplies of capital goods by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency;
- (2) supplies of other goods and services with an open market value exceeding HUF 100 000 at the time of supply by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.

Article 2

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

This Decision shall expire on 31 December 2021.

Article 3

This Decision is addressed to Hungary.

Done at Brussels,

*For the Council
The President*