



EUROPEAN COMMISSION

Brussels, 17.2.2012
COM(2012) 63 final

2012/0026 (NLE)

Proposal for a

COUNCIL DECISION

**authorising Romania to apply measures derogating from Articles 26(1)(a) and 168 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(1) 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 derogating from the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

By letters registered with the Commission on 15 February 2011 and on 22 June 2011, Romania requested an authorisation to introduce measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC in order to limit to 50% the right of deduction with respect to the purchase of certain types of motor vehicles and the purchase of goods and services related thereto. By letter registered with the Commission on 27 September 2011, Romania subsequently replaced its request by a new request to apply the abovementioned measure only to certain types of motorized road vehicles, which are not entirely used by the taxable person for business purposes. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 1 December 2011 of the request made by Romania. By letter dated 5 December 2011, the Commission notified Romania that it had all the information necessary to consider the request.

General context

Article 168 of Directive 2006/112/EC provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purpose of his taxed transactions. Article 26(1)(a) of the same Directive requires the use of goods forming part of the assets of a business for non-business purposes to be a supply of services for a consideration if the VAT on the goods was eligible for deduction.

In the case of motor vehicles, this system is difficult to apply for a number of reasons, notably because it is difficult to identify accurately the split between business and non-business use. Where records are kept, they add an additional burden to both the business and the administration in maintaining and checking them. The number of vehicles concerned means that even small-scale individual evasion has the capacity to grow into significant sums.

As an alternative to the system set out in the Directive, the Romanian tax authorities have requested that they be allowed to limit the initial deduction to a set percentage and in turn relieve the business from accounting for tax on the private use. This has the benefit of simplifying the system for all concerned and ensuring that a percentage of the tax, which might have otherwise been evaded, is collected.

The percentage restriction requested is 50%. This is based on Romania's own assessment and, under the terms of the proposal, would be reviewed upon any request by Romania for extension beyond 2014.

The new system will apply to all businesses in which the vehicles are not used exclusively for business purposes. However, certain types of motor vehicles would be excluded from the

restriction to the right of deduction and would therefore be subject to the normal rules, namely any vehicle with more than 9 seats (including the driver's) and with a maximum permissible laden mass of more than 3 500 kilograms. This mainly restricts the field of application to cars, vans, pick-ups, motorbikes and mopeds. In addition, a detailed list of particular vehicles, which are to be excluded from the restriction, is provided, based on the fact that their non-business use is considered as negligible.

Existing provisions in the area of the proposal

Article 176 of Directive 2006/112/EC stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions, which were in place on 1 January 1979. There are therefore a number of "stand still" provisions restricting the right to deduct in relation to motor vehicles.

In 2004, the Commission made a proposal¹, which contains rules on which categories of expenditure may be subject to a restriction on the right to deduct but the Council, has not been able yet to reach an agreement on that proposal.

Consistency with other policies and objectives of the Union

Not applicable.

2. CONSULTATION OF 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 proposal is designed to counter VAT evasion and to simplify the procedure for charging tax and has, therefore, a potential positive impact for both businesses and administrations. The solution has been identified by Romania as a suitable measure and is comparable to other past and present derogations.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal aims to authorise Romania to apply a measure derogating from Article 168 of Directive 2006/112/EC so as to restrict the right of a taxable person to deduct VAT on expenditure related to certain motorised road vehicles when the vehicle is not used

¹ COM(2004) 728 final
http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0728en01.pdf

exclusively for business purposes. Where the right to deduct has been limited, a derogation from Article 26(1)(a) of Directive 2006/112/EC will relieve the taxable person from accounting for tax on the non-business use of the vehicle. The measure is restricted to vehicles under a certain seating capacity and under a certain weight, and provision is made for a limited number of specified exceptions from the rule.

The restriction is set at a flat rate of 50%. This rate and the necessity for the derogating measures are to be reviewed and reported on by Romania upon any request for an extension. The Decision will expire on the earlier of the date specified in the Decision or the date on which Union rules come into force governing restrictions on the right to deduct in this area.

Legal basis

Article 395(1) of Council 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 Union. The subsidiarity principle therefore does not apply.

Proportionality principle

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

This Decision concerns an authorisation granted to a Member State on 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.

Choice of instruments

Proposed instruments: Council Decision.

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

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

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

5. OPTIONAL ELEMENTS

The proposal includes a review clause and 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 tax², and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 27 September 2011, Romania requested authorisation to introduce special measures concerning certain motorised road vehicles derogating from those provisions laid down in Directive 2006/112/EC which govern a taxable person's right to deduct VAT paid on the purchase of goods and services and those which require tax to be accounted for on business assets used for non-business purposes;
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Romania by letter dated 1 December 2011. By letter dated 5 December 2011, the Commission notified Romania that it had all the information necessary to consider the request;
- (3) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct VAT charged on supplies of goods and services received by him for the purposes of his taxed transactions. Article 26(1)(a) of that Directive contains a requirement to account for VAT when a business asset is put to use for the private purposes of the taxable person or his staff or, more generally, for purposes other than those of his business;
- (4) The non-business use of vehicles is difficult to identify accurately and even where it is possible, the mechanism for doing so is often burdensome. Under the requested measures, the amount of VAT on expenditure eligible for deduction concerning motor vehicles, which are not used entirely for business, purposes should, with some exceptions, be set at a flat percentage rate. Based on currently available information,

² OJ L 347 11.12.2006, p.1.

Romania believes that a rate of 50% is justifiable. At the same time, to avoid double taxation, the requirement for accounting for VAT on the non-business use of a motor vehicle should be suspended where it has been subject to this restriction. These measures can be justified by the need to simplify the procedure for charging VAT and to prevent evasion through incorrect record keeping and false tax declaration;

- (5) The restriction to the right of deduction under the special measures should apply to VAT paid on the purchase, intra-Community acquisition, importation, hire or leasing of specified motorised road vehicles and on expenditure related thereto, including the purchase of fuel;
- (6) Certain types of motor vehicles should be excluded from the scope of the special measures as - due to their nature or the type of business they are used for - any non-business use is considered as negligible. Therefore, the special measures should not apply to vehicles with more than nine seats (including the driver's) or with a maximum permissible laden mass of more than 3 500 kilograms. In addition, a detailed list of specific types of vehicles excluded from that restriction should be provided, based on their particular use;
- (7) These derogating measures should be limited in time to allow for an evaluation of their effectiveness and of the appropriate percentage, since the proposed percentage is based on initial findings on business use;
- (8) Where Romania considers a further extension beyond 2014 is necessary, a report on the application of the measure, which includes a review of the percentage applied, should be submitted to the Commission together with the extension request no later than 31 March 2014;
- (9) On 29 October 2004, the Commission adopted a proposal³ for a Council Directive amending Directive 77/388/EEC, now Directive 2006/112/EC, that includes the harmonisation of the categories of expenses for which exclusions of the right of deduction may apply. Under this proposal, exclusions on the right to deduct may be applied to motorised road vehicles. The derogating measures provided for in this Decision should expire on the date of the entry into force of such amending Directive, if that date is earlier than the date of expiry provided for in this Decision;
- (10) The derogation will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will have no impact on the Union's own resources accruing from value added tax.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 168 of Directive 2006/112/EC, Romania is hereby authorised to limit to 50% the right to deduct the VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as the VAT

³ COM(2004) 728 final
http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0728en01.pdf

charged on expenditure related to those vehicles, where the vehicle is not entirely used for business purposes.

The restriction set out in the first paragraph shall not apply to motor vehicles with a maximum permissible laden mass of more than 3 500 kg or with more than nine seats including the driver's seat.

Article 2

Article 1 shall not apply to the following categories of motor vehicles:

- 1) vehicles used exclusively for emergencies, security and protection and courier services;
- 2) vehicles used by sales agents and by purchasing agents;
- 3) vehicles used for the transport of passengers for remuneration, including taxi services;
- 4) vehicles used to supply remunerated services, including hire or driving lessons provided by driving schools;
- 5) vehicles used for hire or leasing;
- 6) vehicles used as commodities for trading purposes.

Article 3

By way of derogation from Article 26(1)(a) of Directive 2006/112/EC, Romania is authorised not to treat as a supply of services for consideration the private use by a taxable person or his staff or, more generally, for purposes other than those of his business, of a vehicle to which the restriction referred to in Article 1 of this Decision applies.

Article 4

1. This Decision shall expire on the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles that is not eligible for full deduction of VAT, or on 31 December 2014, whichever is the earlier.
2. Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 31 March 2014.

Any request for extension of those measures shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision.

Article 5

This Decision is addressed to Romania.

Done at Brussels, 17.2.2012

*For the Council
The President*