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2013/0284 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Romania to continue to apply 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

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (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 March 2013, Romania has requested an extension of the derogation from Article 193 of the VAT Directive in order to apply reverse charge to timber and wood products. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 17 June 2013 of the request made by Romania. By letter dated 18 June 2013, the Commission notified Romania that it had all the information necessary to consider 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).

In 2009, the Romanian Government requested a derogation pursuant to Article 395 of the VAT Directive 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 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.

The request was approved by Council and Romania was authorised to apply the reverse charge to the abovementioned supplies until 31 December 2013. Romania has now asked for an extension of the derogation regarding the application of reverse charge to supplies of wood products. Romania has however not requested any extension of the derogation as far as insolvent businesses are concerned.

The forestry sector in Romania consists of a large number of small resellers and intermediaries which have proved to be very difficult to control for the tax authorities. The supplies are often made to larger, well established businesses, which are therefore easier to control. This type of sector is therefore very similar to the ones covered in Article 199 of the VAT Directive and for which the reverse charge has proved to be an effective instrument without any adverse impact on fraud at the retail sector or fraud in other Member States or sectors.

From the information provided by the Romanian Government, a prolongation of the derogation seems justifiable.

An extension should be limited in time in order to assess whether the conditions on which it is based would still be valid. It is therefore proposed that the request will be granted until 31 December 2016 and that the Romanian Government shall present a report which includes a review of the efficiency of the measure and an evaluation of the risk of fraud in the wood sector if a new extension request would be envisaged beyond that end date.

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

Consultations of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposal implies continuing a measure which aims to prevent VAT evasion or avoidance and has therefore a potential positive economic impact.

The derogation has a specific and narrow scope and will therefore only have limited impact.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Romania to continue to apply a derogating measure from Directive 2006/112/EC as regards the application of a reverse charge mechanism to supplies of wood products.

Legal basis

Article 395 of the VAT 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 one Member State upon their 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: other.

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

Under Article 395 of the Directive 2006/112/EC of 28 November 2006 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 budget of the Union.

5. OPTIONAL 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 , and in particular Article 395 (1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered within the Commission on 13 March 2013, Romania requested authorisation for extension of a special measure derogating from Article 193 of Directive 2006/112/EC in relation to supplies of wood products.
- (2) In accordance with the second subparagraph of article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 17 June 2013 of the request made by Romania. By letter dated 18 June 2013 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) Council Decision 2010/583/EU of 27 September 2010 authorised Romania to apply a derogating measure pursuant to Article 395 of Directive 2006/112/EC in order to designate the recipient as the person liable for the payment of the VAT on supplies of wood products.
- (5) Prior to the former authorisation to apply reverse charge to the supplies of wood, Romania had encountered problems in the timber market because of the nature of the market and the businesses involved. There are a large number of small enterprises in this sector which the Romanian authorities have found difficult to control. Designating the recipient as the person liable for payment of VAT has, according to the Romanian authorities, had the effect of preventing tax evasion and avoidance in this sector and remains justified.
- (6) The measure is proportionate to the objectives pursued since it is not intended to apply generally, but only to very specific operations in a sector which poses considerable problems of tax evasion or avoidance.
- (7) The measure should not, in the Commission's view, have any adverse impact on fraud at the retail level or in other sectors or Member States.
- (8) The authorisation should be limited in time until 31 December 2016.

- (9) Where Romania requires a further extension beyond 2016, a report shall be submitted to the Commission together with the extension request no later than 1 April 2016. In light of the experience gained up to that date an assessment shall be made on whether or not the derogation remains justified.
- (10) The derogation has no adverse impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, the Republic of Romania is hereby authorised until 31 December 2016 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 supplies of wood products by taxable persons including 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

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission no later than 1 April 2016, and shall be accompanied by a report which includes an assessment of the efficiency of the measure and an evaluation of the risk of fraud in the wood sector.

Article 4

This Decision is addressed to the Republic of Romania.

Done at Brussels,

For the Council
The President