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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Croatia to introduce 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 20 December 2016, Croatia requested an authorisation to apply, as of 1 January 2018 to 31 December 2020, a measure derogating from Article 287 of the VAT Directive, allowing Croatia to exempt from VAT taxable persons whose annual turnover is not higher than EUR 45 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 13 March 2017 of the request made by Croatia. By letter dated 14 March 2017, the Commission notified Croatia 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(19) of the VAT Directive, Croatia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession (230 000 kuna). Croatia asked for the increase of this threshold to the equivalent in national currency of EUR 45 000, namely 300 000 kuna.

Raising the threshold is expected to reduce administrative burden and tax compliance costs for enterprises, as they will be relieved from a number of tax obligations such as filing of VAT returns or keeping VAT records. It is also anticipated that the increase of the threshold will simplify the collection of the tax and reduce the workload for national tax administration.

According to Croatia, the increase of the threshold will have no important impact on state revenues. Croatia estimates that the increase of the threshold will lead to the reduction of state budget revenues of approximately 0.22% of the total state budget revenues.

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

Croatia requested the application of the threshold of the equivalent in national currency of EUR 45 000 as from 1 January 2018 until 31 December 2020.

• Consistency with existing policy provisions in the policy area

Similar derogations have been granted to other Member States. Luxembourg[2] was granted a threshold of EUR 40 000, Belgium[3] was granted a threshold of EUR 25 000, Poland[4] a

[1] OJ L 347, 11.12.2006, p. 1.

[2] 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. 7-8).

threshold of EUR 40 000, Lithuania[5] a threshold of EUR 45 000, Latvia[6] and Slovenia[7] a threshold of EUR 50 000, Italy[8] and Romania[9] 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[10], and the 2017 Commission Work Programme[11], the Commission's proposal in the form of a comprehensive simplification package is due to be presented by the end of 2017.

It is therefore proposed to allow for the raising of the threshold by Croatia up to the equivalent in national currency of EUR 45 000 as from 1 January 2018 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"[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.

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3 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).

4 Council Implementing Decision 2016/2090//EU 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).

5 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).

6 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).

7 Council Implementing Decision (EU) 2015/2089/EU 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).

8 Council Implementing Decision (EU) 2016/1988/EU 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).

9 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).

10 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.

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

12 COM(2008) 394 of 25 June 2008.

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 Croatia 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 increases the threshold of annual turnover below which taxable persons may be exempted from VAT. It therefore extends the scope of the simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than the equivalent in the national currency of EUR 45 000.

Persons whose taxable turnover does not exceed the threshold will not have to register to be identified 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. There will also be a reduction in the workload for the tax authorities. This will have a potential positive impact on the reduction of administrative burden for around 9 000 taxable persons representing around 5.8% of taxable persons currently registered for VAT in Croatia, and subsequently on tax administration.

The budgetary impact in terms of VAT revenue for Croatia is estimated at not more than 0.22% of total VAT revenue.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Croatia 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[13], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Under Article 287(19) of Directive 2006/112/EC, Croatia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession.

(2) By letter registered with the Commission on 20 December 2016, Croatia requested an authorisation to introduce a special measure derogating from Article 287 of Directive 2006/112/EC, allowing it to exempt from VAT taxable persons whose annual turnover is no higher than EUR 45 000 as of 1 January 2018. Croatia has requested that the corresponding threshold, which is established at EUR 35 000 pursuant to Article 287(19), be increased to EUR 45 000.

(3) A higher threshold for the special scheme for small enterprises is a simplification measure, as it may significantly reduce the VAT obligations of small enterprises.

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

(5) From the information provided by Croatia, potentially around 9 000 taxpayers could make use of the measure in order to reduce their VAT obligations referred to in Chapter 2 of Title XI of Directive 2006/112/EC. It would also reduce the burden on the tax administration and simplify the collection of the tax.

(6) Given that this derogating measure will result in reduced VAT obligations for small enterprises, Croatia should be authorised to apply the measure for a limited period. Taxable persons should still be able to opt for the normal VAT arrangements.

(7) 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 enter into force before the period of validity of the derogation expires.

[13] OJ L 347, 11.12.2006, p. 1.

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

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

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287(19) of Directive 2006/112/EC, Croatia is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 45 000 at the conversion rate on the day of its accession.

Article 2

This Decision shall apply from 1 January 2018 until 31 December 2020, or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC, whichever date is the earlier.

Article 3

This Decision is addressed to the Republic of Croatia.

Done at Brussels,

For the Council
The President