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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Czechia 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 Council Directive 2006/112/EC of 28 November 2006 on the common system of valued 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 23 November 2021, Czechia requested an authorisation to apply, until 31 December 2024, a measure derogating from Article 287 of the VAT Directive, allowing Czechia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 85 000.

In accordance with Article 395(2), second subparagraph, of the VAT Directive, the Commission informed the other Member States by letter dated 16 December 2021 of the request made by Czechia. The Commission notified Czechia by letter dated 20 December 2021 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 supplies and, consequently, he [or she] cannot deduct the VAT on his inputs.

Under Article 287 of the VAT Directive, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision.

Under point (7) of Article 287 of the VAT Directive, Czechia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000.

An authorisation to raise the threshold of annual turnover from EUR 35 000 to EUR 85 000 would significantly simplify the administrative burden on businesses eligible for the exemption and would stimulate the development of such small businesses by releasing them from the VAT obligation under the normal VAT arrangements, such as keeping VAT records or submitting VAT returns. Further, the introduction of such a special measure would result in a smaller burden on the tax administration by lowering the requirement to manage and inspect taxable persons with a turnover under the threshold. In addition, there would be a positive effect on the general level of compliance with VAT obligations for these taxable persons.

The special measure is fully optional for taxable persons. Therefore, small businesses whose turnover does not exceed the threshold would still have the possibility to exercise their right to apply the normal VAT arrangements.

According to estimates provided by Czechia, the introduction of the special measure would lead to a decrease in VAT revenue collection of less than 2 % and would therefore not significantly affect the total amount of revenue from VAT or the overall amount of tax revenue collected at the stage of final consumption.

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

The special measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses.

Given the positive impact on the reduction of administrative burden for both businesses and the tax administration without a major impact on the total VAT revenue, it is appropriate to authorise Czechia to introduce and apply the special measure until 31 December 2024.

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

The derogating measure is in line with the objectives of Directive (EU) 2020/285 amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises[2], which resulted from the VAT action plan[3], and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of competition both domestically and at EU level, reduce the negative impact of the threshold effect, and facilitate business compliance as well as monitoring by tax administrations.

Moreover, the threshold of EUR 85 000 is consistent with Directive (EU) 2020/285, insofar as it allows Member States to set the annual turnover threshold required for an exemption from VAT at a level no higher than EUR 85 000 (or the equivalent in national currency).

Similar derogations, exempting from VAT taxable persons whose annual turnover is below a certain threshold, as provided for in Articles 285 and 287 of the VAT Directive, have been granted to other Member States. The Netherlands[4] and Belgium[5] have been granted a threshold of EUR 25 000; Italy[6] a threshold of EUR 30 000, Luxembourg[7] a threshold of EUR 35 000; Poland[8], Latvia[9] and Estonia[10] have been granted a threshold of EUR 40 000;

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2 Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

3 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide COM(2016)148 final.

4 Council Implementing Decision (EU) 2018/1904 of 4 December 2018 authorising the Netherlands to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 310, 6.12.2018, p. 25).

5 Council Implementing Decision (EU) 2018/2077 of 20 December 2018 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 331, 28.12.2018, p. 222.

6 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).

7 Council Implementing Decision (EU) 2019/2210 of 19 December 2019 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 332, 23.12.2019, p. 155).

8 Council Implementing Decision (EU) 2018/1919 of 4 December 2018 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 311, 7.12.2018, p. 32).

9 Council Implementing Decision (EU) 2020/1261 of 4 September 2020 amending Implementing Decision (EU) 2017/2408 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 (OJ L 296, 10.9.2020, p. 4).

Hungary[11] a threshold of EUR 48 000; Slovenia[12] a threshold of EUR 50 000; Lithuania[13] a threshold of EUR 55 000; Croatia[14] a threshold of EUR 45 000; Malta[15] a threshold of EUR 30 000; and Romania[16] a threshold of EUR 88 500.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. In addition, the inclusion of an expiry date of the special measure until 31 December 2024, as requested by Czechia, is aligned with the requirements of Directive (EU) 2020/285. That Directive provides for 1 January 2025 as the date on which Member States will have to apply the national provisions, which they are required to adopt, to comply with it.

The proposed measure is therefore consistent with the provisions of the VAT Directive.

- **Consistency with other Union policies**

The Commission has been consistently stressing the need for simpler rules for small enterprises. In this respect, the Commission adopted in March 2020 an SME Strategy for a sustainable and digital Europe[17], where it committed to continue to work to reduce the burden on SMEs. The objective to reduce the regulatory burden for SMEs is one of the pillars of that strategy. This special measure is in line with such objectives, as far as fiscal rules are concerned. It is also consistent with the 2020 Action Plan on fair and simple taxation supporting the recovery strategy[18], which acknowledges that tax compliance costs remain high in the EU, and that compliance costs are typically substantially higher for small than for large companies.

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10 Council Implementing Decision (EU) 2021/358 of 22 February 2021 amending Implementing Decision (EU) 2017/563 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 69, 26.2.2021, p. 4).

11 Council Implementing Decision (EU) 2018/1490 of 2 October 2018 authorising Hungary to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 252, 8.10.2018, p. 38).

12 Council Implementing Decision (EU) 2018/1700 of 6 November 2018 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 285, 13.11.2018 p. 78).

13 Council Implementing Decision (EU) 2021/86 of 22 January 2021 authorising the Republic of Lithuania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 30, 28.1.2021, p. 2).

14 Council Implementing Decision (EU) 2020/1661 of 3 November 2020 amending Implementing Decision (EU) 2017/1768 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 (OJ L 374, 10.11.2020, p. 4).

15 Council Implementing Decision (EU) 2021/753 of 6 May 2021 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax, and repealing Implementing Decision (EU) 2018/279 (OJ L 163, 10.5.2021, p. 1).

16 Council Implementing Decision (EU) 2020/1260 of 4 September 2020 amending Implementing Decision (EU) 2017/1855 authorising Romania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 296, 10.9.2020, p. 1).

17 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An SME Strategy for a sustainable and digital Europe (COM(2020) 103 final).

18 Communication from the Commission to the European Parliament and the Council – An Action Plan for fair and simple taxation supporting the Recovery Strategy (COM(2020) 312 final).

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 it is based, the proposal falls under the exclusive competence of the European Union. Hence, 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. to simplify the tax collection for small taxable persons and for the tax administration.

- **Choice of the instrument**

The instrument proposed is a Council Implementing Decision.

Under Article 395 of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is 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**

No stakeholder consultation has been conducted. The present proposal is based on a request made by Czechia and concerns only this particular Member State.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at increasing the current exemption threshold from EUR 35 000 to EUR 85 000 (in the equivalent in national currency). This increase is a simplification measure, which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 85 000. It will therefore have a positive impact on the reduction of administrative burden for both businesses and the tax administration without a major impact on the total VAT revenue. Because of the narrow scope of the derogation and its limited application in time, the impact of the measure will in any case be limited.

Currently, based on data available from 2020, there are approximately 910 000 small enterprises exercising their right to be exempted from VAT. The increase in threshold to EUR 85 000 would benefit around 105 000 additional enterprises, leading to a decrease in VAT revenue of less than 2 %.

The derogating measure will be optional for taxable persons. Taxable persons will be able to opt for the regular VAT arrangements in accordance with Article 290 of Directive

2006/112/EC. The budgetary impact in terms of VAT revenue for Czechia is estimated at approximately EUR 370 million, which can be considered negligible.

- **Fundamental rights**

The proposal does not have any consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Following entering into force of Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax[19], there will be no compensation calculation carried out by Czechia as of VAT own resource statement for the financial year 2022 onwards.

[19] Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).

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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) Pursuant to Article 287, point (7), of Directive 2006/112/EC Czechia may exempt from value added tax (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 date of its accession.

(2) By letter registered with the Commission on 23 November 2021, Czechia requested an authorisation to introduce a special measure derogating from Article 287, point (7), of Directive 2006/112/EC and thus to exempt from VAT taxable persons whose annual turnover is no higher than EUR 85 000 or the equivalent in national currency ('the special measure'). That special measure would be applicable until 31 December 2024, the date by which Member States are to transpose Council Directive (EU) 2020/285[2]. It follows from that Directive that, from 1 January 2025, Member States will be allowed to exempt from VAT the supply of goods and services made by taxable persons whose Member State annual turnover does not exceed a threshold of EUR 85 000 or the equivalent in national currency.

(3) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Czechia to the other Member States by letter dated 16 December 2021. By letter dated 20 December 2021, the Commission notified Czechia that it had all the information necessary for the appraisal of the request.

(4) The special measure is in line with Directive (EU) 2020/285, which seeks to reduce the compliance burden of small enterprises and avoid distortions of competition in the internal market.

(5) The special measure will remain optional for taxable persons as they may still opt for the normal VAT arrangements pursuant to Article 290 of Directive 2006/112/EC.

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

(6) According to information provided by Czechia, the special measure will only have a negligible effect on the overall amount of the tax revenue Czechia collects at the stage of final consumption.

(7) Following entry into force of Council Regulation (EU, Euratom) 2021/769[3], there will be no compensation calculation carried out by Czechia with regard to the VAT own resource statement for the financial year 2022 onwards.

(8) Given that Czechia expects that the increased threshold will result in reduced VAT obligations and thus a reduction in the administrative burden and compliance costs for both small enterprises and the tax authorities, and the lack of any major impact on the total VAT revenue generated, Czechia should be authorised to introduce the special measure.

(9) The authorisation to apply the special measure should be limited in time. The time limit should be sufficient to allow the effectiveness and appropriateness of the threshold to be evaluated. Moreover, pursuant to Article 3(1) of Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1 of that Directive, which deletes Article 287 of Directive 2006/112/EC and lays down simpler VAT rules for small enterprises, and apply those provisions from 1 January 2025. It is therefore appropriate to authorise Czechia to apply the special measure until 31 December 2024,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287, point (7), of Directive 2006/112/EC, the Czech Republic is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 85 000 or the equivalent in national currency.

Article 2

This Decision shall apply from the date of its publication until 31 December 2024.

Article 3

This Decision is addressed to the Czech Republic.

Done at Brussels,

For the Council
The President

[3] Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).