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2021/0073 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising Malta to apply 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 value added tax¹ ('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 October 2020, Malta requested an authorisation to increase the threshold of an existing measure derogating from Article 287 of the VAT Directive, in order to exempt from VAT taxable persons whose annual turnover is no higher than EUR 30 000, until 31 December 2024. The Commission requested further information related to the request which was provided by letter registered with the Commission on 9 November 2020.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 17 December 2020 of the request made by Malta. The Commission notified Malta by letter dated 18 December 2020 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. Malta started applying the EUR on 1 January 2008.

Under point 13 of Article 287 of the VAT Directive, Malta may exempt from VAT three categories of taxable persons: taxable persons whose annual turnover is no higher than EUR 37 000 if the economic activity consists principally in the supply of goods; EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs); and EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs).

Since its accession, Malta has made use of this provision to assist small businesses and to encourage new businesses to start operating. This has proved to be a useful simplification measure as it removes many of the VAT obligations for businesses operating below certain annual turnovers, which reduced the operating costs of these businesses. At the same time, the effect on revenue was insignificant. The Maltese government is committed to continue to apply measures to simplify the obligations of small operators, in line with the European

¹ OJ L 347, 11.12.2006, p.1.

Union's objectives for small businesses, as laid out in the Commission Communication "Think small first" - a "Small Business Act" for Europe"².

For this purpose, with Implementing Decision (EU) 2018/279 of 20 February 2018 Malta was authorised to increase the threshold for the category with the lowest turnover, that is EUR 14 600, to EUR 20 000. By Council Implementing Decision (EU) 2020/1662 of 3 November 2020³ Malta was authorised to prolong the application of this measure until 31 December 2024.

The adoption and subsequent transposition of this special measure⁴ to domestic law on 1 July 2018 led to over 1262 small enterprises benefitting from the increased threshold for annual turnover under such relative category of the simplification scheme for SMEs.

By raising the threshold to EUR 30 000 for taxable persons whose economic activity consists principally in the supply of services with a low value added (high inputs) or supplies of services with a high value added (low inputs), it is considered that the measure will reduce significantly the administrative burden on businesses eligible for the scheme, and in particular on micro-enterprises, by releasing them from the VAT obligations under the normal VAT arrangements, such as keeping VAT records or submitting VAT returns.

The special measure has reduced significantly the administrative burden and costs for the substantial amount of Maltese small enterprises indicated above. Moreover, the application of the special measure has enabled Malta to allocate more resources to the fight against VAT fraud and the enhancement of enforcement of the current VAT system.

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

It is therefore appropriate to authorise Malta to apply the derogating measure until 31 December 2024.

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

The derogating measure is in line with the philosophy of Council Directive (EU) 2020/285⁵ amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, which resulted from the VAT action plan⁶, and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of

² Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, Brussels, 25.6.2008, COM(2008)394 of 25 June 2008.

³ Council Implementing Decision (EU) 2020/1662 of 3 November 2020 amending Implementing Decision (EU) 2018/279 authorising Malta to apply 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. 6–7.

⁴ Council Implementing Decision (EU) 2018/279 of 20 February 2018 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 54, 24.2.2018, p. 14–15).

⁵ 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 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.

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 30 000 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 Netherlands⁷ has been granted a threshold of EUR 25 000; Italy⁸ a threshold of EUR 30 000; Luxembourg⁹ a threshold of EUR 35 000; Latvia¹⁰, Poland¹¹ and Estonia¹² have been granted a threshold of EUR 40 000; Croatia¹³ a threshold of EUR 45 000 and Lithuania¹⁴ a threshold of EUR 55 000; Hungary¹⁵ a threshold of EUR 48 000; Slovenia¹⁶ a threshold of EUR 50 000; and Romania¹⁷ a threshold of EUR 88 500.

As already mentioned, derogations from the VAT Directive should always be limited in time so that their effects can be assessed. The inclusion of an expiry date of the special measure until 31 December 2024, as requested by Malta, is aligned with application from 1 January

⁷ 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).

⁸ 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.11-12).

⁹ 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).

¹⁰ Council Implementing Decision (EU) 2017/2408 of 18 December 2017 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 342, 21.12.2017, p. 8).

¹¹ 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).

¹² 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).

¹³ Council Implementing Decision (EU) 2017/1768 of 25 September 2017 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 250, 28.9.2017, p. 71).

¹⁴ 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. 2–3).

¹⁵ 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).

¹⁶ 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).

¹⁷ 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. 1–3.

2025 of Directive (EU) 2020/285 on simpler VAT rules for small and medium-sized enterprises.

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 its annual work programmes. In this regard, the 2020 Commission Work Programme¹⁸ refers to “a dedicated SME Strategy that will make it easier for small and medium-sized businesses to operate, scale up and expand”. The derogating measure is in line with such objectives, as far as fiscal rules are concerned. It is notably consistent with the 2017 Commission Work Programme¹⁹, which referred specifically to VAT, pointing out that the administrative burden of VAT compliance for small businesses is high and that technical innovations pose new challenges for effective tax collection, and stressed the need to simplify VAT for smaller companies.

Likewise, the measure is consistent with the 2015 single market strategy²⁰, where the Commission set out to help small and medium-sized businesses grow, inter alia by reducing the administrative burdens that prevent them from taking full advantage of the single market. It also follows the philosophy of the 2013 Commission Communication ‘Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe’²¹, which underlined the need to simplify tax legislation for small businesses.

Finally, the measure is in line with EU policies on small and medium-sized enterprises, as set out in the 2016 Start-Up Communication²², and the 2008 Communication “Think Small First” – a “Small Business Act” for Europe²³ which called on the Member States to take account of the special features of SMEs when designing legislation and simplify the existing regulatory environment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2020 – A Union that strives for more (COM(2020) 37 final).

¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2017 (COM(2016) 710 final).

²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions upgrading the Single Market: more opportunities for people and businesses (COM(2015) 550 final).

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe (COM(2012) 795 final).

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Europe’s Next Leaders: The Start-Up and Scale-Up Initiative (COM(2016) 733 final).

²³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Think Small First’ A ‘Small Business Act’ for Europe (COM(2008) 394 final).

- **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 Malta and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at increasing the current exemption threshold from EUR 20 000 to EUR 30 000. This increase in the threshold is a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 30 000. It will therefore have a potential positive impact on the reduction of administrative burden for a number of taxable persons and, subsequently, on the tax administration.

According to data for the year 2019 the number of potential taxpayers that will be affected by this increase is 1 764, for high value added services (low inputs) and 237, for low value added services (high inputs).

The Maltese authorities reported that the number of traders currently using the SME scheme and the exemption is 34 585 and by raising the threshold the number could potentially increase to 36 586 taxpayers.

The percentage of the potential users of the SME scheme applying the threshold of EUR 30 000, as compared to the total number of taxpayers in Malta, would be 34%.

Based on simplified declaration of turnover under the SME scheme in 2019, the total estimated VAT, calculated at the standard rate, and considered as not collected (as it was below the EUR 20 000 threshold), amounts to approximately EUR 11.4 million which is the 1.2% of the total amount revenue collected from VAT in Malta in 2019 (EUR 944.7 million) as reported in the official data available.

By raising the threshold to EUR 30 000 for both supplies of services with a low value added (high inputs) or supplies of services with a high value added (low inputs), the not collected VAT will potentially increase by about EUR 3.3 million which could be estimated as an increase of 0,35%.

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 taxable persons currently registered for VAT in Malta, and subsequently on tax administration.

The budgetary impact in terms of VAT revenue for Malta is not significant on the national revenue budget.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Malta will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

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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), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article 287, point (13), of Directive 2006/112/EC, Malta may exempt from value added tax ('VAT') three categories of taxable persons: those whose annual turnover is no higher than EUR 37 000 if the economic activity consists principally in the supply of goods; those whose annual turnover is no higher than EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs); and those whose annual turnover is no higher than EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs).
- (2) By Council Implementing Decision (EU) 2018/279² Malta is authorised to apply a special measure derogating from Article 287 of Directive 2006/112/EC to exempt from VAT taxable persons whose economic activity consists principally in supplies of services with a high value added (low inputs) and whose annual turnover is no higher than EUR 20 000, until 31 December 2024.
- (3) By letter registered with the Commission on 20 October 2020, Malta requested an authorisation to apply a measure derogating from Article 287 of Directive 2006/112/EC, allowing Malta to exempt from VAT taxable persons whose economic activity consists principally in the supply of services with a low value added (high inputs), or supply of services with a high value added (low inputs) and whose annual turnover is no higher than EUR 30 000, until 31 December 2024 ('the derogating measure'). The Commission requested further information related to the request, which was provided by letter registered with the Commission on 9 November 2020.
- (4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted Malta's request to the other Member States by letter dated 17 December 2020. By letter dated 18 December 2020, the Commission notified Malta that it had all the information necessary for appraisal of the request.

¹ OJ L 347, 11.12.2006, p.1.

² Council Implementing Decision (EU) 2018/279 of 20 February 2018 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 54, 24.2.2018, p. 14).

- (5) Given that the increased threshold is expected to reduce VAT obligations and thus the administrative burden and compliance costs for small enterprises, and simplify VAT collection for the tax authorities, and the impact on the total VAT revenue of Malta collected at the stage of final consumption is negligible, Malta should be authorised to apply the derogating measure.
- (6) The derogating measure has no impact on the Union's own resources accruing from VAT because Malta will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89³.
- (7) The authorisation to apply the derogating 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, Article 287 of Directive 2006/112/EC is deleted by Council Directive (EU) 2020/285⁴, which lays down simpler VAT rules for small enterprises, with effect from 1 January 2025. It is therefore appropriate to authorise Malta to apply the derogating measure until 31 December 2024.
- (8) Implementing Decision (EU) 2018/279 should therefore be repealed,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from point (13) of Article 287 of Directive 2006/112/EC, Malta is authorised to exempt from VAT taxable persons whose economic activity consists principally in the supply of services with a low value added (high inputs), or the supply of services with a high value added (low inputs), and whose annual turnover is no higher than EUR 30 000.

Article 2

Implementing Decision (EU) 2018/279 is repealed.

Article 3

This Decision shall apply until 31 December 2024.

³ Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

⁴ 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).

Article 4

This Decision is addressed to the Republic of Malta.

Done at Brussels,

*For the Council
The President*