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2018/0260 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising Hungary 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 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 introduce 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 November 2017, Hungary requested an authorisation to introduce a measure derogating from Article 287 of the VAT Directive allowing the exemption from VAT of taxable persons with an annual turnover not exceeding EUR 48 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 6 February 2018 of the request made by Hungary. By letter dated 7 February 2018, the Commission notified Hungary 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 Member States to apply special schemes to small enterprises, including the possibility of exempting taxable persons whose annual turnover does not exceed a certain threshold. 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(12) of the VAT Directive, Hungary 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. Hungary requests to increase the exemption threshold from EUR 35 000 to EUR 48 000 as from 1 January 2019.

From the information provided by Hungary, raising the exemption threshold from EUR 35 000 to EUR 48 000 would increase the number of small enterprises that may benefit from the reduction of administrative burdens and compliance costs. Moreover, since this threshold would be aligned with another threshold concerning income tax, small enterprises would benefit from fully simplified tax arrangements.

Bearing in mind that economic growth has led to a steady increase in revenue, raising the personal exemption threshold could be justified according to Hungary.

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

Considering that Hungary has been authorised to exempt taxable persons from VAT with an annual turnover not exceeding a threshold of EUR 35 000 and that it has re-evaluated the situation, a higher threshold seems to be acceptable. It is therefore proposed to allow Hungary to increase the exemption threshold for SMEs from EUR 35 000 to EUR 48 000 until 31 December 2021 or the the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises.

¹ OJ L 347, 11.12.2006, p. 1.

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

Similar derogations have been granted to other Member States. Luxembourg² was granted a threshold of EUR 30 000, Poland³ and Estonia⁴ a threshold of EUR 40 000, Italy⁵ a threshold of EUR 65 000, Croatia⁶ a threshold of EUR 45 000, Latvia⁷ a threshold of EUR 40 000 and Romania⁸ a threshold of EUR 88 500.

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 Plan⁹, and the 2017 Commission Work Programme¹⁰, the Commission's proposal on the SMEs scheme¹¹ has recently been presented.

It is therefore proposed to grant the derogating measure and increase the threshold until 31 December 2021 or until the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC.

- **Consistency with other Union policies**

The measure is in line with the Union's objectives for small businesses, as laid down in the Commission Communication "Think small first" – a "Small Business Act" for Europe¹² 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.

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).

³ Council Implementing Decision (EU) 2016/2090 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).

⁴ Council Implementing Decision (EU) 2017/563 of 21 March 2017 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 80, 25.3.2017, p. 33).

⁵ 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).

⁶ 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).

⁷ 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).

⁸ Council Implementing Decision (EU) 2017/1855 of 10 October 2017 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 265, 14.10.2017, p. 19).

⁹ 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.

¹⁰ Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends, Strasbourg, 25.10.2016, COM(2016)710 final

¹¹ Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises, 18.1.2018, COM(2018) 21 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, a 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 Hungary 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 authorises Hungary to exempt from VAT taxable persons whose annual turnover does not exceed EUR 48 000 as from 1 January 2019. Persons whose taxable turnover does not exceed the threshold do not have to register 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.

According to Hungary, the EUR 48 000 threshold will not have any substantial impact on the collection of VAT revenues. It would affect about 32 000 taxable persons, accounting for 10% of all taxable persons. If all eligible persons made use of the increased threshold, this would entail a negligible reduction in VAT revenue of 0.52-0.65%.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Hungary 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 tax¹, and in particular the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to point (12) of Article 287 of Directive 2006/112/EC, Hungary 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 day of its accession.
- (2) By letter registered with the Commission on 13 November 2017, Hungary requested an authorisation to introduce a special measure derogating from point (12) of Article 287 of Directive 2006/112/EC in order to increase the exemption threshold to EUR 48 000. Through that special measure, those taxable persons would be exempt from certain or all of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.
- (3) A higher threshold for the special scheme for small enterprises set out in Articles 281 to 294 of Directive 2006/112/EC 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 letters dated 6 February 2018, of the request made by Hungary. By letter dated 7 February 2018, the Commission notified Hungary that it had all the information necessary to consider the request.
- (5) The requested derogation is in line with the policy objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe" 25 June 2008).²
- (6) Given that Hungary expects that the increased threshold would result in reduced VAT obligations and thus a reduction in the administrative burdens and compliance costs for small enterprises, Hungary should be authorised to apply the special measure for a limited period. The special scheme for small enterprises is optional, so taxable persons would still be able to opt for the normal VAT arrangements.

¹ OJ 347, 11.12.2006, p.1.

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 final.

- (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 Articles enters into force setting a date from which Member States are to apply national provisions before the period of validity of the derogation expires on 31 December 2021. If that happens, this Decision should cease to apply.
- (8) Based on information provided by Hungary, the increased threshold will only have a negligible impact on the overall amount of the tax revenue of Hungary collected at the final stage of consumption.
- (9) The derogation has no impact on the Union's own resources accruing from value added tax because Hungary will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, EURATOM) No 1553/89³,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from point (12) of Article 287 of Directive 2006/112/EC, Hungary is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 48 000 at the conversion rate on the day of its accession.

Article 2

This Decision shall apply from 1 January 2019 until the earlier of the following two dates:

- (a) 31 December 2021;
- (b) the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises.

Article 3

This Decision is addressed to Hungary.

Done at Brussels,

*For the Council
The President*

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).