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2019/0006 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Lithuania to introduce a special measure derogating from Article 193 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 (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 16 October 2018, Lithuania requested a derogation from Article 193 of the VAT Directive in order to apply the reverse charge mechanism to hard drives. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 19 November 2018 of the request made by Lithuania. By letter dated 20 November 2018, the Commission notified Lithuania that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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).

Pursuant to Article 395 of the VAT Directive, Lithuania requested a derogation from Article 193 of the VAT Directive to be authorised to apply the reverse charge mechanism to supplies of hard drives which are not covered by Article 199a of the VAT Directive. Under this procedure, the taxable person, to whom the supplies are made, becomes liable for the payment of VAT. This taxable person, provided it has a full right of deduction, would simultaneously declare and deduct the VAT corresponding to the supply, thus leading to no effective payment of VAT to the Treasury.

Lithuania discovered VAT fraud in the sector of electronic goods such as laptops, mobile phones, tablets and hard drives. These goods are acquired from other Member States and, before they are supplied to retailers or directly to consumers, multiple transactions take place between missing traders who do not pay VAT to the Treasury. Checks carried out in Lithuania revealed that in 2016-2017 around 6 million EUR in tax may not have been paid on electronic goods representing significant losses for the state budget.

Lithuania undertook a number of measures to tackle and prevent the VAT fraud. Since October 2016, all VAT payers in Lithuania are obliged, on a monthly basis, to enter information on the VAT invoices that they have received and issued into the e-invoice subsystem (‘i.SAF’) of the smart administration system ('i.MAS') helping the authorities to identify differences between the data declared by VAT taxpayers and the amounts of tax not declared in a timely manner. Also information on goods transport documents must be registered in the i.MAS electronic consignment notes subsystem (‘i.VAZ’), specifying the goods carried, consignors and consignees, before the goods are transported in the territory of Lithuania. This operational information gathered by the State Tax Inspectorate also used to detect potential cases of fraud or to quickly find out about goods involved in a fraudulent chain.

Despite all the measures introduced to combat VAT fraud, the information provided by Lithuania shows that these measures are not sufficient to prevent VAT fraud in the supply of electronic goods. Lithuania considers that the introduction of the reverse charge in the sector concerned is necessary.

Lithuania intends to introduce the reverse charge to electronic products based on Article 199a of the VAT Directive. However hard drives are not included in this article. Lithuania also submits that the experience of other Member States shows that following the introduction of the reverse charge mechanism to those electronic goods covered by Article 199a of the VAT Directive the fraud moves to other electronic goods.

Lithuania therefore requests to be authorised to introduce the reverse charge mechanism also to hard drives based on Article 395 of the VAT Directive.

Given the potential positive impact of the measure in the fight against fraud discovered by Lithuania, it is proposed to grant the derogation for a limited period, from 1 March 2019 until 28 February 2022. During the period of application of the derogating measure Lithuania should introduce other conventional measures to effectively control and prevent fraud in the supplies of hard drives. Consequently there should be no further need to derogate from Article 193 of the VAT Directive with regards to the supplies of hard drives.

Consistency with existing policy provisions in the policy area

Similar derogations in relation to Article 193 of the VAT Directive have been granted to other Member States.

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

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 proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore 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 prevent certain forms of tax evasion or avoidance in a specific sector.

- **Choice of the instrument**

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by Lithuania and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for Implementing Decision aims at preventing certain forms of tax evasion or avoidance in the sector of hard drives. The reverse charge mechanism should help Lithuania to prevent VAT fraud in hard drives' sector. Consequently, the derogating measure will have a potential positive impact.

Because of the narrow scope of the derogation and the limited application in time, the negative impact, consisting in higher administrative burden for businesses dealing with electronic products, will in any case be limited.

4. BUDGETARY IMPLICATIONS

The proposal will have no adverse impact on the Union's own resources accruing from VAT

5. OTHER ELEMENTS

The proposal includes a time limitation set at 28 February 2022.

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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 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) 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 value added tax (VAT) to the tax authorities.

(2) By letter registered with the Commission on 16 October 2018, Lithuania has requested an authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC in order to apply the reverse charge mechanism to supplies of hard drives.

(3) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letters dated 19 November 2018 of the request made by Lithuania. By letter dated 20 November 2018, the Commission notified Lithuania that it had all the information necessary to consider the request.

(4) Lithuania discovered VAT missing trader fraud in the sector of electronic goods such as laptops, mobile phones, tablets and hard drives. The scale and scope of this practice has a direct, very negative impact on the state budget.

(5) Lithuania has undertaken number of measures to tackle and prevent the VAT fraud. According to Lithuania those measures are not sufficient to prevent VAT fraud in the supply of electronic goods.

(6) Lithuania intends to introduce the reverse charge to electronic products based on Article 199a of Directive 2006/112/EC. However, hard drives are not included in that article.

(7) In order to provide for a more comprehensive form of the reverse charge mechanism that should apply not only to the electronic products as already allowed by Article 199a of Directive 2006/112/EC but also to hard drives, Lithuania requests to be authorised to introduce the reverse charge mechanism for supplies of hard drives based on Article 395 of Directive 2006/112/EC.

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

(8) Given the possible positive impact of the special measure in the fight against fraud identified by Lithuania, the derogation should be granted for a limited period, from 1 March 2019 until 28 February 2022.

(9) Derogations are in general granted for a limited period of time to allow an assessment whether the derogating measure is appropriate and effective. Derogations grant Member States time to introduce other conventional measures to tackle the respective problem until the expiry of the derogating measure, thus making an extension of the derogation redundant. A derogation allowing making use of the reverse charge mechanism is only granted exceptionally for specific fraudulent areas and constitutes a means of last resort. Lithuania should therefore implement other conventional measures to fight and prevent the VAT fraud in the sector of hard drives until the expiry of this derogation and consequently should no longer need to derogate from Article 193 of Directive 2006/112/EC with regard to the supplies of hard drives.

(10) The special measure will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, Lithuania is authorised to designate the recipient as the person liable to pay VAT in the case of supplies of hard drives.

Article 2

This Decision shall apply from 1 March 2019 and shall expire on 28 February 2022.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

For the Council
The President