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PROPOSAL

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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION 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

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Brussels, 30.8.2013
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Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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 8 April 2013, the Italian Republic requested authorisation to continue to exempt taxable persons below a certain turnover threshold, and to raise this threshold from EUR 30 000 to EUR 65 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 10 June 2013 of the request made by the Italian Republic. By letter dated 14 June 2013, the Commission notified the Italian Republic that it had all the information necessary to consider the request.

General context

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 cannot deduct VAT on his inputs.

This measure was first introduced in accordance with the provisions of Article 14 of Council Directive 67/228/EEC[1]. However, those Member States which did not make use of the option provided for under that provision could subsequently, according to Article 24(2)(b) of Directive 77/388/EEC now recast as the first paragraph of Article 285 of the VAT Directive, only exempt taxable persons from VAT whose annual turnover is no higher than EUR 5 000. The Italian Republic did not make use of the option provided by Article 14 of Council Directive 67/228/EEC.

Because of a significant number of taxable persons with a very low annual turnover, the Italian Republic requested a derogation in 2007 in order to simplify VAT obligations for small traders and to ease the collection of the tax for the national tax administration by exempting taxable persons whose annual turnover is no higher than EUR 30 000. This derogation was authorised by Council Decision 2008/737/EC[2] until 31 December 2010, and subsequently extended by Council Decision 2010/688/EU[3] up to 31 December 2013. The Italian Republic has now requested that the measure, which is optional for taxable persons, be extended to 31 December 2016. The Italian Republic has also requested that the annual turnover threshold be increased to EUR 65 000. By increasing the threshold, Italy makes the measure available to a greater number of SMEs. This is in line with the objectives of the Commission Communication *"Think Small First" - A "Small Business Act" for Europe* (COM(2008) 394 of 25 June 2008), which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing

[1] OJ 71, 14.4.1967, p. 1303-1312
[2] OJ L 249, 18.9.2008, p. 13–14
[3] OJ L 294, 12.11.2010, p. 12-13

regulatory environment. Moreover, no problems have been identified in the application of the measure, nor in monitoring those businesses it covers.

In its proposal for a Directive simplifying VAT obligations of 29 October 2004 (COM (2004) 728 final)[4] the Commission included provisions aimed at allowing the Member States to exempt taxable persons whose annual turnover does not exceed a ceiling of EUR 100 000 with the possibility of updating this amount each year. However, the Council has, as at this stage, not yet reached an agreement on that proposal.

From information provided by the Italian Republic it appears that the impact of the measure on tax revenue collected at the final consumption stage will be negligible.

It is therefore proposed to extend the derogation for another period until the earliest of 13 December 2016 or the entry into force of a Directive on the annual turnover thresholds below which taxable persons may be exempt from VAT, and to increase the threshold to EUR 65 000.

Existing provisions in the area of the proposal

In 2004, the Commission made a proposal to - inter alia - increase the annual turnover threshold available to Member States (COM(2004) 728 final[5]) for the exemption from VAT of taxable persons to EUR 100 000. That proposal is still on the table of the Council.

In the medium term, the Commission considers that the adoption of that proposal would be a more appropriate way forward than having a piecemeal approach based on individual derogations. The Commission therefore calls on the Council to resume the negotiations on that proposal.

Consistency with the other policies and objectives of the Union.

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" (COM(2008) 394 of 25 June 2008).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant

Collection and use of expertise

There was no need for external expertise.

Impact assessment

[4] OJ C 24, 29.1.2005, p. 10

[5] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0728:FIN:EN:PDF

The decision aims at continuing a simplification measure which removes many of the VAT obligations for businesses operating below an annual turnover, and increasing that turnover from EUR 30 000 to EUR 65 000.

Because of the narrow scope of the derogation, and its limited application in time, the scope will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for the Italian Republic to continue to apply a derogating measure from Directive 2006/112/EC as regards the introduction of a simplification measure for businesses with an annual turnover no higher than a certain threshold, and to increase that threshold to EUR 65 000.

Legal basis

Article 395 of the VAT Directive.

4. BUDGETARY IMPLICATION

The proposal has no implication for the budget of the Union because Italy will carry out a compensation calculation in accordance with Article 6 of Council Regulation (ECC EURATOM) 1553/89[6].

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

[6] OJ L 155, 7.6.1989, p. 9–13

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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[7], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In a letter registered by the Commission on 8 April 2013 Italy requested authorisation for a measure derogating from Article 285 of Directive 2006/112/EC in order to continue to exempt certain taxable persons whose annual turnover falls below a certain threshold, and to raise this threshold from EUR 30 000 to EUR 65 000. Through that measure, those taxable persons would be exempt from certain or all of the obligations in relation to value added tax (VAT) referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(2) The Commission informed the other Member States by letter dated 10 June 2013 of the request made by Italy. By letter dated 14 June 2013 the Commission notified Italy that it had all the information necessary to consider the request.

(3) A special scheme for small enterprises is already available to Member States under Title XII of Directive 2006/112/EC. The extended measure derogates from Article 285 of that Directive in its application to Italy only insofar as the annual turnover threshold for the scheme is higher than the EUR 5 000 threshold.

(4) By Council Decision 2008/737/EC of 15 September 2008[8], Italy was authorised, as a derogating measure, to exempt taxable persons whose annual turnover is no higher than 30 000 until 31 December 2010. The application of this derogation was subsequently extended until 31 December 2013 by Council Decision 2010/688/EU[9]. Given that this threshold has resulted in reduced VAT obligations for smaller businesses, Italy should be authorised to apply the measure for a further limited period, and to increase the threshold to EUR 65 000. Taxable persons may still opt for the normal VAT arrangements.

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7 OJ L 347, 11.12.2006, p. 1

8 OJ L 249, 18.9.2008, p. 13–14

9 OJ L 294, 12.11.2010, p. 12-13

(5) For the sake of making the measure available to a greater number of SMEs, and thereby corresponding to the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe" (COM(2008) 394 of 25 June 2008), Italy should be authorised to increase the annual turnover threshold under which certain taxable persons can be VAT exempt from EUR 30 000 to EUR 65 000.

(6) In it proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying the value added tax obligations of 29 October 2004[10], the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating that amount each year. The extension request submitted by Italy is compatible with that proposal on which the Council has not yet been able to reach an agreement.

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

(8) The derogation has no impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Italy is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 65 000.

Italy may raise that ceiling in order to maintain the value of the exemption in real terms.

Article 2

This Decision shall take effect on the day of its notification.

This Decision shall apply from 1 January 2014 until the entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may be exempted from VAT, or until 31 December 2016, whichever is the earlier.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President

[10] COM (2004) 728 final (OJ C 24, 29.1.2005, p. 10)