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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2016) 598 final.

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Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 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 30 March 2016, the Italian Republic requested authorisation to continue to apply a derogation measure concerning the right of deduction of VAT borne on certain types of means of transport. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 22 June 2016 of the request made by the Italian Republic. By letter dated 23 June 2016, the Commission notified the Italian Republic that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 168 and 168a of the VAT Directive provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purposes of his taxed transactions. At the same time, Article 26(1)(a) of the VAT Directive stipulates that the use of goods, forming part of the assets of a business, for private purposes is to be considered as a supply of services for consideration if the VAT on these goods was wholly or partly deductible. As a result, the system ensures that final consumption is taxed when the corresponding input VAT was initially deducted.

In relation to motor vehicles, it is sometimes difficult and burdensome for the taxable persons to identify and register the split between business and private use and for the tax administration to verify the effective division of use. This would be the case even if Italy would make use of the option provided for in Article 168a(2) of the VAT Directive to limit the deduction on expenditure related to company cars to the proportion of the taxable person's effective business use. In addition, because of the number of mixed use vehicles, tax evasion could become considerable.

In order to simplify VAT collection and to combat tax evasion, the Italian Republic requested and obtained in 2007 from the Council an individual derogation allowing it to restrict, in a compulsory way, until 31 December 2010, the right of deduction to 40% in relation to motorised road vehicles (other than agricultural or forestry tractors, normally used for carrying persons or goods by road with a maximum authorised mass not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat)[1]. However, it should be pointed out that certain categories of vehicles were specifically excluded from this restriction, such as vehicles forming part of stock-in-trade, for instruction by driving schools, used for hire or leasing, used by sales representatives and taxis. At the same time, businesses would be relieved from accounting from tax on the private use. This decision was extended by

[1] Council Decision 2007/441/EC of 18 June 2007 authorising the Italian Republic to apply measures derogating from Articles 26(1) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 165, 27.6.2007, p. 33).

Council Decision 2010/748/EU[2] up to 31 December 2013 and by Council implementing Decision 2013/679/EU[3] up to 31 December 2016.

In accordance with Article 6 of the above-mentioned Decision, the Italian Republic has presented a report covering the application of the Decision which includes a review of the percentage restriction.

It appears from information provided by the Italian Republic in that report that, in particular given the very high number of small enterprises in the Italian Republic (99% or 5,2 million taxable persons are to be considered as micro-entities, essentially consisting of individuals or with only one employee), the limitation to 40% would still correspond to the actual circumstances and therefore be appropriate.

However, any extension should be limited in time in order to assess whether the conditions on which the derogation is based would still be valid. Therefore, it is proposed to extend the derogation until the end of 2019 and to request the Italian Republic to present a new report if a new extension request is envisaged beyond that end date.

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

Article 176 of Directive 2006/112/EC stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions, which were in place on 1 January 1979. There are therefore a number of "stand still" provisions restricting the right to deduct in relation to motor vehicles.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct[4], such derogation is appropriate in the awaiting of a harmonisation of these rules at EU level.

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 European Union. The subsidiarity principle therefore does not apply.

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2 Council Implementing Decision 2010/748/EC of 29 November 2010 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council Directive 2006/112/EC on the common system of value added tax (OJ L 318, 4.12.2010, p. 45).

3 Council Implementing Decision 2013/679/EU of 15 November 2013 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 37).

4 COM (2004) 728 final - Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations (OJ C 24, 29.1.2005, p.10) withdrawn on 21 May 2014 (OJ C 153 21. 05. 2014, p. 3).

- **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 of avoidance and to simplify the VAT collection in a specific sector.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Other means would not be adequate for the following reason:

Under Article 395 of Council Directive 2006/112/EC, 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 Italy and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal is designed to counter VAT evasion and to simplify the procedure for charging tax and has, therefore, a potential positive impact significantly reducing administrative burden for both businesses and administrations. The solution has been identified by Italy as a suitable measure and is comparable to other past and present derogations.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implication for the EU budget.

The proposal aims at authorising Italy to continue restricting the right to deduct for certain vehicles and related expenditure over 2017-2019, as was granted until 2016 by Decision 2007/441. Italy calculates, in line with Article 6(4) of Council Regulation No 1553/89, a corresponding "compensation for cars and related expenditure" and should therefore continue to do so until 2019.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2019.

In case Italy considers another extension of the derogating measure beyond 2019, a new evaluation report should be submitted to the Commission together with the extension request no later than 1 April 2019.

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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[5], and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Decision 2007/441/EC[6] authorises Italy to limit the right of deduction of value added tax (VAT) charged on expenditure on motorised road vehicles not wholly used for business purposes to 40%. Decision 2007/441/EC also provides that the use for private purposes of those vehicles which had been subject to a right of deduction restriction under that Decision was not to be considered as a supply for a consideration. In addition, Decision 2007/441/EC contains definitions of the vehicles and expenditure included in the scope of the decision, and a list of vehicles which are explicitly excluded from it. Decision 2007/441/EC was amended by Council Implementing Decision 2010/748/EC[7] and subsequently by Council Implementing Decision 2013/679/EU[8] which set the expiry date at 31 December 2016.

(2) By letter registered with the Commission on 31 March 2016, Italy requested the authorisation to extend the measure, derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC, in order to continue to restrict the right of deduction in relation to expenditure on certain motorised road vehicles not wholly used for business purposes.

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5 OJ L 347, 11.12.2006, p. 1.

6 Council Decision 2007/441/EC of 18 June 2007 authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council Directive 2006/112/EC on the common system of value added tax (OJ L 165, 27.6.2007, p. 33).

7 Council Implementing Decision 2010/748/EC of 29 November 2010 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council Directive 2006/112/EC on the common system of value added tax (OJ L 318, 4.12.2010, p. 45).

8 Council Implementing Decision 2013/679/EU of 15 November 2013 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 37).

(3) In accordance with Article 6 of Council Decision 2007/441/EC, as amended, Italy submitted a report to the Commission covering the application of the Decision which included a review of the percentage restriction. The information provided by Italy still shows that a restriction of the right of deduction to 40% corresponds to the actual circumstances as regards the ratio of business to non-business use of the vehicles concerned. Italy should therefore be authorised to apply the measure for a further limited period, until 31 December 2019.

(4) The Commission informed the other Member States by letter dated 22 June 2016 of the request made by Italy. By letter dated 23 June 2016, the Commission notified Italy that it had all the information necessary to consider the request.

(5) In the event that Italy requires a further extension beyond 2019, a report together with the extension request should be submitted to the Commission no later than 1 April 2019.

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

(7) Decision 2007/441/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Decision 2007/441/EC Articles 6 and 7 are replaced by the following:

'Article 6

Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 1 April 2019.

Any request for the extension of those measures shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT charged on expenditure on motorised road vehicles not wholly used for business purposes.';

Article 7

This Decision shall expire on 31 December 2019.'.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President