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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 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

Delegations will find attached document COM(2017) 61 final.

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2017/0018 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EN EN

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC[1] 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 derogating from the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

By letter registered with the Commission on 18 May 2016, Estonia requested an authorisation to apply, as of 1 January 2018, a measure derogating from Article 287 of the VAT Directive, allowing Estonia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 40 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 4 October 2016 of the request made by Estonia. The Commission notified Estonia by letter dated 5 October 2016 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(8) of the VAT Directive, Estonia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 16 000 at the conversion rate on the day of its accession. Estonia joined the euro on 1 January 2011.

By raising the threshold for a person to be identified for VAT purposes from EUR 16 000 to EUR 40 000, it is anticipated that the administrative burdens on businesses eligible for the scheme, and in particular on micro-enterprises, will reduce as a result of the measure, by releasing them from many of the VAT obligations under the normal VAT arrangements, such as keeping VAT records or submitting VAT returns.

Moreover, there will also be a reduction in the workload for the tax authorities.

According to the Estonian authorities, the measure will have no significant impact on the total amount of VAT revenue collected at the final consumption stage.

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

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

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

Similar derogations have been granted to other Member States. Belgium[2] and Luxemburg[3] were granted a threshold of EUR 25 000, Poland[4] a threshold of EUR 40 000, Lithuania[5] a threshold of EUR 45 000, Latvia[6] and Slovenia[7] a threshold of EUR 50 000, Italy[8] and Romania[9] a threshold of EUR 65 000.

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 Plan[10], and the 2017 Commission Work Programme[11], the Commission's proposal in the form of a comprehensive simplification package is due to be presented by the end of 2017.

It is therefore proposed to allow for the raising of the threshold up to EUR 40 000 as of 1 January 2018 until the earliest of 31 December 2020 or the entry into force of a Directive amending the provisions of the VAT Directive on a special scheme for small enterprises.

- **Consistency with other Union policies**

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[12]"

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2 Council Implementing Decision (EU) 2015/2348 of 10 December 2015 amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 16.12.2015, p. 51).

3 Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

4 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).

5 Council Implementing Decision 2014/795/EU of 7 November 2014 extending the application of Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 44).

6 Council Implementing Decision 2014/796/EU of 7 November 2014 authorising the Republic of Latvia to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 46).

7 Council Implementing Decision 2015/2089/EU of 10 November 2015 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 302, 19.11.2015, p.107).

8 Council Implementing Decision (EU) 2016/1988 of 8 November 2016 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).

9 Council Implementing Decision 2014/931/EU of 16 December 2014 extending the application of Implementing Decision 2012/181/EU authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 365, 19.12.2014, p. 145).

10 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.

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

12 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 regulatory environment.

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.

Other means would not be adequate because under Article 395 of the VAT Directive, 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 thus 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 Estonia 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 aims at increasing the current exemption threshold as a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 40 000. 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.

In 2015, there were 15 119 persons identified for VAT purposes with an annual turnover in the range EUR 16 001-40 000 (which amounts to 19.4 % of the total number of persons identified for VAT purposes) and which become, in addition, eligible for VAT exemption under the derogation. According to the Estonian authorities, around 3 000 taxable persons within this group (3.8 % of the total number of current taxable persons) mainly sell items to final consumers. Nevertheless, the measure will have no significant impact on the total VAT revenue collected at the final consumption stage. It is estimated that the annual state VAT revenue might fall by EUR 6.6 million, which amounts to 0.39 % of the total VAT revenue.

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.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Estonia will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89[13].

5. OTHER ELEMENTS

The proposal includes a sunset clause.

[13] 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[14], and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 18 May 2016, Estonia requested an authorisation to apply a measure derogating from Article 287 of Directive 2006/112/EC, allowing Estonia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 40 000 as of 1 January 2018.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 4 October 2016 of the request made by Estonia. The Commission notified Estonia by letter dated 5 October 2016 that it had all the information necessary to consider the request.

(3) Under Article 287(8) of Directive 2006/112/EC, Estonia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 16 000 at the conversion rate on the day of its accession.

(4) The derogation requested is in line with the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe" 25 June 2008)[15].

(5) Given that this derogating measure will result in reduced VAT obligations for smaller businesses, Estonia should be authorised to apply the measure for a limited period, until 31 December 2020. Taxable persons should still be able to opt for the normal VAT arrangements.

(6) The provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review and a Directive, amending these provisions

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

[15] 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.

of the VAT Directive, might therefore enter into force before the above-mentioned date.

(7) From information provided by Estonia, the increased threshold will have a negligible impact on the overall amount of tax revenue collected at the stage of final 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 point 8 of Article 287 of Directive 2006/112/EC, the Republic of Estonia is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 40 000.

Article 2

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

This Decision shall apply from 1 January 2018 until 31 December 2020, or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises, whichever date is earlier.

Article 3

This Decision is addressed to the Republic of Estonia.

Done at Brussels,

For the Council
The President