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PROPOSAL

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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.

Encl.: COM(2013) 831 final

EUROPEAN
COMMISSION

Brussels, 27.11.2013
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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Poland to introduce measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds and objectives of the proposal

Pursuant to paragraph 1 of Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, 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 June 2013, Poland requested an authorisation to introduce measures derogating from paragraph 1 point (a) of Article 26 and Article 168 of Directive 2006/112/EC in order to limit to 50% the right of deduction with respect to the purchase, hire, rent or lease of certain types of motor vehicles which are not exclusively used for business purposes and the purchase of goods and services related to those vehicles, including the purchase of fuel.

In accordance with paragraph 2 of Article 395 of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 10 October 2013 of the request made by Poland. By letter dated 14 October 2013, the Commission notified Poland that it had all the information necessary to consider the request.

General context

Article 168 of Directive 2006/112/EC provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purpose of his taxed transactions. Paragraph 1 point (a) of Article 26 of that Directive requires the use of goods forming part of the assets of a business for non-business purposes to be a supply of services for a consideration if the VAT on the purchase of those goods was eligible for deduction.

In the case of motor vehicles, this system can be difficult to apply for a number of reasons, notably because it is difficult to identify accurately the split between business and non-business use. Where records are kept, they add an additional burden to both the business and the administration in maintaining and checking them. The number of vehicles concerned means that even small-scale individual evasion has the capacity to grow into significant sums.

As an alternative to the system set out in the Directive, Poland has requested that it is allowed to limit the initial deduction to a set percentage and in turn relieve businesses from accounting for VAT on the private use. This has the benefit of simplifying the system for all concerned and ensuring that a percentage of the tax, which might have otherwise been evaded, is collected.

The percentage restriction requested is 50%. This is based on Poland's own assessment and, under the terms of the proposal, would be reviewed upon any request by Poland for extension beyond 2016.

Poland is currently authorised on the basis of Council Implementing Decision 2010/581/EU[1] to restrict to 60 % the right to deduct VAT on the purchase, intra-Community acquisition, import, hire or lease of certain motor vehicles other than passenger cars, up to a maximum of PLN 6 000. That Decision shall expire on 31 December 2013.

The new restriction to the right of deduction will apply as from 1 January 2014 to motor vehicles used by a taxable person not exclusively for business purposes. However, certain types of motor vehicles would be excluded from that restriction and would therefore be subject to the normal rules, namely any vehicle with more than 9 seats (including the driver's) and with a total maximum weight of more than 3 500 kilograms. This mainly restricts the field of application to passenger cars, vans, pick-ups and motorbikes.

The restriction also applies to VAT charged on any expenditure, including purchase of fuel, related to motor vehicles covered by this special measure, provided that the expenditure is not entirely related to the taxable persons' business, which is e.g. the case with the installation of taximeters.

Derogations are normally granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. Any extension should therefore be limited in time in order to assess whether the conditions, on which the derogation is based, would still be valid. Poland has requested authorisation to apply the special measure subject to this proposal until 31 December 2018.

It is however common practice to grant a three year period in similar cases (see e.g. Council Implementing Decisions 2012/232/EU[2] and 2013/191/EU[3]). Therefore, it is proposed that this decision shall expire by the end of 2016 and to request Poland to present a report by 1 April 2016 including a review of the percentage restriction applied in case a further extension would be envisaged beyond 2016.

Existing provisions in the area of the proposal

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.

In 2004, the Commission made a proposal to - inter alia - establish rules on which categories of expenditure may be subject to a restriction on the right to deduct (COM(2004) 728 final[4]). The Council has not yet reached an agreement on that proposal.

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1 Council Implementing Decision of 27 September 2010 authorising the Republic of Poland to introduce a special measure derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax, OJ L 256, 30.9.2010, p. 24

2 Council Implementing Decision of 26 April 2012 authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax, OJ L 117, 1.5.2012, p. 7

3 Council Implementing Decision of 22 April 2013 authorising Latvia to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax, OJ L 113, 25.4.2013, p. 11

4 http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0728en01.pdf

Consistency with other policies and objectives of the Union

Not applicable.

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

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

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal aims to authorise Poland to apply a measure derogating from Article 168 of Directive 2006/112/EC so as to restrict the right of a taxable person to deduct VAT on the purchase, hire, rent or lease of certain motorised road vehicles and expenditure related thereto when the vehicle is not used exclusively for business purposes and the expenditure is not entirely related to the taxable person's business. Where the right to deduct has been limited, a derogation from point (a) of paragraph 1 of Article 26 of Directive 2006/112/EC will relieve the taxable person from accounting for tax on the non-business use of that vehicle. The measure is restricted to vehicles under a certain seating capacity and under a certain total weight.

The restriction is set at a flat rate of 50%. This rate and the necessity for the derogating measures are to be reviewed and reported on by Poland upon any request for an extension. The Decision will apply until the earlier of the date specified in the Decision or the date on which Union rules come into force governing restrictions on the right to deduct in this area.

Legal basis

Article 395 of Council Directive 2006/112/EC.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle as this Decision concerns an authorisation granted to a Member State on 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.

Choice of instruments

Proposed instrument: Council Implementing Decision.

Other means would not be adequate for the following reason(s):

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.

4. BUDGETARY IMPLICATION

The proposal will not adversely affect the European Union’s own resources accruing from VAT.

5. OPTIONAL ELEMENTS

The proposal includes a review clause and a sunset clause.

2013/0411 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Poland to introduce measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax

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 paragraph 1 of Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 18 June 2013, Poland requested authorisation to introduce special measures concerning certain motorised road vehicles and expenditure related thereto, derogating from those provisions laid down in Directive 2006/112/EC which govern a taxable person's right to deduct VAT paid on the purchase of goods and services and those which require tax to be accounted for on business assets used for non-business purposes.

(2) In accordance with the second subparagraph of paragraph 2 of Article 395 of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Poland by letter dated 10 October 2013. By letter dated 14 October 2013, the Commission notified Poland that it had all the information necessary to consider the request.

(3) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct VAT charged on supplies of goods and services received by him for the purposes of his taxed transactions. Point (a) of paragraph 1 of Article 26 of that Directive contains a requirement to account for VAT when a business asset is put to use for the private purposes of the taxable person or his staff or, more generally, for purposes other than those of his business.

(4) The measure requested by Poland deviates from those provisions so as to restrict the right to deduct VAT on the purchase, hire, rent or lease of certain motorised road vehicles and expenditure related thereto and to relieve the taxable person from accounting for VAT on the non-business use of vehicles covered by the restriction.

(5) The non-business use of motor vehicles is difficult to identify accurately and even where it is possible, the mechanism for doing so is often burdensome. Under the

5 OJ L 347 11.12.2006, p.1.

requested measures, the amount of VAT on expenditure eligible for deduction concerning motor vehicles, which are not used entirely for business purposes should, with some exceptions, be set at a flat percentage rate. Based on currently available information, Poland believes that a rate of 50% is justifiable. At the same time, to avoid double taxation, the requirement for accounting for VAT on the non-business use of a motor vehicle should be suspended where it has been subject to this restriction. These measures can be justified by the need to simplify the procedure for charging VAT and to prevent evasion through incorrect record keeping and false tax declaration.

(6) The restriction to the right of deduction under the special measures should apply to VAT paid on the purchase, intra-Community acquisition, importation, hire or leasing of specified motorised road vehicles and on expenditure related thereto, including the purchase of fuel.

(7) Certain types of motor vehicles should be excluded from the scope of the special measures as - due to their nature or the type of business they are used for - any non-business use is considered as negligible. Therefore, the special measures should not apply to vehicles with more than 9 seats (including the driver's) and with a total maximum weight of more than 3 500 kilograms. In addition, the restriction to the right of deduction shall not apply to VAT charged on any expenditure that is entirely related to the taxable person's business.

(8) These derogating measures should be limited in time to allow for an evaluation of their effectiveness and of the appropriate percentage, since the proposed percentage is based on initial findings regarding business use.

(9) Where Poland considers a further extension of the derogating measures beyond 2016 is necessary, a report on the application of the measures in question, which includes a review of the percentage applied, should be submitted to the Commission together with the extension request no later than 1 April 2016.

(10) On 29 October 2004, the Commission adopted a proposal[6] for a Council Directive amending Directive 77/388/EEC, now Directive 2006/112/EC that includes the harmonisation of the categories of expenses for which exclusions from the right of deduction may apply. Under that proposal, exclusions from the right to deduct could be applied to motorised road vehicles. The derogating measures provided for in this Decision should expire on the date of the entry into force of such an amending Directive, if that date is earlier than the date of expiry provided for in this Decision.

(11) The derogation will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the European Union's own resources accruing from VAT,

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

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 168 of Directive 2006/112/EC, Poland is hereby authorised to limit to 50% the right to deduct the VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as the VAT charged on expenditure related to those vehicles, where the vehicle is not entirely used for business purposes.

The restriction set out in the first subparagraph shall not apply to motor vehicles with a total maximum weight of more than 3 500 kilograms or motor vehicles with more than nine seats including the driver's seat.

The restriction set out in the first subparagraph shall not apply to VAT charged on any expenditure that is entirely related to the taxable person’s business.

Article 2

By way of derogation from point (a) of paragraph 1 of Article 26 of Directive 2006/112/EC, Poland is authorised not to treat as a supply of services for consideration the private use by a taxable person or his staff or, more generally, for purposes other than those of his business, of a vehicle to which the restriction referred to in Article 1 of this Decision applies.

Article 3

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

This Decision shall apply as of 1 January 2014. It shall expire on the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles that is not eligible for full deduction of VAT, or on 31 December 2016, whichever is the earlier.

2. Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission no later than 1 April 2016. Such request shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision.

Article 4

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council
The President