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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 10 October 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: COM(2014) 622 final

Subject: Proposal for a COUNCIL IMPLEMENTING DECISION authorising the
Republic of Estonia to apply 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

Delegations will find attached document COM(2014) 622 final.

Encl.: COM(2014) 622 final



Brussels, 10.10.2014
COM(2014) 622 final

2014/0288 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Estonia to apply 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

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 26 May 2014, Estonia requested authorisation to apply a measure derogating from the overall principles governing the right of deduction of input tax in relation to passenger cars. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 11 June 2014 of the request made by Estonia. By letter dated 12 June 2014, the Commission notified Estonia that it had all the information it considered necessary for appraisal of the request.

General context

Articles 168 and 168a of the VAT Directive provide that a taxable person is entitled to deduct VAT charged on purchases made for the purpose of taxed transactions. Article 26(1)(a) of the same Directive requires the use of goods forming part of the assets of a business for private purposes to be a supply of services for consideration if the VAT on the goods was eligible for deduction. This system allows for the recovery of initially deducted VAT in relation to the private use.

In the case of passenger cars, this system is difficult to apply, in particular because it is difficult to identify the split between private and business use. Where records are kept, they add an additional burden to both the business and the administration in maintaining and checking them, even in case Estonia would make use of the option provided for in Article 168a 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.

Therefore, Estonia has requested to be allowed to restrict the right of deduction to a set percentage and in turn to relieve the business from accounting for tax on the private use. This has the benefit of simplifying the system for all concerned and prevents, at the same time, tax evasion or avoidance because of incorrect record keeping.

On the basis of information provided by Estonia, it appears that, on average, 50% of the use of business passenger cars are used for private purposes. The percentage restriction should therefore be set at 50%.

The new system will apply to all passenger cars with a maximum of eight seats in addition to the driver’s seat, not exceeding 3500 kilograms and which are not used exclusively for business purposes. However, passenger cars which are used for certain specific activities would be excluded from the restriction on the right to deduct and would be treated under the normal rules: cars purchased for resale, hire or lease, cars used for transportation of passengers (such as taxis), and cars used for driving lessons.

The derogation should be limited in time to 31 December 2017, in order to be able to assess whether the 50% restriction is still a correct reflection of the overall apportionment between

business and private use. Any extension request should be accompanied by a report which includes a review of the percentage applied and should be sent to the Commission with that request by 31 March 2017.

Existing provisions in the area of the proposal

Similar derogations in relation to the right of deduction have been granted to other Member States.

Article 176 of the VAT Directive 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 passenger cars.

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 Decision proposal aims in the first place at simplifying the collecting of VAT in relation to passenger cars partly used for non-business purposes and has therefore a potential positive impact. At the same time, tax evasion via incorrect record keeping is countered.

However, because of the narrow scope of the derogation and the limited application in time, the impact will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Estonia to restrict the right of deduction to 50% of VAT incurred on expenditure in relation to business passenger cars not exclusively used for business purposes. Where that right to deduct has been limited, the taxable person is relieved from accounting for VAT on the private use of the car.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

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 principle

The proposal complies with the proportionality principle for the following reasons.

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.

Choice of instruments

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.

4. BUDGETARY IMPLICATION

The proposal has no implication for the union budget.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Estonia to apply 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

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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 26 May 2014, Estonia requested authorisation to derogate from the provisions of Directive 2006/112/EC governing the right to deduct input tax in relation to passenger cars.
- (2) The Commission informed the other Member States by letter dated 11 June 2014 of the request made by Estonia. By letter dated 12 June 2014, the Commission notified Estonia that it had all the information it considered necessary for appraisal of the request.
- (3) Articles 168 and 168a of Directive 2006/112/EC establish a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by him for the use of his taxed transactions. Article 26(1)(a) of that Directive contains a requirement to account for VAT when a business asset is put to non-business use.
- (4) The non-business use is often very difficult to identify accurately and even where it is possible, the mechanism for doing so is often burdensome. Under the requested authorisation, the amount of VAT on expenditure eligible for deduction in respect of passenger cars which are not used entirely for business purposes should, with some exceptions, be set at a flat percentage rate. Based on currently available information, the Estonian authorities believe that a rate of 50% is justifiable. At the same time, in order to avoid double taxation, the requirement of accounting for VAT on the non-business use of passenger cars should be suspended where those cars have been subject to a limitation. This simplification measure removes the need to keep records

¹ OJ L 347, 11.12.2006, p. 1.

on private use of business cars and, at the same time, prevents tax evasion through incorrect record keeping.

- (5) The limitation of the right of deduction under the requested authorisation should apply to VAT paid on the purchase, leasing, intra-Community acquisition and importation of specified passenger cars and on expenditure related thereto, including the purchase of fuel.
- (6) The requested authorisation should only apply to passenger cars with a maximum authorised weight not exceeding 3500 kilograms and having not more than eight seats in addition to the driver's seat, since any non-business use of passenger cars exceeding 3500 kilograms or having more than eight seats in addition to the driver's seat is negligible due to their nature or the type of business they are used for. A detailed list of specific passenger cars excluded from that authorisation should also be provided, based on their particular use.
- (7) The authorisation should be limited in time until 31 December 2017, in order to allow for a review of the necessity and effectiveness of the derogating measure and the apportionment rate between business and non-business use it is based on.
- (8) Where Estonia considers that an extension of the authorisation beyond 2017 is necessary, it should submit to the Commission a report which includes a review of the percentage limit applied together with the request for an extension no later than 31 March 2017.
- (9) The derogation will only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and 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 Articles 168 and 168a of Directive 2006/112/EC, Estonia is authorised to limit to 50% the right of deduct the value added tax (VAT) on expenditure on passenger cars not wholly used for business purposes.

Article 2

By way of derogation from point (a) of Article 26(1) of Directive 2006/112/EC, Estonia shall not treat as supplies of services for consideration the use for non-business purposes of a passenger car included in the assets of a taxable person's business, where that car has been subject to a limitation authorised under Article 1 of this Decision.

Article 3

The expenditure referred to in Article 1 shall cover the purchase, leasing, intra-Community acquisition and importation of passenger cars not wholly used for business purposes as well as expenditure related to the maintenance, repair and fuel for such cars.

Article 4

The Decision should only apply to passenger cars with a maximum authorised weight not exceeding 3500 kilograms and having not more than eight seats in addition to the driver's seat.

Article 5

Articles 1 and 2 shall not apply to the following categories of passenger cars:

- (a) cars purchased for resale, hire or lease;
- (b) cars used for transportation of passengers for a fee, including taxi services;
- (c) cars used for the provision of driving lessons.

Article 6

This Decision shall expire on 31 December 2017. Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 30 March 2017 and accompanied by a report which includes a review of the percentage set out in Article 1.

Article 7

This Decision is addressed to the Republic of Estonia.

Done at Brussels,

*For the Council
The President*