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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	16 December 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 736 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION extending the period of validity of Decision 2012/232/EU authorising Romania to apply measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2014) 736 final.

Encl.: COM(2014) 736 final

EUROPEAN
COMMISSION

Brussels, 16.12.2014
COM(2014) 736 final

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Proposal for a

COUNCIL IMPLEMENTING DECISION

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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 13 February 2014, Romania requested authorisation to continue to apply a measure derogating from the overall principles governing the right of deduction of input VAT in relation to certain motorised road vehicles. The request was completed on 15 September 2014 with a report covering the application of Decision 2012/232/EU.

General context

Article 168 of the VAT Directive provides 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 Romania 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.

In order to simplify VAT collection and combat tax evasion, in 2011 Romania requested an individual derogation allowing it to restrict the right of deduction to 50% in relation to certain motorised road vehicles. The derogation request was approved by the Council by Decision 2012/232/EU of 26 April 2012 and expires on 31 December 2014. Some categories of vehicles were specifically excluded from this restriction, such as vehicles used exclusively for emergency, security or courier services, vehicles used by agents and taxis, vehicles used for instruction by driving schools, used for hire or leasing or used as commodities for trading purposes. At the same time, businesses would be relieved from accounting from tax on the private use.

In accordance with the second subparagraph of Article 4(2) of the above mentioned Decision, Romania has presented a report covering the application of the Decision which included a review of the percentage restriction. It appears from the information provided by Romania that they find that the limitation of 50% still corresponds to the actual circumstances and that this limit therefore still should be regarded as 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 2017 and to request Romania to present a new report if a new extension request would be envisaged beyond that date.

Existing provisions in the area of the proposal

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

This proposal is based on a request made by Romania and concerns only this Member State.

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. It will have no adverse impact on the Union's own resources accruing from VAT.

3. LEGAL ELEMENTS OF THE PROPOSAL

Authorisation for Romania to continue to apply a derogating measure from the VAT Directive as to restrict to 50% the right of a taxable person to deduct VAT on expenditure related to motorised vehicles when the vehicle is not used exclusively for business purposes. When the right of deduction has been limited, the taxable person is relieved from the obligation to account for VAT on the private use of the car. Any possible request for extending the measure should be accompanied by the submission of a report on the application of the derogation, including a review of the percentage restriction.

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, i.e. to combat tax evasion and to simplify VAT Collection.

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.

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

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered at the Commission on 13 February 2014, Romania requested authorisation to continue to apply a measure derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC in order to restrict the right of deduction in relation to expenditure on certain motorised road vehicles not wholly used for business purposes. By letter registered at the Commission on 15 September 2014, Romania complemented its request with a report on the application of Council Decision 2012/232/EU.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, by letter dated 12 November 2014, the Commission informed the other Member States of the request made by Romania. By letter dated 13 November 2014, the Commission notified Romania that it had all the information necessary to consider the request.

(3) Article 168 of Directive 2006/112/EC authorises a taxable person to deduct VAT charged on supplies of goods and services received by that person where the goods and services in question are used for the purposes of his taxed transactions. Point (a) of Article 26(1) 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) Decision 2012/232/EU authorised Romania to apply a derogating measure pursuant to Article 395(1) of Directive 2006/112/EC in order to implement a measure to limit the right of deduction of input VAT to 50% as regards purchase, intra-EU acquisition, importation, hire and lease of motor vehicles, and VAT on expenditure related to such

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

vehicles, including fuel, when the vehicles are not used exclusively for business purposes.

(5) Decision 2012/232/EU is due to expire on 31 December 2014.

(6) In accordance with the second subparagraph of Article 4(2) of Decision 2012/232/EU, Romania submitted a report to the Commission on the application of that Decision, including a review of the percentage restriction applied on the right of deduction. As was the case with respect to the previous derogation, Romania continues to maintain that a rate of 50% is justifiable.

(7) It is considered that the derogation would only have 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. Romania should therefore be authorised to continue to apply the measure for a limited period, until 31 December 2017.

(8) In the event Romania were to request a further extension of the derogating measure beyond 2017, a new report should be submitted to the Commission together with the extension request no later than 31 March 2017,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2012/232/EU is amended as follows:

(1) Article 4 is replaced by the following:

"Article 4

This Decision shall expire on 31 December 2017.

Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 31 March 2017.

Such a 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 2

This Decision shall apply from 1 January 2015.

Article 3

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President