Council of the
European Union

Brussels, 22 August 2018
(OR. en)

11661/18

Interinstitutional File:
2018/0314(NLE)

FISC 332
ECOFIN 784

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 August 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 599 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Hungary to introduce a measure derogating from point (a) of Articles 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(2018) 599 final.

Encl.: COM(2018) 599 final

EUROPEAN
COMMISSION

Brussels, 20.8.2018
COM(2018) 599 final

2018/0314 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Hungary to introduce a measure derogating from point (a) of Articles 26(1) and Articles 168 and 168a 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[1] ('the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogating 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 6 February 2018, Hungary requested to derogate from Articles 26(1)(a), 168 and 168a of the VAT Directive and to restrict the right of deduction of VAT on the leasing of passenger cars in Hungary. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 8 June 2018 of the request made by Hungary. By letter dated 11 June 2018, the Commission notified Hungary that it had all the information it considered necessary for the appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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.

Taxable persons in Hungary may currently deduct VAT on the leasing of passenger cars to the extent that the passenger car is used for the taxable person's taxable economic activity. Taxable persons must thus be able to prove the extent to which they use their passenger cars for business purposes.

Hungary submits that this system is difficult to apply. Keeping journey logs imposes a heavy burden on taxable persons in maintaining such logs and on the tax administration for checking them. According to Hungary it is often difficult to determine and document the private and professional use in case the employee keeps the vehicle after work and on days off. Inspections have shown that often journey logs kept by taxable persons are incorrect and difficult to verify.

Hungary therefore requests, based on Article 395 of the VAT Directive, to introduce a measure derogating from Articles 26(1)(a), 168 and 168a of the VAT Directive limiting the right of deduction on the leasing of passenger cars to a set percentage. In turn businesses will be relieved 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.

The restriction to the right of deduction should apply to the VAT paid on the leasing of passenger cars which are used not exclusively for business purposes. Passenger cars covered by the measure will be motor vehicles principally designed for the transportation of maximum 9 persons with a gross vehicle weight not exceeding 5 tons. Vehicles designed for transport of goods, vehicles serving special purposes (i.e. crane truck, fire engine, truck-mixer), vehicles designed for the transport of 10 or more than 10 persons, tractors and trailers would be

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

excluded from the restriction to the right of deduction of VAT and would be treated under the normal rules.

Based on estimations of the private use of company cars, Hungary submits that the average private use should be around 40-60%. According to Hungary, the deduction limit should therefore be set at 50%.

Taxable persons wishing to derogate from the 50% deduction limit and to deduct VAT to the proportion of actual business use will be allowed to do so provided they dispose of detailed evidence on the business use of leased passenger cars.

The derogation should apply from 1 January 2019 and should be limited in time to 31 December 2021, so that it can be assessed whether the 50% restriction is 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 2021.

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

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 VAT in relation to passenger cars.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct[2], 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 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. to simplify tax collection and to prevent certain forms of tax evasion or avoidance. In particular, given the potential for businesses to under declare their liability and the burdensome check of mileage data for tax authorities, the 50% restriction would simplify the VAT collection in a specific sector.

[2] 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)

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

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 Hungary 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 simplify the procedure for charging tax and to counter VAT evasion and has, therefore, a potential positive impact for both businesses and administrations. The solution has been identified by Hungary 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.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2021.

In case Hungary would consider another extension of the derogating measure beyond 2021, a report including a review of the percentage limit should be submitted to the Commission together with the extension request no later than 31 March 2021.

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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 with the Commission on 6 February 2018, Hungary requested authorisation to derogate from the provisions of Directive 2006/112/EC governing the right to deduct input tax in relation to the leasing of passenger cars.

(2) The Commission transmitted the request of Hungary to other Member States by letter dated 8 June 2018. By letter dated 11 June 2018, the Commission notified Hungary that it had all the information it considered necessary for the 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 supplied to a taxable person for the purposes of his taxed transactions. Point (a) of Article 26(1) of Directive 2006/112/EC contains a requirement to account for VAT when a business asset is put to use for private purposes of the taxable person or of his staff or, more generally, for purposes other than those of his business.

(4) Taxable persons in Hungary may currently deduct VAT on the leasing of passenger cars to the extent that the passenger car is used for the taxable person's taxable economic activity. In order to benefit from that VAT deduction, taxable persons have to prove the extent to which they use their passenger cars for business purposes.

(5) Hungary claims that this system is difficult to apply. The non-business use is often very difficult to identify accurately and even where it is possible, the mechanism is often burdensome.

(6) Hungary, therefore, requested a special measure whereby the amount of VAT on expenditure eligible for deduction in respect of leasing of passenger cars which are not used entirely for business purposes should be set at a flat percentage rate. Based on its estimations, Hungary concludes that the most appropriate deduction limit is 50%. At the same time, the requirement to account for VAT on the non-business use of passenger cars should be suspended where those cars have been subject to a deduction limitation of 50%.

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

(7) The limitation of the right of deduction under the requested authorisation should apply to VAT paid on the leasing of passenger cars designed for the transportation of maximum nine persons with a gross vehicle weight not exceeding five tons. Vehicles designed for transport of goods, vehicles serving special purposes (i.e. crane truck, fire engine, truck-mixer), vehicles designed for the transport of ten or more than ten persons, tractors and trailers are excluded from the restriction to the right of deduction of VAT.

(8) Taxable persons who do not wish to apply the 50% deduction limit and wish to apply the VAT deduction up to the proportion of actual business use, should be able to do so based on detailed evidence on the business use.

(9) 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. The requested measure removes the need to keep records on private use of leased business cars and, at the same time, prevents tax evasion through incorrect record keeping. It is therefore appropriate to grant Hungary the authorisation to apply the requested measure.

(10) The special measure should be limited in time, in order to allow for a review of the necessity and effectiveness of the derogating measure and the used apportionment rate between business and non-business.

(11) Where Hungary considers that an extension of the authorisation beyond 2021 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 by 31 March 2021.

(12) 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, Hungary is authorised to limit to 50% the right to deduct the value added tax (VAT) on expenditure related to 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, Hungary 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

Articles 1 and 2 shall only apply to passenger cars designed for the transportation of maximum nine persons with a gross vehicle weight not exceeding five tons.

Article 4

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

– vehicles designed for transport of goods,

– vehicles serving special purposes (i.e. crane truck, fire engine, truck-mixer),
– vehicles designed for the transport of ten or more than ten persons,
– tractors,
– trailers.

Article 5

This Decision shall apply as from 1 January 2019 and shall expire on 31 December 2021.

Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2021 and shall be accompanied by a report which includes a review of the percentage set out in Article 1.

Article 6

This Decision is addressed to Hungary.

Done at Brussels,

For the Council
The President