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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 October 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 721 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Implementing Decision (EU) 2015/2429 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

Delegations will find attached document COM(2018) 721 final.

Encl.: COM(2018) 721 final

EUROPEAN
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Brussels, 31.10.2018
COM(2018) 721 final

2018/0373 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2015/2429 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

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EXPLANATORY MEMORANDUM

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 20 June 2018, Latvia requested an authorisation to continue to apply a measure derogating from the overall principles governing the right of deduction of input VAT in relation to certain passenger cars. Together with the request for extension, Latvia submitted a report including a review of the percentage foreseen for the limitation of the right of deduction.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 7 September 2018 of the request made by Latvia. By letter dated 10 September 2018, the Commission notified Latvia that it had all the information it considered necessary for appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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.

By Council Implementing Decision 2013/191/EU[1] Latvia was granted the authorisation to restrict the right of deduction to 80% in relation to certain passenger cars. Latvia considered that this percentage did not correspond to actual circumstances and by Council Implementing Decision (EU) 2015/2429[2] Latvia was granted the authorisation to restrict the right of deduction to 50%. The latter Decision expires on 31 December 2018 and Latvia requested to prolong it for another limited period of time.

As required by Article 6(2) of Implementing Decision (EU) 2015/2429, Latvia submitted a report including the review of the percentage set for the VAT deduction.

Latvia considers that the applied percentage limit remains appropriate. During the period of application of the special measure Latvia has made full use of the deduction restriction and

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[1] Council Implementing Decision 2013/191/EU 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. 11-12.

[2] Council Implementing Decision (EU) 2015/2429 of 10 December 2015 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 334, 22.12.2015, p. 15-17.

recognises that it allows administrative burden to be eased for VAT payers and for the tax administration where a passenger vehicle is not solely used for business purposes.

The conditions for the application of the derogation continue to apply. Thus, the special measure applies to all passenger cars with a maximum of eight seats in addition to the driver's seat and under a certain weight that are not used exclusively for business purposes. Passenger cars which are used for certain specific activities are 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) or goods; cars used for driving lessons; cars used for guard or emergency services; cars used as car sales demonstration vehicle.

Given the positive impact of the special measure on the administrative burden of tax payers and of tax authorities, it is proposed to grant the derogating measure for another limited period, until 31 December 2021. Any extension request should be accompanied by a report which includes a review of the percentage applied and should be sent to the Commission 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[3], 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 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.

[3] 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**

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.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by Latvia 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 Latvia 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 Latvia 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[4], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Implementing Decision (EU) 2015/2429[5] authorised Latvia to restrict the right of deduction to 50% of VAT on the purchase, leasing, intra-Community acquisition and importation of 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, as well as expenditure related to maintenance, repair, and fuel of such passenger cars until 31 December 2018.

(2) By letter registered with the Commission on 20 June 2018, Latvia requested an authorisation to continue to apply the special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC in order to restrict the right of deduction in relation to expenditure on certain passenger cars not wholly used for business purposes.

(3) The Commission transmitted the request of Latvia to other Member States by letter dated 7 September 2018. By letter dated 10 September 2018, the Commission notified Latvia that it had all the information it considered necessary for the appraisal of the request.

(4) As required by Article 6(2) of Implementing Decision (EU) 2015/2429, Latvia submitted a report including the review of the percentage set for the VAT deduction. Based on currently available information, Latvia claims that the limit of 50% is still justifiable and remains appropriate.

(5) The extension of the derogating measure should be limited in time to allow for an evaluation of its effectiveness and of the appropriate percentage. Given the positive impact of the derogating measure on the administrative burden of the taxpayers and of tax authorities, Latvia should therefore be authorised to continue to apply the measures for a limited period, until 31 December 2021.

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4 OJ L 347, 11.12.2006 , p. 1.

5 Council Implementing Decision (EU) 2015/2429 of 10 December 2015 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 334, 22.12.2015, p. 15-17.

(6) Where Latvia considers that a further extension of the derogating measure is necessary beyond 2021, it should submit to the Commission a report that includes a review of the percentage applied, together with the extension request, by 31 March 2021.

(7) The derogation will 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.

(8) Council Implementing Decision (EU) 2015/2429 should, therefore, be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 6 of Council Implementing Decision (EU) 2015/2429 is replaced by the following:

' *Article 6*

1. This Decision shall apply from 1 January 2016 until 31 December 2021.

2. 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 2

This Decision shall apply from 1 January 2019.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels,

For the Council
The President