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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 785 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE COUNCIL in accordance with Article 395 of Council Directive 2006/112/EC

Delegations will find attached document COM(2017) 785 final.

Encl.: COM(2017) 785 final



Brussels, 3.1.2018
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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

in accordance with Article 395 of Council Directive 2006/112/EC

1. BACKGROUND

By letter registered with the Commission on 26 April 2017, Romania requested based on Article 395 of the VAT Directive¹ an authorisation to apply 0% VAT rate of VAT to a number of supplies of goods and services. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 4 October 2017 of the request made by Romania. By letter dated 5 October 2017, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request.

Pursuant to Article 395 of the VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. As this procedure provides for derogations from the general principles of VAT, in accordance with the consistent rulings of the Court of Justice of the European Union, such derogations should be proportionate and limited in scope.

Articles 96 to 99 of the VAT Directive provide for VAT rates applicable to supplies of goods and services. Romania would like to derogate from these provisions and apply a 0% VAT rate to a number of supplies of goods and services to which normally apply a standard or a reduced VAT rate. Romania requests the measure for the purpose of combating tax evasion.

2. THE REQUEST

Romania requests, under Article 395 of the VAT Directive that the Council, acting upon a proposal of the Commission, authorises Romania to apply a 0% VAT rate of VAT to the following supplies of goods and services:

- the supply of housing to natural persons, including the land on which that housing was built. The land on which the housing was built also includes that housing's footprint;
- the supply of buildings, including the land on which they were built, intended to be used as care homes for the elderly and pensioners;
- the supply of buildings, including the land on which they were built, intended to be used as children's homes or as recovery and rehabilitation centres for children with disabilities;
- the supply of buildings, including the land on which they were built, to mayor's offices with a view to renting them out, at reduced rents, to persons or families whose economic situation does not allow them to own or rent a home under market conditions;
- the supply of fertilisers and pesticides used in agriculture, seeds and other agricultural products intended for sowing or planting, as well as the provision of services of a specific type used in the agricultural sector;

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1)

- the provision of media advertising services

Romania submits that 0% VAT rate for the above listed supplies of goods and services is requested for the purpose of combating tax evasion. According to Romania it should also improve the competitiveness of producers compared to that of black market actors and thus decrease shadow economy.

Romania also points out in its request to additional benefits stemming from the application of the 0% VAT rate to the above supplies. It would thus respectively in case of supplies of housing increase employment, cause reduction of prices, increase people's access to housing. In case of supplies of agricultural goods generate positive results from a social point of view and raise living standard of the population. In case of supplies of advertising services it would increase the sustainable development of this sector.

3. THE COMMISSION'S VIEW

When the Commission receives requests in accordance with Article 395 of the VAT Directive, these are examined to ensure that the basic conditions for their granting are fulfilled i.e. whether the proposed specific measure simplifies procedures for taxable persons and/or the tax administration or whether it prevents certain types of tax evasion or avoidance. In this context, the Commission has always taken a limited, cautious approach to ensure that derogations do not undermine the operation of the general VAT system, are limited in scope, necessary and proportionate.

As to the concrete situation of Romania, the 0% VAT rate is requested for purposes of fighting tax evasion and decreasing the shadow economy. Furthermore the measure is supposed to have additional economic and social benefits.

In this respect the Commission would like to reiterate that a derogation based on Article 395 of the VAT Directive can only be granted in order to prevent certain types of tax evasion or avoidance. Tax fraud in the area of VAT deprives public budgets of revenues which could have been collected from VAT. The fight against tax fraud aims to stop these losses to the public budgets and regain the lost revenues. However, by introducing the 0% VAT rate this aim is not fulfilled. With the planned measure no revenues stemming from VAT would be collected on the supplies subject to 0% VAT rate as Romania simply renounces such revenues.

Consequently, according to the Commission, the introduction of 0% VAT rate cannot be regarded as a measure to prevent tax evasion or avoidance as required by Article 395 of the VAT Directive. As the conditions of Article 395 are not fulfilled, the derogating measure requested by Romania cannot be justified based on this Article.

4. CONCLUSION

On the basis of the above-mentioned elements, the Commission objects to the request made by Romania.