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2014/0289 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

extending the application of Council Implementing Decision 2011/335/EU authorising the Republic of Lithuania to continue to apply a special measure derogating from Article 287 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 16 May 2014, Lithuania requested authorisation to continue to exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 45 000 turnover threshold at the conversion rate on the day of its accession. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 6 June 2014 of the request made by Lithuania. By letter dated 12 June 2014, the Commission notified Lithuania that it had all the information necessary to consider the request.

General context

Chapter 1 of Title XII of the VAT Directive allows for the possibility for Member States to apply special schemes for small enterprises, including the possibility of exempting taxable persons below a certain annual turnover. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, he cannot deduct VAT on his inputs.

Lithuania was first granted the measure by Council Implementing Decision 2011/335/EU¹ which will expire on 31 December 2014. The measure derogates from Title XII of the VAT Directive only in so far as the taxable person's annual turnover threshold for the special scheme is higher than that currently allowed for Lithuania under Article 287(11) of the VAT Directive, which is EUR 29 000.

Lithuania has now requested that the measure, which is optional for taxable persons, be extended for a further limited period.

From information provided by Lithuania, it appears that the impact of the measure on tax revenue collected at the final consumption stage is negligible. However, the analysis provided by Lithuania shows that the majority of taxable persons who have registered for VAT purposes (approximately 82 %) during years 2012-2013 did it on the basis of this measure.

It is therefore proposed to extend the derogation for another period until 31 December 2017.

Existing provisions in the area of the proposal

Similar derogations have been granted to other Member States.

Consistency with the other policies and objectives of the Union.

The measure is in line with the Union's objectives for small businesses, as laid out in Commission Communication "Think small first" – a "Small Business Act" for Europe" (COM(2008) 394 of 25 June 2008).

¹ OJ L 150, 9.6.2011, p. 6.

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 aims at continuing a simplification measure which removes many of the VAT obligations for businesses operating below an annual turnover.

Because of the narrow scope of the derogation, and its limited application in time, the scope will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Lithuania to continue to apply a derogating measure from the VAT Directive as regards the introduction of a simplification measure for businesses with an annual turnover no higher than EUR 45 000.

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:

This 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

Proposed instruments: Council Implementing Decision.

Other means would not be adequate for the following reasons:

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the only suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal has no implication for the budget of the Union because Lithuania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

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 ⁽²⁾ (the VAT Directive), and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In a letter registered by the Commission on 16 May 2014, the Republic of Lithuania requested authorisation for a measure derogating from Article 287(11) of the VAT Directive in order to continue to exempt certain taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 45 000 at the conversion rate on the day of its accession to the European Union. Through that measure, those taxable persons would be exempt from certain or all of the obligations in relation to value added tax (VAT) referred to in Chapters 2 to 6 of Title XI of the VAT Directive.
- (2) The Commission informed the other Member States by letter dated 6 June 2014 of the request made by Lithuania. By letter dated 12 June 2014, the Commission notified Lithuania that it had all the information necessary to consider the request.
- (3) A special scheme for small enterprises is already available to Member States under Title XII of the VAT Directive. The extended measure derogates from Title XII of the VAT Directive only in so far as the taxable person's annual turnover threshold for the special scheme is higher than that allowed for Lithuania under Article 287(11) of the VAT Directive, which is EUR 29 000.
- (4) By Council Implementing Decision 2011/335/EU of 30 May 2011,³ Lithuania was authorised, as a derogating measure, to exempt taxable persons whose annual turnover is no higher than EUR 45 000 until 31 December 2014. Given that this threshold has resulted in reduced VAT obligations for smaller businesses, Lithuania should be authorised to apply the measure for a further limited period. Taxable persons may still opt for the normal VAT arrangements.
- (5) From information provided by Lithuania, the extension of the derogation will only have a negligible impact on the overall amount of tax revenue collected at the final stage of consumption.

² OJ L 347, 11.12.2006, p. 1.

³ OJ L 150, 9.6.2011, p. 6.

(6) The derogation has no impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision 2011/335/EU, the date '31 December 2014' shall be replaced by '31 December 2017'.

Article 2

This Decision shall apply from 1 January 2015.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

For the Council
The President