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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.10.2009
COM(2009)582 final

Proposal for a

COUNCIL DECISION

authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives 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 to derogate from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Secretariat-General of the Commission on 3 March 2009, the Republic of Latvia (hereinafter 'Latvia') requested authorisation to continue a measure derogating from Article 193 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 22 September 2009 of the request made by Latvia. By letter dated 24 September 2009, the Commission notified Latvia that it had all the information necessary to consider the request.

General context

The timber market in Latvia is largely dominated by small companies and individual suppliers, which have often proved to be transitory businesses, difficult for the tax administration to control and therefore often vehicles for tax evasion. A common form of evasion involves the invoicing of supplies followed by the disappearance of the supplier without paying the tax to the tax authorities but leaving the customer in receipt of a valid invoice for VAT deduction.

The proposed provision stipulates that in the case of transactions in relation to timber, the recipient of the goods and services will, under certain circumstances, be the person liable to account for the VAT. This provision derogates from the general rule of Article 193 of the VAT Directive, which stipulates that it is the supplier of goods or services who is liable for the payment of the VAT to the tax authorities. In practice, this results in the supplier of the goods not charging the VAT to his customer in so far as the customer qualifies as a taxable person for VAT purposes. Such a customer, provided he has a full right of deduction, would simultaneously declare and deduct the VAT corresponding to the supply; thus leading to no effective payment of VAT to the Treasury.

This derogating measure (derogating from the then applicable Sixth Directive (Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977) which has, without substantial modification to the content, been replaced by the VAT Directive) had initially been granted in the Act of Accession of 2003 ((OJ L 236, 23.9.2003, p. 33) and, more precisely, in Chapter 7, point 1(b) of Annex VIII for a period until 30 April 2005. Subsequently, the measure was extended until 31 December 2009 by Council Decision 2006/42/EC of 24 January 2006 (OJ L 25, 28.1.2006, p. 31).

The Commission understands that the situation and facts, on which the initial derogation was based, continue to exist and that the previous derogation has enabled Latvia to reduce the risk of VAT evasion and to simplify the procedure for charging the tax in the timber market. The derogation should therefore be granted for another limited period.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The Decision proposal aims at combating VAT evasion in the timber market of Latvia and at simplifying the charging of the tax and has therefore a potential positive impact.

However, because of the narrow scope of the derogation and the limited application in time, the impact will in any case be limited.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Latvia to extend the application of a measure derogating from Article 193 of the VAT Directive as regards the use of a reverse charge mechanism for timber transactions.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

In accordance with Article 395 of the VAT Directive, a Member State wishing to introduce measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Therefore, the proposal complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

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.

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.

BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

ADDITIONAL INFORMATION

Review/revision/sunset clause

The proposal includes a sunset clause.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 3 March 2009, the Republic of Latvia (hereinafter 'Latvia') requested authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC governing the person liable for the payment of the VAT to the tax authorities.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Latvia in a letter dated 22 September 2009. By a letter dated 24 September 2009, the Commission notified Latvia that it had all the information that it considered necessary to consider the request.
- (3) The timber market in Latvia is dominated by small local companies and individual suppliers. The nature of the market and the businesses involved have generated tax fraud which the tax authorities have found difficult to control. Therefore, a special provision was included in Latvia's law on VAT, laying down that, as regards timber transactions, the person liable to pay tax is the taxable person for whom the taxable supply of goods or services is carried out.
- (4) The measure derogates from Article 193 of Directive 2006/112/EC, stipulating that, under the internal system, the taxable person supplying goods or service is normally liable for the payment of the tax.
- (5) The measure has previously been authorised in the Act of Accession 2003², and in particular in Chapter 7, point 1(b) of Annex VIII thereof, and by Council Decision

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 236, 23.9.2003, p. 33.

2006/42/EC of 24 January 2006³ under the then applicable Sixth Directive 77/388/EC⁴.

- (6) The Commission understands that the legal and factual situation which justified the current application of the derogating measure in question has not changed and continues to exist. Latvia should therefore be authorised to apply the measure during a further limited period.
- (7) The derogation will not adversely affect the Community's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, Latvia is authorised to continue to designate the recipient as the person liable to pay VAT in the case of timber transactions from 1 January 2010 until 31 December 2012.

Article 2

This Decision is addressed to the Republic of Latvia.

Done at Brussels,

For the Council
The President

³ OJ L 25, 28.1.2006, p. 31.

⁴ OJ L 145, 13.6.1977.