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2016/0163 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/676/EU authorising Romania to continue to apply a special measure derogating from Article 193 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 9 February 2016, Romania has requested an extension of the derogation from Article 193 of the VAT Directive in order to apply the reverse charge mechanism to wood products. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 23 March 2016 of the request made by Romania. By letter dated 29 March 2016, the Commission notified Romania that it had all the information necessary to consider the request.

• General context

As a general rule, Article 193 of the VAT Directive stipulates that the taxable person supplying goods or services is normally liable to pay value added tax (VAT).

Pursuant to Article 395 of the VAT Directive, Romania requested in 2009 a derogation in order to be authorised to apply the reverse charge mechanism to, inter alia, supplies of wood products. Under this procedure, the taxable person, to whom the supplies are made, becomes liable for the payment of the VAT. These woods products include, more specifically, standing timber, round or cleft working wood, fuel wood, timber products, as well as square-edged or chipped wood and wood in the rough, processed or semi-manufactured wood.

This request was approved by Council Implementing Decision 2010/583/EU[1] until 31 December 2013 and, as regards the wood products, subsequently extended until 31 December 2016 by Council Implementing Decision 2013/676/EU[2].

Romania has now again asked for an extension of the derogation regarding the application of the reverse charge mechanism to supplies of these wood products.

On the basis of the report provided by Romania, which was presented together with the request for extension of the measure, designating the recipient as the person liable for the payment of VAT for supplies of the above-mentioned wood products had the effect of preventing tax evasion and avoidance in this sector which is characterised by a large number of small resellers and intermediaries which have proved difficult to control. An extension for another limited period seems therefore justifiable as it would not appear that the measure has had a negative impact on fraud at the retail level, in other sectors or in other Member States.

However, any new extension should be limited in time in order to assess whether the conditions on which it is based would still be valid. It is therefore proposed that the request will be granted until 31 December 2019 and that Romania shall again present a report, which

[1] Council Implementing Decision 2010/583/EU of 27 September 2010 authorising Romania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 256, 30.9.2010, p. 27)

[2] Council Implementing Decision 2013/676/EU of 15 November 2013 authorising Romania to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 31)

includes a review of the efficiency of the measure and an evaluation of the risk of fraud in the wood sector, if a new extension request would be envisaged beyond that end date.

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 proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore 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 prevent certain forms of tax evasion or avoidance in a specific sector.

• 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 Romania and concerns only this Member State.

• Collection and use of expertise

There was no need for external expertise.

• Impact assessment

The Decision proposal aims at preventing certain forms of tax evasion or avoidance in the wood sector and has therefore a potential positive impact as it will continue to prevent previously applied fraud schemes in this wood sector. The non-extension of the measure would, according to Romania, inevitably lead to the revival of these schemes.

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

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 2019.

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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[3], and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 193 of Directive 2006/112/EC provides that the taxable person supplying the goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.

(2) Council Implementing Decision 2010/583/EU[4] and subsequently Council Implementing Decision 2013/676/EU[5] authorised Romania to apply a derogating measure in order to designate the recipient as the person liable for the payment of VAT in case of supplies of wood products by taxable persons.

(3) By letter registered with the Commission on 9 February 2016, Romania requested authorisation to continue to apply the measure beyond 31 December 2016.

(4) The Commission informed the other Member States of the request made by Romania in a letter dated 23 March 2016. By letter dated 29 March 2016, the Commission notified Romania that it had all the information necessary to consider the request.

(5) Prior to the authorisation to apply the reverse charge to the supplies of wood, Romania had encountered problems in the timber market because of the nature of the market and the businesses involved. According to the report of Romania, presented together with the request for extension of the measure, designating the recipient as the person liable for the payment of VAT had the effect of preventing tax evasion and avoidance in this sector and remains therefore justified.

(6) The measure is proportionate to the objectives pursued since it is not intended to apply generally, but only to very specific operations in a sector which poses considerable problems of tax evasion or avoidance.

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3 OJ L 347, 11.12.12006, p. 1.

4 Council Implementing Decision 2010/583/EU of 27 September 2010 authorising Romania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 256, 30.9.2010, p. 27).

5 Council Implementing Decision 2013/676/EU of 15 November 2013 authorising Romania to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 31).

(7) The measure should not, in the Commission's view, have any adverse impact on the prevention of fraud at the retail level, in other sectors or in other Member States.

(8) The authorisation should be limited in time until 31 December 2019.

(9) Where Romania considers that a further extension beyond 2019 is necessary, a new report together with the extension request should be submitted to the Commission no later than 1 April 2019.

(10) The derogating measure has no adverse impact on the Union's own resources accruing from VAT.

(11) Implementing Decision 2013/676/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2013/676/EU is amended as follows:

(a) in Article 1 the date '31 December 2016' is replaced by '31 December 2019';

(b) in Article 3 the date '1 April 2016' is replaced by '1 April 2019'.

Article 2

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President