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COM(2012) 654 final

2012/0312 (NLE)

Proposal for a

COUNCIL DECISION

authorising Belgium to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. 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[1] (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 21 June 2012 Belgium requested an authorisation to introduce a measure to exempt taxable persons whose annual turnover is no higher than EUR 25 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 13 September 2012 of the request made by Belgium. By letter dated 17 September 2012 the Commission notified Belgium 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 of 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 the VAT on his inputs.

Under Article 285 of the VAT Directive, Member States which did not make use of Article 14 of Council Directive 67/228/EEC[2], can exempt taxable persons whose threshold is no higher than EUR 5 000.

In the current economic and political climate, the Belgian Government would like to raise this threshold to EUR 25 000, with the possibility to increase it in order to maintain its value in real terms. The introduction of such a threshold will simplify the VAT system for small enterprises and significantly reduce the burdens on those businesses eligible for the scheme by releasing them from many of the VAT obligations under the normal VAT arrangements. The system would be optional for taxable persons. According to the Belgian authorities, some 1% of taxable persons will make use of the scheme, with a corresponding minimal effect on the budget (around 0.2%).

Existing provisions in the area of the proposal

In 2004, the Commission made a proposal to increase the annual turnover threshold available to Member States (COM(2004) 728 final) for the exemption from VAT of taxable persons to EUR 100 000.

Consistency with other policies and objectives of the Union

[1] OJ L 347, 11.12.2006, p.1

[2] OJ 71, 14.4.1967, p. 1303–1312

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant

Collection and use of external expertise

There was no need of external expertise

Impact assessment

The proposal for a Council Decision aims at introducing a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 25 000 and therefore has a potential positive impact.

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 Belgium to introduce a measure derogating from the VAT Directive as regards a simplification measure for businesses with an annual turnover no higher than EUR 25 000.

Legal basis

Article 395 of the VAT Directive

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

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.

Choice of instruments:

Proposed instrument: Council Decision.

Under Article 395 of the VAT Directive, a derogation from the common 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.

4. BUDGETARY IMPLICATION

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

5. OPTIONAL ELEMENTS

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 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(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In a letter registered with the Commission on 21 June 2012, Belgium requested authorisation for a measure derogating from Article 285 of Directive 2006/112/EC in order to introduce a special measure exempting from value added tax (VAT) taxable persons whose annual turnover is no higher than EUR 25 000. Through that measure, those taxable persons would be exempted from all or some of the obligations in relation to VAT referred to in chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(2) The Commission informed the other Member States by letter dated 13 September 2012 of the request made by Belgium. By letter dated 17 September 2012 the Commission notified Belgium that it had all the information necessary to consider the request.

(3) Under Article 285 of Directive 2006/112/EC, Member States, who have not made use of Article 14 of Council Directive 67/228/EEC[4], can exempt taxable persons whose turnover is no higher than EUR 5 000. Belgium has requested that this threshold be increased to EUR 25 000.

(4) A higher threshold for the special scheme for small enterprises is a simplification measure in that it may significantly reduce the VAT obligations of the smallest businesses. The special scheme is optional for taxable persons.

(5) In its proposal for a Directive simplifying valued added tax obligations of 29 October 2004[5], the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating this amount each year. The request submitted by Belgium is in line with that proposal.

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3 OJ L 347, 11.12.2006, p.1

4 OJ 71, 14.4.1967, p. 1303–1312

5 COM(2004) 728 final.

(6) The derogation has no impact on the Union's own resources accruing from VAT and only a negligible effect on the overall amount of the tax revenue of the Member State collected at the stage of final consumption,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Belgium is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000.

Belgium may raise that ceiling in order to maintain the value of the exemption in real terms.

Article 2

This Decision shall apply until the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2015, whichever date is earlier.

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels,

For the Council
The President