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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.10.2009  
COM(2009)608 final

Proposal for a

**COUNCIL DECISION**

**authorising the Republic of Estonia and the Republic of Slovenia to apply a measure derogating from Article 167 of Council Directive 2006/112/EC on the common system of value added tax**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter 'the VAT Directive') provides that the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures derogating 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.

The Republic of Estonia (hereinafter 'Estonia') and the Republic of Slovenia (hereinafter 'Slovenia') were authorised by Council Decision 2007/133/EC of 30 January 2007 (OJ L 57 of 24.2.2007, p. 12) to introduce a special measure derogating from Article 167 of the VAT Directive until 31 December 2009.

This authorisation allows them to defer the right of deduction of VAT until the VAT has been paid to the supplier in respect of taxable persons with an annual turnover which does not exceed EUR 208 646 in the case of Slovenia or which have been registered as sole proprietors in the case of Estonia, allowing them to benefit from an optional scheme (cash accounting) whereby, pursuant to Article 66(b) of the VAT Directive, the VAT on their output transactions becomes chargeable when they have received the payment.

By two letters registered at the Secretariat-General of the Commission on 4 September 2009, Estonia asked for an extension of the measure and that taxable persons should now be eligible for the scheme if their annual turnover does not exceed EUR 208 646. By two letters registered at the Secretariat-General of the Commission on 23 and 31 July 2009, Slovenia also asked for an extension of the measure and that the annual turnover ceiling for the scheme be increased to EUR 400 000. Slovenia stated that this increase would make it possible to reduce the administrative burdens on a greater number of small businesses while improving their cash-flow situation. It would result in making the scheme available to a further 8 787 taxable persons.

In accordance with Article 395(2) of the VAT Directive, by letters of 1 October 2009 in the case of Estonia and 25 September 2009 in the case of Slovenia, the Commission forwarded these requests to the other Member States, and informed Estonia by letter of 5 October 2009 and Slovenia by letter of 29 September 2009 that it had all the information it considered necessary for appraisal of the requests.

The cash accounting scheme is a simplified optional tax scheme intended for small undertakings which do not qualify for tax exemption. It allows such taxable persons to apply a simple rule based on the date of payment for their input and output transactions, to determine when they must exercise their right to deduct VAT and pay the tax to the revenue authorities. It is thus a simplification measure in particular for those undertakings experiencing difficulty in determining, under the normal rules, the date of chargeability for their input and output transactions, and for those which do not maintain an accrual basis of accounting. Furthermore, this scheme creates a cash-flow advantage in particular for those undertakings whose expenditure is

mainly not liable to VAT, such as salaries, or those who are subject to major delays in payment by their customers, which they cannot impose on their suppliers.

The Commission, in its proposal of 28 January 2009 for a directive amending Directive 2006/112/EC as regards the rules on invoicing (COM(2009) 21 final), included provisions allowing Member States to postpone the right to deduct VAT arising until it has been paid to the supplier in respect of taxable persons with an annual turnover not exceeding a ceiling, which could be fixed by Member States at up to EUR 2 000 000 (i.e. the threshold for microenterprises according to Commission Recommendation 2003/361/EC of 6 May 2003, OJ L 124 of 20.5.2003, p.36), who would then be entitled to use an optional scheme under which the VAT to which their output transactions are liable does not become chargeable until they have received the payment.

Bearing in mind the provisions of Article 395 of the VAT Directive and the arguments put forward by Estonia and Slovenia, the Commission believes that the derogation requested meets the conditions laid down in that Article, and, in particular that, as part of the optional cash accounting scheme, it simplifies the procedure for levying the tax for microenterprises. Consequently, and also bearing in mind the background information set out above, the Commission has no objection to this request and therefore believes it must present the corresponding proposal to the Council. In particular, the annual turnover ceilings for the scheme, once the conversion rules under Articles 399 and 400 of the VAT Directive are applied as appropriate, are below that which it proposed.

The Commission is of the opinion, however, that the period of application of this derogation should be limited in order to assess regularly, based in particular on the relevant information provided by those Member States, whether the legal and factual grounds for applying it today continue to obtain. It also believes that this derogation should in any case cease to apply once the harmonised rules proposed by the Commission for this special scheme enter into force.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

The proposed decision makes it possible to maintain an optional cash accounting scheme which aims to simplify the application of the VAT rules by microenterprises while improving their cash-flow situation. It will therefore have a positive impact on those undertakings. There was no need to consult external experts or interested parties nor to assess the impact of this decision. The impact will in any case be limited because of the narrow scope and limited period of application of the derogation.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

The purpose of the proposed decision is to allow Estonia and Slovenia to continue to derogate from Article 167 of the VAT Directive and thus postpone the right to deduct VAT arising until the VAT has been paid to the supplier in respect of taxable persons with an annual turnover which does not exceed EUR 400 000 for Slovenia and the equivalent in national currency of EUR 208 646 for Estonia, and which

therefore qualify for an optional scheme (cash accounting), according to which, pursuant to Article 66(b) of the VAT Directive, the VAT on their output transactions becomes chargeable when they have received the payment.

The legal basis of this decision is Article 395 of the VAT Directive, which was adopted pursuant to Article 93 of the Treaty establishing the European Community. Under this Article, a Member State wishing to apply special measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Since it is an implementing measure involving the harmonisation of legislation on turnover taxes, the principle of subsidiarity has been adhered to.

The proposal complies with the principle of proportionality and therefore does not go beyond what is necessary to achieve the objective of simplification, because it involves only a small number of taxable persons which, moreover, can opt for this scheme or otherwise. Accordingly, it derogates from the principles of the VAT Directive only to a limited and appropriate extent.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the Community budget.

#### **5. ADDITIONAL INFORMATION**

The proposal provides that the period of application of the decision is to expire automatically on the date of entry into force of provisions establishing harmonised rules enabling all the Member States to apply the special derogating measure sought.

Proposal for a

## COUNCIL DECISION

**authorising the Republic of Estonia and the Republic of Slovenia to apply a measure derogating from Article 167 of Council Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

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

Having regard to the proposal from the Commission<sup>2</sup>,

Whereas:

- (1) The Republic of Estonia (hereinafter 'Estonia') and the Republic of Slovenia (hereinafter 'Slovenia') were authorised by Council Decision 2007/133/EC<sup>3</sup>, by way of derogation from Article 167 of Directive 2006/112/EC, to postpone the right of deduction of value added tax (VAT) until it has been paid to the supplier of goods or of services, in respect of taxable persons using an optional cash accounting scheme under which, in accordance with Article 66(b) of that Directive, VAT on their supplies of goods and of services becomes chargeable on receipt of the payment. In order to qualify for this scheme, their annual turnover must not exceed EUR 208 646 in the case of Slovenia and they must be registered as sole proprietors in the case of Estonia.
- (2) Estonia and Slovenia requested authorisation to extend this special derogating measure by letters registered by the Commission's Secretariat-General on 4 September 2009 in the case of Estonia and on 23 and 31 July 2009 in the case of Slovenia. Estonia also asked that taxable persons should now be eligible for the scheme if their annual turnover does not exceed EUR 208 646. Slovenia asked to raise the annual turnover ceiling for the scheme to EUR 400 000.
- (3) In accordance with Article 395(2) of Directive 2006/112/EC, by letters of 1 October 2009 in the case of Estonia and 25 September 2009 in the case of Slovenia the Commission forwarded their requests to the other Member States, and by letters of 5 October 2009 in the case of Estonia and 29 September 2009 in the case of Slovenia,

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1.

<sup>2</sup> OJ C , p. .

<sup>3</sup> OJ L 57, 24.2.2007, p. 12.

informed those countries that it had all the information it considered necessary for appraisal of the request.

- (4) The cash accounting scheme is a simplified optional scheme intended for small undertakings which do not qualify for tax exemption. It allows such taxable persons to apply a simple rule based on the date of payment for their input and output transactions, to determine when they must exercise their right to deduct VAT and pay the tax to the revenue authorities. This scheme thus constitutes a simplification measure for those taxable persons, which can, furthermore, create a cash-flow advantage for them.
- (5) On 28 January 2009, the Commission proposed a directive (COM(2009) 21 final) amending Directive 2006/112/EC as regards the rules on invoicing and also allowing the Member States to postpone the right to deduct VAT arising until it has been paid to the supplier in respect of taxable persons with an annual turnover not exceeding a ceiling, which could be fixed by Member States at up to EUR 2 000 000, and accordingly entitled to use an optional scheme under which the VAT to which their transactions are liable does not become chargeable until they have received the payment.
- (6) The special derogating measure does not affect the amount of VAT revenue collected by Estonia or Slovenia at the final consumption stage and has no impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 167 of Directive 2006/112/EC, Estonia and Slovenia are authorised to postpone the right of deduction of the value added tax of the taxable persons, as defined in the second paragraph, until it has been paid to their suppliers.

The taxable persons concerned must have opted for a scheme under which the value added tax on their supplies of goods and of services becomes chargeable on receipt of the payment. Under this scheme, their annual turnover must not exceed EUR 400 000 in the case of Slovenia and the equivalent in national currency of EUR 208 646, determined in accordance with Articles 399 and 400 of Directive 2006/112/EC, in the case of Estonia.

#### *Article 2*

This Decision shall apply from 1 January 2010 until the date of entry into force of the provisions of a directive authorising the Member States to postpone the right of deduction of value added tax arising until it has been paid to the supplier in respect of taxable persons whose annual turnover does not exceed a certain ceiling and who therefore benefit from an optional scheme according to which the tax on their supplies of goods and of services becomes chargeable when they have received the payment. In any event, this Decision shall apply until 31 December 2012 at the latest.

*Article 3*

This Decision is addressed to the Republic of Estonia and the Republic of Slovenia.

Done at Brussels,

*For the Council  
The President*