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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.6.2008
COM(2008) 404 final

Proposal for a

COUNCIL DECISION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. 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 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 Secretariat-General of the Commission on 15 November 2007 Italy requested authorisation to exempt taxable persons whose annual turnover is no higher than EUR 30 000. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 6 May 2008 of the request made by Italy. By letter dated 8 May 2008 the Commission notified Italy that it had all the information necessary to consider the request.

1.2. 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 can not deduct the VAT on his inputs.

This measure was first introduced in accordance with the provisions of Article 14 of Council Directive 67/228/EEC. However, those Member States which did not make use of the option provided for under that provision could subsequently, according to Article 24(2)(b) of Directive 77/388EEC now recast as the first paragraph of Article 285 of the VAT Directive, only exempt taxable persons from VAT whose annual turnover is no higher than EUR 5 000.

Italy did not make use of the option provided by Article 14 of Council Directive 67/228/EEC. Therefore it has a significant number of taxable persons with a very low annual turnover under the normal VAT scheme and these very small businesses, required to fulfil all VAT obligations, may find them disproportionately burdensome when compared to larger businesses.

The Italian derogation request seeks to simplify the VAT system for small enterprises by introducing the simplification measure referred to in the first paragraph of Article 285 of the VAT Directive but applying the measure to taxable persons with an annual turnover no higher than EUR 30.000. This measure will significantly reduce the burdens on those businesses eligible for the scheme and release them from many of the obligations under the normal VAT arrangements. In addition, the scheme will ease the collection of the tax for the national administration.

The scheme would be optional for taxable persons, and Italy does not expect all eligible enterprises to make use of it, as businesses who predominantly sell to other taxable persons may prefer to operate within the normal VAT arrangements. Therefore Italy calculates that out of around 930 000 eligible businesses, approximately 710 000 would make use of the simplification measure.

The scheme would have a negligible impact on the total amount of tax revenue. Italy estimates a revenue reduction of some 0.15% in the first year of implementation, rising to around 0.25% in the following two years.

Italy would also like to have the possibility to increase the ceiling in order to maintain the value of the exemption in real terms.

The derogation would run until the earliest of 31 December 2010 or the entry into force of a Directive on the annual turnover threshold below which a taxable person may be exempt from VAT.

1.3. 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.

1.4. Consistency with the other policies and objectives of the Union

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Not relevant

2.2. Collection and use of expertise

There was no need for external expertise.

2.3. Impact assessment

The 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 30 000 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

3.1. Summary of the proposed action

Authorisation for Italy to apply a derogating measure from Directive 2006/112/EC as regards the introduction of a simplification measure for businesses with an annual turnover no higher than EUR 30 000.

3.2. Legal basis

Article 395 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

3.3. 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.

3.4. 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.

3.5. Choice of instruments

Proposed instruments: Council Decision.

Other means would not be adequate for the following reason :

Under Article 395 of the VAT Directive 2006/112/EC on the common system of value added tax, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. A Council Decision is the most suitable instrument since it can be addressed to individual Member States.

4. BUDGETARY IMPLICATIONS

The proposal has a negligible implication for the Community budget.

5. ADDITIONAL INFORMATION

5.1. 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 tax,[1] and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) The Italian Republic did not make use of the provisions of Article 14 of Directive 67/228/EEC[3] which means that a scheme to exempt taxable persons could only be introduced in respect of taxable persons whose annual turnover was no higher than EUR 5 000.

(2) In a letter registered by the Commission's Secretariat General on 15 November 2007 Italy requested authorisation for a measure derogating from Article 285 of the VAT Directive in order to exempt taxable persons whose annual turnover is no higher than EUR 30 000. This will release those taxable persons from certain or all of the VAT obligations referred to in Chapters 2 to 6 of Title XI of the VAT Directive.

(3) In accordance with Article 395(2) of Directive 2006/112/EC the Commission informed the other Member States by letter dated 6 May 2008 of the request made by Italy. By letter dated 8 May 2008, the Commission notified Italy that it had all the information necessary to consider the request.

(4) A special scheme for small enterprises is already available to Member States under Title XII of the VAT Directive. This measure derogates from Article 285 of the VAT Directive only insofar as the annual turnover threshold for the scheme is higher than that currently allowed for Italy.

(5) A higher threshold may significantly reduce the VAT obligations of the smallest businesses whilst being optional for taxable persons allows businesses to opt for the normal VAT arrangements.

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[1] OJ L 347, 11.12.2006, p.1. Directive last amended by Directive 2008/8/EC (OJ L 44, 20.02.2008, p.11-22)

[2] OJ C , , p. .

[3] OJ C 71, 14.04.1967, p. 1303/67. Directive repealed by Directive 77/388/EEC

(6) The Commission is committed to establishing a common annual turnover threshold below which taxable persons may be exempt from VAT as a measure to help reduce the burdens on small businesses. In 2004 the Commission proposed[4] to allow Member States the option of increasing the annual turnover threshold for small businesses to be exempt from VAT. The Italian request is in line with the Commission proposal and is a considered and appropriate means of reducing the burdens for small businesses.

(7) Italy would also like the possibility to increase the ceiling to maintain its value in real terms, and so be able to apply a provision akin to that in Article 286 of the VAT Directive to this measure.

(8) The derogation will have no impact on the European Communities' own resources accruing from value added tax.

(9) From information provided by the Italian Republic, the measure will lead to a reduction of the overall amount of tax revenue collected at the final stage of consumption of some 0.15% in the first year of implementation, rising to around 0.25% in the following two years.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Italy is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 30 000. This scheme is optional for taxable persons.

Article 2

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

Article 3

This Decision shall expire on the date of entry into force of Community rules establishing a common annual turnover threshold below which taxable persons may be exempt from VAT, but on 31 December 2010 at the latest.

Article 4

This Decision is addressed to Italy.

[4] OJ C 24, 29.01.2005, p.8.

Done at Brussels,

For the Council
The President