EUROPEAN COMMISSION

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COM(2010) 540 final

2010/0269 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Council 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 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 18 February 2010, the Italian Republic requested authorisation to continue to apply a derogation measure concerning the right of deduction of VAT borne on certain types of means of transport. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 13 July 2010 of the request made by the Italian Republic. By letter dated 15 July 2010, the Commission notified the Italian Republic that it had all the information necessary to consider the request.

General context

Article 168 of the VAT Directive provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purposes his taxed transactions. At the same time, Article 26(1)(a) of the VAT Directive stipulates that the use of goods, forming part of the assets of a business, for private purposes is to be considered as a supply of services for consideration if the VAT on these goods was wholly or partly deductible. As a result, the system ensures that final consumption is taxed when corresponding input VAT was initially deducted.

In relation to motor vehicles, it is sometimes difficult and burdensome for the taxable persons to identify and register the split between business and private use and for the tax administration to verify the effective division of use. Because of the number of mixed use vehicles, tax evasion could become considerable.

In order to simplify VAT collection and to combat tax evasion, the Italian Republic requested and obtained from the Council an individual derogation allowing it to restrict the right of deduction to 40% in relation to motorised road vehicles (other than agricultural or forestry tractors, normally used for carrying persons or goods by road with a maximum authorised mass not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat)[1]. However, it should be pointed out that certain categories of vehicles were excluded from this restriction, such as vehicles forming part of a stock-in-trade, for instruction by driving schools, used for hire or leasing, used by sales representatives and taxis. At the same time, businesses would be

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[1] Council Decision 2007/441/EC of 18 June 2007 authorising the Italian Republic to apply measures derogating from Articles 26(1) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 165, 27.6.2007, p. 33).

relieved from accounting from tax on the private use.

In accordance with Article 6 of the above-mentioned Decision, the Italian Republic presented a report covering the first two years of the application of that Decision which included a review of the percentage restriction.

It appears from information provided by the Italian Republic in that report that, in particular given the very high number of small enterprises in the Italian Republic, the limitation to 40% would still be corresponding to the actual circumstances and therefore be appropriate.

However, any extension should be limited in time in order to asses whether the conditions, on which the derogation is based, would still be valid. Therefore, it is proposed to extend the derogation until the end of 2013 and to request the Italian Republic to present a new report in case a new extension request would be envisaged beyond that end date. The Decision would in any case expire in case EU rules governing restrictions on the right of deduction in this area would come into force before that end date.

Existing provisions in the area of the proposal

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure of which the VAT is not deductible. Until such time, Member States are authorised to maintain exclusions which were in place on 1 January 1979. Therefore, there are a number of "standstill" provisions restricting the right of deduction in relation to motor vehicles. Furthermore, similar deduction restrictions have also been granted to other Member States on the basis of Article 395 of the VAT Directive.

In 2004, the Commission made a proposal[2] which contains rules on which forms of expenditure may be subject to a restriction on the right to deduct but the Council has not been able yet to reach an agreement on that proposal.

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 proposal is designed to counter VAT evasion and to simplify the procedure for

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2 COM(2004) 728final (OJ C 24, 29.1.2005, p. 10).

charging tax and has, therefore, a potential positive impact.

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

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for the Italian Republic to continue to apply a derogating measure from the VAT Directive as to restrict to 40% the right of a taxable person to deduct VAT on expenditure related to motorised road vehicles when the vehicle is not used exclusively for business purposes. When the right of deduction has been limited, the taxable person is relieved from the obligation to account for VAT on the private use. Any possible request for extending the measure should be accompanied by the submission of a report on the application of the derogation.

Legal basis

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

Subsidiarity principle

The proposal falls under the exclusive competence of the EU institutions. The subsidiarity principle therefore does not apply.

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

Proposed instruments: Decision.

Other means would not be adequate for the following reason(s).

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. A Council implementing Decision is the most suitable instrument since it can be addressed to individual Member States.

BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

ADDITIONAL INFORMATION

Review/revision/sunset clause

The proposal includes a review clause and 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 by the Commission's Secretariat General on 18 February 2010, Italy requested authorisation to extend a measure derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC in order to continue to restrict the right of deduction in relation to expenditure on certain motorised road vehicles not wholly used for business purposes.

(2) The Commission informed the other Member States of the request made by Italy by letter dated 13 July 2010. By letter dated 15 July 2010, the Commission notified Italy that it had all the information necessary to consider the request.

(3) Council Decision 2007/441/EC of 18 June 2007 authorising the Italian Republic to apply measures from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax[4], authorised Italy to limit the right of deduction of value added tax (VAT) charged on expenditure on motorised road vehicles not wholly used for business purposes to 40%. Decision 2007/441/EC also provided that the use for private purposes of those vehicles which had been subject to a right of deduction restriction under that Decision was not to be considered as a supply of services for consideration. Decision 2007/441/EC also contains definitions of the vehicles and the expenditure included in the scope of that Decision and a list of vehicles which were explicitly excluded from the scope of that Decision.

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[3] OJ L 347, 11.12.2006, p. 1.
[4] OJ L 165, 27.6.2007, p. 33.

(4) In accordance with Article 6 of Decision 2007/441/EC, Italy submitted a report to the Commission covering the two first years of application of the Decision which included a review of the percentage restriction. The information provided by Italy shows that a restriction of the right of deduction to 40% still corresponds to the actual circumstances as regards the business and non-business use of the vehicles concerned. Italy should therefore be authorised to apply the measure during a further limited period, until 31 December 2013.

(5) Where Italy considers a further extension beyond 2013, a new report should be submitted to the Commission together with that extension request no later than 1 April 2013.

(6) On 29 October 2004, the Commission adopted a proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations[5]. The derogating measures provided for in this Decision should expire on the date of entry into force of such amending Directive, if that date is earlier than the date of expiry provided for in this Decision.

(7) The derogation has no impact on the Union's own resources accruing from value added tax.

(8) Decision 2007/441/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2007/441/EC is amended as follows:

(1) Article 6 is replaced by the following:

"Article 6

Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission no later than 1 April 2013.

Any request for extension of those measures shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT charged on expenditure on motorised road vehicles not wholly used for business purposes."

(2) Article 7 is replaced by the following:

"Article 7

This Decision shall expire on the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles which is not eligible for a full deduction of value added tax, and on 31 December 2013 at the latest."

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5 COM(2004) 728 final.

Article 2

This Decision shall apply from 1 January 2011.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President