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2018/0367 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

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

## **EXPLANATORY MEMORANDUM**

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'<sup>1</sup>), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce 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 19 July 2018, the Netherlands requested an authorisation to introduce a measure derogating from Article 285 of the VAT Directive allowing the exemption from VAT of taxable persons whose annual turnover does not exceed EUR 25 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 9 August 2018 of the request made by the Netherlands except for Spain and Cyprus who have been informed by letters dated 10 August 2018. By letter dated 13 August 2018, the Commission notified the Netherlands that it had all the information necessary to consider the request.

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

Chapter 1 of Title XII of the VAT Directive allows Member States to apply special schemes to small enterprises, including the possibility to exempt taxable persons whose annual turnover does not exceed a certain threshold from VAT. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, cannot deduct VAT on the inputs.

Under Article 285 of the VAT Directive, Member States which have not exercised the option under Article 14 of the Second Council Directive 67/228/EEC<sup>2</sup> may exempt taxable persons whose annual turnover does not exceed EUR 5 000 from VAT. The Netherlands, being one of these Member States, requested to increase the exemption threshold from EUR 5 000 to EUR 25 000 as of 1 January 2020.

According to the information provided by the Netherlands, their current system is of graduated relief for taxable persons who, on an annual basis and after deduction of input tax, are liable for no more VAT than EUR 1 883. The process for granting graduated tax relief is complex, and contains a high level of error. Due to the rapidly growing number of small businesses in the Netherlands, the operational costs for the Dutch tax authorities are increasing and the administrative burden for businesses is growing, while the financial interest involved remains low. The Netherlands, therefore, wish to modernise their system by introducing an optional turnover-linked VAT exemption scheme with an exemption threshold of EUR 25 000. This measure would reduce VAT obligations for small businesses and simplify the collection of VAT for tax authorities.

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

<sup>2</sup> Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p.1303/67).

The Netherlands also point out that this measure is in line with the scope of the proposal for a Directive on the special scheme for small businesses published by the European Commission on 18 January 2018<sup>3</sup>.

It is therefore proposed to allow the Netherlands to increase the exemption threshold for SMEs from EUR 5 000 to EUR 25 000 until 31 December 2022 or until the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises.

- **Consistency with existing policy provisions in the policy area**

Similar derogations have been granted to other Member States. Luxembourg<sup>4</sup> was granted a threshold of EUR 30 000, Poland<sup>5</sup> and Estonia<sup>6</sup> a threshold of EUR 40 000, Italy<sup>7</sup> a threshold of EUR 65 000, Croatia<sup>8</sup> a threshold of EUR 45 000, Latvia<sup>9</sup> a threshold of EUR 40 000 and Romania<sup>10</sup> a threshold of EUR 88 500.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. Moreover, the provisions of Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan<sup>11</sup>, and the 2017 Commission Work Programme<sup>12</sup>, the Commission's proposal on the SMEs scheme has been presented recently.

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<sup>3</sup> Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises, 18.1.2018, COM(2018) 21 final.

<sup>4</sup> Council Implementing Decision (EU) 2017/319 of 21 February 2017 amending Implementing Decision 2013/677/EU authorising Luxembourg to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 47, 24.2.2017, p. 7).

<sup>5</sup> Council Implementing Decision (EU) 2016/2090 of 21 November 2016 amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 324, 30.11.2016, p.7).

<sup>6</sup> Council Implementing Decision (EU) 2017/563 of 21 March 2017 authorising the Republic of Estonia to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 80, 25.3.2017, p. 33).

<sup>7</sup> Council Implementing Decision (EU) 2016/1988 of 8 November 2016 amending Implementing Decision 2013/678/EU authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 306, 15.11.2016, p. 11).

<sup>8</sup> Council Implementing Decision (EU) 2017/1768 of 25 September 2017 authorising the Republic of Croatia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 250, 28.9.2017, p. 71).

<sup>9</sup> Council Implementing Decision (EU) 2017/2408 of 18 December 2017 authorising the Republic of Latvia to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 342, 21.12.2017, p. 8).

<sup>10</sup> Council Implementing Decision (EU) 2017/1855 of 10 October 2017 authorising Romania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 265, 14.10.2017, p. 19).

<sup>11</sup> Communication from the Commission to the European Parliament, the Council and the European and Social Committee on an action plan on VAT, Towards a single EU VAT area – Time to decide, Brussels, 7.4.2016, COM(2016)148 final.

<sup>12</sup> Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends, Strasbourg, 25.10.2016, COM(2016)710 final.

- **Consistency with other Union policies**

The measure is in line with the Union's objectives for small businesses, as laid down in the Commission Communication "Think Small First" – A "Small Business Act" for Europe<sup>13</sup>, which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing regulatory environment.

## **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 subsidiarity principle 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. the simplification for small enterprises and for the tax administration.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT provisions is only possible upon 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 an individual Member State.

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

This proposal is based on a request made by the Netherlands and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision authorises the Netherlands to exempt taxable persons whose annual turnover does not exceed EUR 25 000 from VAT as of 1 January 2020. Taxable persons whose annual turnover does not exceed the threshold are released from many of the general VAT obligations and the administrative burden on them

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<sup>13</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, Brussels, 25.6.2008, COM(2008)394 final.

will reduce as a result of this measure as well. It also simplifies tax collection for the Dutch tax authorities.

According to the Netherlands, the introduction of the EUR 25 000 threshold will not have any substantial impact on the total tax revenue at the stage of final consumption. Approximately 9 % of taxpayers are expected to use the exemption threshold, which corresponds to an impact on the State budget of around 0.09 %.

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

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

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal is limited in time.

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

### **authorising the Netherlands to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax**

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<sup>1</sup>, and in particular the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to the first paragraph of Article 285 of Directive 2006/112/EC, Member States which have not exercised the option under Article 14 of Council Directive 67/228/EEC<sup>2</sup> may exempt taxable persons whose annual turnover is no higher than EUR 5 000 from value added tax (VAT).
- (2) By letter registered with the Commission on 19 July 2018, the Netherlands requested an authorisation to introduce a special measure derogating from Article 285 of Directive 2006/112/EC in order to apply an exemption threshold of EUR 25 000. Through that special measure taxable persons whose annual turnover is no higher than EUR 25 000 would be exempt from certain or all of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.
- (3) A higher threshold for the special scheme for small enterprises set out in Articles 281 to 294 of Directive 2006/112/EC is a simplification measure, as it may significantly reduce the VAT obligations of small enterprises. The special scheme is optional for taxable persons.
- (4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letters dated 9 August 2018 of the request made by the Netherlands, with the exception of Spain and Cyprus informed by letters dated 10 August 2018. By letter dated 13 August 2018, the Commission notified the Netherlands that it had all the information necessary to consider the request.
- (5) The requested derogation is in line with the policy objectives of Commission Communication "Think Small First" – A "Small Business Act" for Europe.<sup>3</sup>

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

<sup>2</sup> Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p.1303/67).

<sup>3</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, COM(2008)394 final of 25 June 2008.

- (6) Given that the Netherlands expect that the increased threshold will result in reduced VAT obligations and thus a reduction in administrative burdens and compliance costs for small enterprises, the Netherlands should be authorised to apply the special measure for a limited period of time, until 31 December 2022. The special scheme for small enterprises is optional, so taxable persons would still be able to opt for the normal VAT arrangements.
- (7) As Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises are subject to review, it is possible that a directive amending those Articles enters into force setting a date from which Member States are to apply national provisions before the period of validity of the derogation expires on 31 December 2022. If that happens, this Decision should cease to apply.
- (8) Based on information provided by the Netherlands, the increased threshold will only have a negligible impact on the overall amount of the tax revenue of the Netherlands collected at the final stage of consumption.
- (9) The derogation has no impact on the Union's own resources accruing from value added tax because the Netherlands will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89<sup>4</sup>,

HAS ADOPTED THIS DECISION:

*Article 1*

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

*Article 2*

This Decision shall apply from 1 January 2020 until the earlier of the following two dates:

- (a) 31 December 2022;
- (b) the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises.

*Article 3*

This Decision is addressed to the Netherlands.

Done at Brussels,

*For the Council  
The President*

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<sup>4</sup> Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).