EUROPEAN
COMMISSION

Brussels, 13.4.2015
COM(2015) 148 final

2015/0074 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Denmark to introduce a special measure derogating from Article 75 of Council Directive 2006/112/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Pursuant to Article 395 of Council 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 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.

By letter registered with the Commission on 13 January 2015, Denmark requested authorisation to apply a measure derogating from Article 75 of the VAT Directive.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 13 and 14 February 2015 of the request made by Denmark. By letter dated 17 February 2015, the Commission notified Denmark that it had all the information necessary to consider the request.

General context

In order to simplify VAT collection and combat tax evasion, Denmark requested in 2011 an individual derogation which would allow the introduction of a flat-rate scheme for the private use of light goods vehicles with a maximum authorised weight of up to three tonnes which have been registered solely for business use. The derogation request was approved by Council Implementing Decision 2012/447/EU of 24 July 2012[1], and expired on 31 December 2014.

Without any such derogating measure the Danish legislation implies that any private use of such a vehicle registered solely for business purposes would have as a consequence that the taxable person loses in full the right of deduction of the VAT on the purchase cost of the vehicle. Denmark makes use of a standstill provision under Article 176 of the VAT Directive regarding the deduction of VAT on the purchase and running costs of light goods vehicles with a maximum authorised weight of up to three tonnes. If a business registers such a light goods vehicle as being solely for business purposes, it will be authorised to deduct in full the VAT on the purchase of the vehicle as well as the running costs. However, a business which registers a light goods vehicle as being both for business and personal use is not authorised to deduct the VAT on the purchase cost, but can deduct in full the VAT on the running costs of the vehicle.

The Danish system as described above can be complicated and costly to administer, both for the taxable person and for the tax administration. Denmark has therefore requested to apply a simplified procedure as previously granted by Council Implementing Decision 2012/447/EU. According to the Danish authorities, the simplified procedure has worked very well the last years and they find good reasons to continue with such a procedure. As the request for an extension of the measure was first received by the Commission after the expiration of the previously granted derogation measure, this proposal cannot extend the previous measure with retroactive effect.

The flat-rate system could be used by a taxable person for up to twenty days per calendar year for a cost of DKK 40 per day. The amount of DKK 40 per day would cover only VAT and has been determined by the Danish Government on the basis of an analysis of national statistics. A similar payment, under separate national legislation, would be required to cover income tax on the disposal of a company car, and a surcharge to the circulation tax. Should the taxable

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1 OJ L 202, 28.07.2012, p. 24.

person use the vehicle for more than twenty days during a calendar year, the standstill rules would apply, and the taxable person would lose in full the right of deduction of the purchase costs of the vehicle.

The Danish authorities have developed an electronic system whereby taxable persons can pay the daily flat-rate online. The authorities consider the system to simplify the accounting obligations for the taxable persons as well as the tax authorities' duty to collect and charge the tax.

The simplified procedure is optional. The taxable person would therefore still be able to register their light goods vehicle for both business and private use if that suits their circumstances.

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

There was no need for consultation or external expertise. The derogation would only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption, whereas it has benefits for businesses using light goods vehicles for both private and professional use and simplifies tax collection.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Decision authorises Denmark to introduce a special measure derogating from the VAT Directive as regards the accounting of the VAT on the private use of certain vehicles.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

Considering the provision of the VAT Directive on which the proposal is based, the proposal falls under the exclusive competence of the 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, i.e. to simplify VAT obligations and VAT collection, as well as combatting tax evasion.

Choice of instruments

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible on the authority 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 will have no adverse impact on the Union's own resources accruing from VAT.

5. OPTIONAL ELEMENTS

The proposal is limited in time.

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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[2], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 13 January 2015, Denmark requested authorisation to apply a measure derogating from the provisions of Council Directive 2006/112/EC governing the right to deduct input VAT.

(2) The Commission informed the other Member States of the request made by Denmark by letters dated 13 and 14 February 2015. By letter dated 17 February 2015, the Commission notified Denmark that it had all the information that it considered necessary to consider the request.

(3) Without a derogation measure as requested, the legislation in Denmark implies that if a light goods vehicle with a maximum authorised weight of up to three tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is authorised to deduct, in full, the input VAT on the purchase and running costs of the vehicle. If such a vehicle is subsequently used for private purposes, the taxable person loses the right to deduct the VAT incurred on the purchase cost of the vehicle.

(4) To mitigate the consequences of this regime, Denmark has requested authorisation to apply a special measure derogating from Article 75 of Council Directive 2006/112/EC as previously granted by Council Implementing Decision 2012/447/EU[3], which expired 31 December 2014. The measure allows taxable persons, who have registered a vehicle as being for business purposes only, to use the vehicle for non-business purposes, and to calculate the taxable amount of the deemed supply pursuant to Article 75 of Council Directive 2006/112/EC on a daily flat-rate basis, rather than lose their right to deduct the VAT incurred on the purchase cost of the vehicle.

(5) The simplified calculation method would, however, be limited to twenty days of non-business use for each calendar year, and the flat-rate amount of VAT to be paid is fixed at DKK 40 for each day of non-business use. This amount has been determined by the Danish Government on the basis of an analysis of national statistics.

[2] OJ L 347, 11.12.2006, p. 1.
[3] OJ L 202, 28.07.2012, p. 24

(6) This measure, which is to apply to light goods vehicles with a maximum authorised weight of up to three tonnes, would simplify the VAT obligations of taxable persons who make occasional non-business use of a vehicle registered for business purposes. However, it would remain possible for a taxable person to choose to register a light goods vehicle as being for both business and private use. In doing so, the taxable person would lose the right to deduct the VAT on the purchase of the vehicle but would not be required to pay a daily charge for any private use.

(7) Allowing a measure which ensures that a taxable person who makes occasional non-business use of a vehicle registered for business purposes is not deprived of the full right to deduct the input VAT on that vehicle would be consistent with the general rules on deduction as laid down by Council Directive 2006/112/EC.

(8) The authorisation should be valid for a limited period and should therefore expire on 31 December 2017.

(9) In the event Denmark requests a further extension of the derogating measure beyond 2017, a report shall be submitted to the Commission together with the extension request no later than 31 March 2017.

(10) It is considered that the derogation would only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 75 of Council Directive 2006/112/EC, where a taxable person uses for private purposes, or those of his staff, or more generally for purposes other than those of his business, a light goods vehicle which has been registered as being solely for business use, Denmark is authorised to determine the taxable amount by reference to a flat-rate for each day of such use.

The flat-rate per day as referred to in the first paragraph shall be DKK 40.

Article 2

The measure referred to in Article 1 shall only apply to light goods vehicles with a maximum authorised total weight of three tonnes.

This measure shall not apply where the private use exceeds 20 days per calendar year.

Article 3

This Decision shall take effect on the day of its notification.

This Decision shall expire on 31 December 2017.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2017.

Such a request shall be accompanied by a report which includes a review of the measure applied on the basis of this Decision.

Article 4

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels,

For the Council
The President