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2021/0006 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**amending Implementing Decision (EU) 2017/563 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**

## EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of valued added tax[1] ('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 Commission on 9 October 2020, Estonia requested an authorisation to continue to apply, until 31 December 2024, a measure derogating from Article 287 of the VAT Directive, allowing Estonia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 40 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 15 October 2020 of the request made by Estonia. The Commission notified Estonia by letter dated 19 October 2020 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 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 or she cannot deduct the VAT on his inputs.

Pursuant to point (8) of Article 287 of the VAT Directive, Estonia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 16 000 at the conversion rate on the day of its accession.

By Council Implementing Decision (EU) 2017/563[2] Estonia was authorised to increase the threshold concerning taxable persons, the annual turnover of which, does not exceed EUR 40 000. Estonia, according to the implementing decision, may apply the derogating measure from 1 January 2018 until 31 December 2020.

The special procedure for small enterprises has been amended by the Council Directive (EU) 2020/285[3], which comes into force 1 January 2025. Estonia requested to prolong the application of the derogating measure until 31 December 2024. The new threshold, starting from 1 January 2025, according to Article 284 of the VAT Directive is EUR 85 000. Therefore the threshold value of EUR 40 000, established for small enterprises in Estonia, complies with the new provision.

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1 OJ L 347, 11.12.2006, p.1.

2 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. 33–34).

3 Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13–23)

The maintenance of the value of the threshold for registering as a taxable person, allows for persons whose taxable turnover is in the range of EUR 16 001 to EUR 40 000, to maintain a smaller administrative burden without a significant impact on the total amount of value added tax (VAT) revenue. The workload of the tax administrator is also slightly reduced. The derogating measure remains voluntary for taxable persons.

The derogating measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses.

The application of the measure does not significantly impact the total amount of VAT revenue collected in the phase of end consumption. The reduction, as a result of the measure, in the VAT that is paid into the state revenue is EUR 15.6 million per year, which accounts for 0.6% of the total receipt of value added tax.

The derogating measure does not affect the own resources from VAT, as Estonia will calculate the compensation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89.

It is therefore appropriate to authorise the Republic of Estonia to apply the derogating measure until 31 December 2024.

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

The derogating measure is in line with the philosophy of Directive (EU) 2020/285 amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, which resulted from the VAT action plan[4], and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of competition both domestically and at EU level, reduce the negative impact of the threshold effect, and facilitate business compliance as well as monitoring by tax administrations.

Moreover, the threshold of EUR 40 000 is consistent with Directive (EU) 2020/285, insofar as it allows Member States to set the annual turnover threshold required for an exemption from VAT at a level no higher than EUR 85 000 (or the equivalent in national currency).

Similar derogations, exempting from VAT taxable persons whose annual turnover is below a certain threshold, as provided for in Articles 285 and 287 of the VAT Directive, have been granted to other Member States. The Netherlands[5] has been granted a threshold of EUR 25 000; Italy[6] a threshold of EUR 30 000; Luxembourg[7] a threshold of EUR 35 000; Latvia[8],

[4] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide COM(2016)148 final.

[5] Council Implementing Decision (EU) 2018/1904 of 4 December 2018 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 (OJ L 310, 6.12.2018, p. 25).

[6] 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.11-12).

[7] Council Implementing Decision (EU) 2019/2210 of 19 December 2019 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 332, 23.12.2019, p. 155).

[8] Council Implementing Decision (EU) 2020/1261 of 4 September 2020 amending Implementing Decision (EU) 2017/2408 authorising the Republic of Latvia to apply a special measure derogating

Poland[9] have been granted a threshold of EUR 40 000; Lithuania[10] a threshold of EUR 55 000; Croatia[11] a threshold of 45 000 and Malta[12] a threshold of EUR 20 000; Hungary[13] a threshold of EUR 48 000; Slovenia[14] a threshold of EUR 50 000; and Romania[15] a threshold of EUR 88 500.

As already mentioned, derogations from the VAT Directive should always be limited in time so that their effects can be assessed. The inclusion of an expiry date of the special measure until 31 December 2024, as requested by the Republic of Estonia, is aligned with the requirements of Directive (EU) 2020/285 on simpler VAT rules for small and medium-sized enterprises. That directive provides for 1 January 2025 as the date on which Member States will have to apply the national provisions, which they are required to adopt to comply with it.

The proposed measure is therefore consistent with the provisions of the VAT Directive.

- **Consistency with other Union policies**

The Commission has been consistently stressing the need for simpler rules for small enterprises in its annual work programmes. In this regard, the 2020 Commission Work Programme[16] refers to "a dedicated SME Strategy that will make it easier for small and medium-sized businesses to operate, scale up and expand". The special measure is in line with such objectives, as far as fiscal rules are concerned. It is notably consistent with the 2017 Commission Work Programme[17], which referred specifically to VAT, pointing out that the administrative burden of VAT compliance for small businesses is high and that technical

from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 296, 10.9.2020, p. 4–5).

9 Council Implementing Decision (EU) 2018/1919 of 4 December 2018 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 311, 7.12.2018, p. 32).

10 Council Implementing Decision (EU) 2017/1853 of 10 October 2017 amending Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a 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. 15–16). Written procedure ongoing for the new measure

11 Council Implementing Decision (EU) 2020/1661 of 3 November 2020 amending Implementing Decision (EU) 2017/1768 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 374, 10.11.2020, p. 4–5).

12 Council Implementing Decision (EU) 2020/1662 of 3 November 2020 amending Implementing Decision (EU) 2018/279 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 374, 10.11.2020, p. 6–7).

13 Council Implementing Decision (EU) 2018/1490 of 2 October 2018 authorising Hungary to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 252, 8.10.2018, p.38).

14 Council Implementing Decision (EU) 2018/1700 of 6 November 2018 amending Implementing Decision 2013/54/EU authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 285, 13.11.2018, p. 78).

15 Council Implementing Decision (EU) 2020/1260 of 4 September 2020 amending Implementing Decision (EU) 2017/1855 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 296, 10.9.2020, p. 1–3).

16 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2020 – A Union that strives for more (COM(2020) 37 final).

17 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2017 (COM(2016) 710 final).

innovations pose new challenges for effective tax collection, and stressed the need to simplify VAT for smaller companies.

Likewise, the measure is consistent with the 2015 single market strategy[18], where the Commission set out to help small and medium-sized businesses grow, inter alia by reducing the administrative burdens that prevent them from taking full advantage of the single market. It also follows the philosophy of the 2013 Commission Communication 'Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe'[19], which underlined the need to simplify tax legislation for small businesses.

Finally, the measure is in line with EU policies on small and medium-sized enterprises, as set out in the 2016 Start-Up Communication[20], and the 2008 Communication '"Thinks small first" – a "Small Business Act" for Europe'[21] which called on the Member States to take account of the special features of SMEs when designing legislation and 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 it is based, the proposal falls under the exclusive competence of the European Union. Hence, 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. to simplify the tax collection for small taxable persons and for the tax administration.

### • Choice of the instrument

Proposed instrument: Council Implementing Decision.

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

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18 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions upgrading the Single Market: more opportunities for people and businesses (COM(2015) 550 final).

19 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe (COM(2012) 795 final).

20 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Europe's Next Leaders: The Start-Up and Scale-Up Initiative (COM(2016) 733 final).

21 Communication from the Commission to the European Parliament, the Council, 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).

Commission. Moreover, a Council 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**

No stakeholder consultation has been conducted. The present proposal is based on a request made by Estonia and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision increases the threshold of annual turnover below which taxable persons may be exempted from VAT. It therefore extends the scope of the simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 40 000.

Persons whose taxable turnover does not exceed the threshold will not have to register to be identified for VAT purposes, and thus the administrative burden on them will reduce as a result of the measure, since they will not need to keep VAT records or submit a VAT return. There will also be a reduction in the workload for the tax authorities. This will have a potential positive impact on the reduction of administrative burden for taxable persons currently registered for VAT in Estonia, and subsequently on tax administration.

According to Estonia in 2016 and 2017, the percentage of persons identified for VAT purposes, with an annual turnover in the range EUR 16 001-40 000 is accounted for 18% of the total number of persons identified for VAT purposes. In 2019, this percentage was 15% of all the persons identified for VAT purposes. As of 14 September 2020, the total number of taxable persons identified for VAT purposes in Estonia is 98 160. The derogating measure thus directly affects approximately 3 000 businesses.

The budgetary impact in terms of VAT revenue for Estonia has not led to a significant impact on the national revenue budget. The reduction, as a result of the measure in VAT state revenue is EUR 15.6 million per year, which accounts for 0.6% of the total receipt of VAT. The effect is negligible.

- **Fundamental rights**

The proposal does not have any consequences for the protection of fundamental rights.

## 4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Estonia will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89[22].

[22] OJ L 155, 7.6.1989, p. 9–13.

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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[1], and in particular the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 287(8) of Directive 2006/112/EC, Estonia may exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 16 000 at the conversion rate on the day of its accession.

(2) By Council Implementing Decision (EU) 2017/563[2], Estonia was authorised to introduce a special measure derogating from Article 287 of Directive 2006/112/EC (‘the derogating measure’) to exempt from VAT taxable persons whose annual turnover is no higher than EUR 40 000. Estonia was authorised to apply the derogating measure from 1 January 2018 until 31 December 2020 or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC, whichever date is earlier.

(3) On 18 February 2020, the Council adopted Directive (EU) 2020/285[3] amending Articles 281 to 294 of Directive 2006/112/EC as regards the special scheme for small enterprises and laying down new rules for small enterprises, including the maximum threshold of Member State annual turnover of EUR 85 000 or the equivalent in national currency.

(4) By letter registered with the Commission on 9 October 2020, Estonia requested an authorisation to continue to apply the derogating measure until 31 December 2024.

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1 OJ L 347, 11.12.2006, p. 1.

2 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).

3 Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

(5) By letter dated 15 October 2020, the Commission informed the other Member States, in accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, of the request made by Estonia. By letter dated 19 October 2020, the Commission notified Estonia that it had all the information necessary to consider the request.

(6) The derogating measure is in line with the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe[4].

(7) Based on information provided by Estonia, the derogating measure will only have a negligible impact on the overall amount of tax revenue of Estonia collected at the stage of final consumption. Taxable persons may still opt for the normal VAT arrangements in accordance with Article 290 of Directive 2006/112/EC.

(8) The derogating measure will not adversely affect the Union's own resources accruing from VAT because Estonia will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89[5].

(9) Given the potential positive impact of the derogating measure in reducing the administrative burden and costs for small businesses, Estonia should be authorised to apply the derogating measure for a further period.

(10) The authorisation to apply the derogating measure should be limited in time. The time limit should be sufficient to allow the effectiveness and appropriateness of the threshold to be evaluated. Moreover, according to Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1 of that Directive, and apply those provisions from 1 January 2025. It is therefore appropriate to authorise Estonia to apply the derogating measure until 31 December 2024.

(11) Implementing Decision (EU) 2017/563 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

In Article 2 of Implementing Decision (EU) 2017/563, the second paragraph is replaced by the following:

‘This Decision shall apply from 1 January 2018 until 31 December 2024.’

4 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.

5 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).

*Article 2*

This Decision is addressed to the Republic of Estonia.

Done at Brussels,

*For the Council*
*The President*