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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Slovak Republic to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a 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 tax¹ ('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 5 November 2024, Slovakia requested an authorisation to derogate from Article 26(1), point (a), Article 168 and Article 168a of the VAT Directive in order to restrict the right to deduct the input VAT on the purchase, lease, intracommunity acquisition and importation of motor vehicles M1 category, motorcycles L1e category and motorcycles L3e category², as well as for the supply of relevant services, spare parts, accessories and fuel when they are used simultaneously for business purposes and other purposes. With the request Slovakia provided an analysis justifying the percentage of deduction applicable, which is set at fifty per cent.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 29 November 2024 of the request made by Slovakia. By letter dated 2 December 2024, the Commission notified Slovakia that it had all the information it considered necessary for appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 168 of the VAT Directive provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purpose of taxed transactions. Article 168a(1) of the VAT Directive provides that the VAT on expenditure related to immovable property forming part of the business assets of a taxable person and used both for business and non-business purposes shall be deductible only to the proportion of the property's use for purposes of the taxable person's business. Pursuant to Article 168a(2) of the VAT Directive Member States may also apply this rule in relation to expenditure related to other goods forming part of the business assets as they specify. Article 26(1)(a) of the same Directive requires the use of goods forming part of the assets of a business for private purposes to be a supply of services for consideration if the VAT on the goods was eligible for deduction. This system allows for the recovery of initially deducted VAT in relation to the private use.

In the case of passenger cars and motorcycles, this system is difficult to apply, because it is difficult to identify the split between private and business use. Where records are kept, they add an additional burden to both the business and the administration in maintaining and checking them.

Pursuant to Article 395 of the VAT Directive, Member States may apply measures derogating from the provisions of the VAT Directive to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance if they have been authorised by the Council.

¹ OJ L 347, 11.12.2006, p. 1, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>.

² Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151 14.6.2018, p. 1) and Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 060 2.3.2013, p. 52).

Slovakia has requested to be allowed to restrict the right of deduction for certain passenger cars and motorcycles which are not fully used for business purposes, and for the provision of certain goods and services related to them, to a set percentage and in turn to relieve the business from accounting for tax on the private use. The special measure would relieve taxable persons from having to treat the non-business use of such passenger cars and motorcycles as a supply of services. This has the benefit of simplifying the system for all concerned and prevents, at the same time, tax evasion or avoidance because of incorrect record keeping.

The advantages of the use of a flat rate were confirmed by an electronic questionnaire elaborated by the Slovakian Ministry of Finance. This questionnaire was distributed to businesses through business associations to obtain data on the use of vehicles that were part of the business assets for both private and business purposes. From the examined sample of respondents, 71 % of them preferred the use of a flat-rate percentage for the deduction of VAT on vehicles of mixed use, while 78 % of the respondents considered the current treatment as administrative burdensome.

Together with the data obtained from the survey, Slovakia has analysed data derived from control activities aimed at verifying the data on purchases of motor vehicles and the entitlement of input tax deduction on those vehicles, as well as data from on-spot visits and audits. From the different activities carried out the Slovakian authorities arrived at the conclusion that a fifty per cent percentage is an accurate estimate of the distribution of the use of the vehicles between private and business use.

Cars and motorcycles covered by this measure are motor vehicles from the M1 category, motorcycles from the L1e category and motorcycles from the L3e category not fully used for business purposes. The transactions covered are the purchase, intracommunity acquisition and importation of these vehicles, as well as their leasing. The limitation of the right of deduct will also apply to the abovementioned transactions when related to spare parts, accessories, services and fuelling intended for these vehicles. Nevertheless, certain types of motor vehicles and motorcycles used for certain type of activities where the non-business use is considered negligible are excluded from the scope of the derogation. This exclusion covers cars and motorcycles purchased for resale, hire or lease or used for transportation of passengers for consideration, including taxi services, the provision of driving lessons, testing purposes or as replacement of vehicles undergoing works.

Given the positive impact expected from the special measure on the administrative burden of taxpayers and tax authorities alike, it is proposed to authorise the derogating measure.

The authorisation should be valid for a limited period, until 30 June 2028, in order to allow for a review of the necessity and effectiveness of the derogating measure and the apportionment rate between business and non-business use it is based on. Any extension request should be accompanied by a report which includes a review of the percentage applied and should be sent to the Commission by 30 September 2027.

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

Similar derogations in relation to the right of deduction have been granted to other Member States (Estonia³, Italy⁴, Latvia⁵, Hungary⁶, Poland⁷, Romania⁸ and Croatia⁹).

³ Council Implementing Decision (EU) 2021/1998 of 15 November 2021 authorising Estonia to apply a measure derogating from Article 26(1), point a, and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 408, 17.11.2021, p. 3-5).

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions which were in place on 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession. There are therefore several “stand still” provisions restricting the right to deduct VAT in relation to passenger cars.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct¹⁰, such derogation is appropriate in the awaiting of a harmonisation of these rules at EU level.

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 aims pursued, i.e. to simplify the procedure for collecting the tax and to prevent certain forms of tax evasion or avoidance. In particular, given the potential for businesses to under declare their liability and the burdensome check of mileage data for tax authorities, the 50 %

⁴ Council Implementing Decision (EU) 2022/2411 of 6 December 2022 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 317, 9.12.2022, p. 120–121).

⁵ Council Implementing Decision (EU) 2021/1968 of 9 November 2021 amending Implementing Decision 2015/2429/EU authorising Latvia to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 401, 12.11.2021, p. 1-2).

⁶ Council Implementing Decision (EU) 2021/1774 of 5 October 2021 amending Implementing Decision 2018/1493 authorising Hungary to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 360, 11.10.2021, p. 108–109).

⁷ Council Implementing Decision (EU) 2022/2385 of 6 December 2022 amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 315, 7.12.2022, p. 87–88).

⁸ Council Implementing Decision (EU) 2024/1641 of 24 May 2024 authorising Romania to apply special measures derogating from Article 26(1), point (a), and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L, 2024/1641, 06.06.2024).

⁹ Council Implementing Decision (EU) 2024/2884 of 5 November 2024 amending Implementing Decision (EU) 2018/1994 authorising Croatia to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L, 2024/2884, 13.11.2024).

¹⁰ COM (2004) 728 final - Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations (OJ C 24, 29.1.2005, p.10) withdrawn on 21 May 2014 (OJ C 153 21. 05. 2014, p. 3)

restriction would simplify the VAT collection procedure and would prevent tax evasion inter alia through incorrect record keeping.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of the VAT Directive, 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**

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

- **Collection and use of expertise**

There was no need to recourse to external expertise.

- **Impact assessment**

The proposal is designed to simplify the procedure for charging tax by removing the need for taxable persons to keep records on the private use of specified passenger cars and, at the same time, prevent VAT evasion through incorrect record keeping. It has, therefore, a potential positive impact for both businesses and the tax administration.

The Slovakian tax authorities conducted an analysis on the data derived from control activities from January 2023 to May 2024. From this analysis it concluded that taxpayers applied the flat rate foreseen in the Slovakian Act on Income Tax to the VAT paid on the acquisition of passenger cars and motorcycles and related expenses, instead of determining the real use for private and business purposes of the vehicles. Even though the provision was aimed at its use only in relation to income tax, taxpayers considered that the application of this flat rate could avoid litigation with tax authorities.

Further, the tax authorities conducted audits on 255 taxpayers from 2019 to 2024. The audits were merely focused on the usage of motor vehicles and the verification was carried out on 277 motor vehicles from which 240 were passenger motor vehicles. According to the Slovak authorities, these audits proved that in many cases taxpayers were practising incorrect deductions on the input VAT related to those vehicles. The Slovak authorities also arrived at the conclusion that the use for business purposes was slightly over fifty per cent of the total use.

Finally, the Slovak authorities obtained additional data from a questionnaire that was distributed to businesses through business associations.

From the analysis of the data obtained, the Slovak authorities arrived at the conclusion that a fifty per cent flat rate constitutes a realistic proxy of the distribution of the use of the car for private and business purposes.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The proposal will 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.

5. OTHER ELEMENTS

The proposal is limited in time and includes a sunset clause set at 30 June 2028.

In case Slovakia would consider an extension of the special measure, a report including a review of the percentage limit should be submitted to the Commission together with the extension request, no later than 30 September 2027.

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Slovak Republic to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a 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 tax¹, and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Articles 168 and 168a of Directive 2006/112/EC govern taxable persons' right to deduct value added tax (VAT) charged on supplies of goods and services used by them for the purposes of their taxed transactions. Article 26(1), point (a), of that Directive contains a requirement to account for VAT when a business asset is used for private purposes of taxable persons or their staff or, more generally, for purposes other than those of their business.
- (2) By letter registered with the Commission on 5 November 2024, Slovakia requested authorisation in accordance with Article 395(2), first subparagraph, of Directive 2006/112/EC to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of that Directive to limit to 50 % the right to deduct VAT on expenditure on certain vehicles not wholly used for business purposes, and to not treat as supplies of services for consideration the use for private purposes of those vehicles included in the assets of a taxable person's business, where that vehicle has been subject to such limitation (the 'special measure').
- (3) The requested special measure covers motor vehicles, not fully used for business purposes, from the M1 category, motorcycles from the L1e category and motorcycles from the L3e category, as specified in Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles² and Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and

¹ OJ L 347, 11.12.2006, p. 1, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>.

² Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151 14.6.2018, p. 1).

market surveillance of two- or three-wheel vehicles and quadricycles³. The transactions covered are the purchase, intracommunity acquisition and importation of these vehicles, as well as their leasing. The limitation of the right to deduct VAT includes expenditure on spare parts, accessories, services and fuelling intended for these vehicles.

- (4) Certain motor vehicles should be excluded from the scope of the special measure since, due to the type of business they are used for, any non-business use thereof is considered to be negligible. Therefore, the special measure should not apply to cars and motorcycles purchased for resale, hire or lease or used for transportation of passengers for consideration, including taxi services, the provision of driving lessons, testing purposes or as replacement of vehicles undergoing works.
- (5) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request to the other Member States by letter dated 29 November 2024. By letter dated 2 December 2024, the Commission notified Slovakia that it had all the information necessary for the appraisal of the request.
- (6) Slovakia included in the request an explanation of the reasons for setting the percentage for the limitation of the right to deduct VAT to 50. Slovakia used for that purpose data obtained from control activities and audits, together with a survey conducted with businesses. According to Slovakia, the result from the analysis of this data led to set the percentage of 50 as an accurate proxy of the distribution, between private and business purposes, of the use of the vehicles to which the special measure is intended.
- (7) Slovakia submits that the special measure will have a positive impact on the administrative burden for the taxpayers and tax authorities by simplifying VAT collection and preventing tax evasion through incorrect record keeping. For these reasons, the Commission considers it to be appropriate to authorise Slovakia to apply the special measure until 30 June 2028.
- (8) The special measure should be limited to the time needed to evaluate its effectiveness and the appropriateness of the percentage rate applied.
- (9) The special measure is proportionate to the objectives pursued, namely, to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance, since it is limited in time and scope. In addition, the special measure does not give rise to a risk that fraud would shift to other sectors or to other Member States.
- (10) If Slovakia considers an extension of the special measure beyond 30 June 2028 to be necessary, it should submit a request for such an extension to the Commission by 30 September 2027. That request should be accompanied by a report on the application of the special measure, including a review of the percentage applied.
- (11) According to information provided by Slovakia, the special measure will have only negligible effect on the overall amount of tax revenue Slovakia collects at the stage of final consumption, and it will have no adverse impact on the Union's own resources accruing from VAT,

³ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 060 2.3.2013, p. 52).

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 168 and 168a of Directive 2006/112/EC, the Slovak Republic is authorised to limit to 50 % the right to deduct value added tax (VAT) on expenditure on the following categories of vehicles, not wholly used for business purposes:

- (a) motor vehicles from the M1 category, specified in Article 4(1)(a)(i) of Regulation (EU) 2018/858;
- (b) motorcycles from the L1e category, specified in Article 4(2)(a) of Regulation (EU) 168/2013;
- (c) motorcycles from the L3e category, specified in Article 4(2)(c) of Regulation (EU) No 168/2013.

The first paragraph shall not apply to vehicles used or purchased for the following:

- (a) resale, hire or lease;
- (b) transportation of passengers for consideration, including taxi services;
- (c) the provision of driving lessons;
- (d) testing purposes;
- (e) as replacement of vehicles undergoing works.

Article 2

By way of derogation from Article 26(1), point (a) of Directive 2006/112/EC, the Slovak Republic shall not treat the use for non-business purposes of a vehicle referred to in Article 1, first paragraph, included in the assets of a taxable person's business, as supplies of services for consideration, where that vehicle has been subject to a limit authorised under Article 1 of this Decision.

Article 3

The expenditure referred to in Article 1 shall cover all of the following:

- (1) purchase, leasing, intra-Community acquisition and importation of vehicles referred to in Article 1, first paragraph;
- (2) expenditure on supplies of goods or services performed in relation to those vehicles and their use, including the purchase of fuel.

Article 4

- 1. This Decision shall take effect on the day of its notification.
This Decision shall apply from 1 July 2025. It shall expire on 30 June 2028.
- 2. Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 30 September 2027 and accompanied by a report which includes a review of the percentage set out in Article 1.

Article 5

This Decision is addressed to the Slovak Republic.

Done at Brussels,

*For the Council
The President*