COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.10.2009
COM(2009) 522 final

Proposal for a

COUNCIL DECISION

authorising the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to apply a measure derogating from Article 167 of Council Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive') provides that the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce 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.

The Kingdom of Sweden (hereinafter 'Sweden') and the United Kingdom of Great Britain and Northern Ireland (hereinafter 'the United Kingdom') were authorised by Council Decision 2007/133/EC of 30 January 2007 (OJ L 57 of 24.2.2007, p. 12) to introduce a special measure derogating from Article 167 of the VAT Directive until 31 December 2009.

This authorisation enables them to postpone the right of deduction of VAT until it has been paid to the supplier in respect of taxable persons with an annual turnover which does not exceed SEK 3 000 000 for Sweden and GBP 1 350 000 for the United Kingdom, allowing them to benefit from an optional scheme (cash accounting), according to which, pursuant to Article 66(b) of the VAT Directive, the VAT on their output transactions becomes chargeable when they have received the payment .

By letter registered by the Secretariat-General of the Commission on 3 March 2009, Sweden requested an extension of this measure. By letter registered by the Secretariat-General of the Commission on 15 January 2009, the United Kingdom requested an extension of this measure and that the ceiling for the annual turnover for the scheme be increased to GBP 1 500 000. The United Kingdom stated that the increase would make it possible to maintain the link with the threshold of EUR 2 000 000 for microenterprises, in view of the current exchange rate between sterling and the Euro, and would result in opening up the scheme to a further 6 800 undertakings.

In accordance with Article 395(2) of the VAT Directive, by letters of 9 July 2009 the Commission informed the other Member States of the request made by Sweden and the United Kingdom and, by letters of 13 July 2009 notified Sweden and the United Kingdom that it had all the information it considered necessary for appraisal of the request.

The cash accounting scheme is a simplified optional tax scheme intended for small undertakings which do not qualify for tax exemption. It enables such taxable persons to apply a simple rule based on the date of payment for their input and output transactions, to determine at what point they must exercise their right to deduct VAT and pay the tax to the revenue authorities. It is thus a simplification measure in particular for those undertakings experiencing difficulty in determining, under the normal rules, the date of chargeability for their input and output transactions, and for those which do not maintain an accrual basis of accounting. Furthermore, this scheme creates a cash-flow advantage in particular for those undertakings whose

expenditure is mainly not liable to VAT, such as salaries, or for those who are subject to large delays in payment by their customers which they cannot impose on their suppliers.

The Commission, in its proposal of 28 January 2009 for a directive amending Directive 2006/112/EC as regards the rules on invoicing (COM(2009) 21 final), included provisions enabling Member States to postpone the right to deduct VAT arising until it has been paid to the supplier in respect of taxable persons with an annual turnover not exceeding a ceiling, which could be fixed by Member States at up to EUR 2 000 000 (i.e. the threshold for microenterprises according to Commission Recommendation 2003/361/EC of 6 May 2003, OJ L 124 of 20.5.2003, p.36), and accordingly entitled to use an optional scheme under which the VAT to which their output transactions is liable does not become chargeable until they have received the payment.

Bearing in mind the provisions of Article 395 of the VAT Directive and the arguments put forward by Sweden and the United Kingdom, the Commission believes that the derogation requested meets the conditions laid down in that Article, and, in particular, as part of the optional cash accounting scheme, that it simplifies the procedure for levying the tax for microenterprises. Consequently, and also bearing in mind the background information set out above, the Commission has no objection to this request and therefore believes it must present the corresponding proposal to the Council. In particular, the annual turnover ceilings for the scheme, once the conversion rules under Articles 399 and 400 of the VAT Directive are applied, are below that which it proposed.

The Commission is of the opinion, however, that the period of application of this derogation should be limited in order to assess regularly, based in particular on the relevant information provided by those Member States, whether the legal and factual grounds for applying it today continue to obtain. It also believes that this derogation should in any case cease to apply once the harmonised rules proposed by the Commission for this special scheme enter into force.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

The proposed decision makes it possible to maintain an optional cash accounting scheme which aims to simplify the application of the VAT rules by microenterprises while improving their cash-flow situation. It will therefore have a positive impact on those undertakings. There was no need to consult external experts or interested parties nor to assess the impact of this decision. The impact will in any case be limited because of the narrow scope and limited period of application of the derogation.

3. LEGAL ELEMENTS OF THE PROPOSAL

The purpose of the proposed decision is to allow Sweden and the United Kingdom to continue to derogate from Article 167 of the VAT Directive and thus postpone the right to deduct VAT arising until the latter has been paid to the supplier in respect of taxable persons with an annual turnover which does not exceed SEK 3 000 000 for

Sweden and GBP 1 500 000 for the United Kingdom, and which therefore qualify for an optional scheme (cash accounting), according to which, pursuant to Article 66(b) of the VAT Directive, the VAT on their output transactions becomes chargeable when they have received the payment.

The legal basis of this decision is Article 395 of the VAT Directive, which was adopted pursuant to Article 93 of the Treaty establishing the European Community. Under this Article, a Member State wishing to apply special measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Since it is an implementing measure involving the harmonisation of legislation on turnover taxes, the principle of subsidiarity has been adhered to.

The proposal complies with the principle of proportionality and therefore does not go beyond what is necessary to achieve the objective of simplification, because it involves only a small number of taxable persons which, moreover, can opt for this scheme or otherwise. Accordingly, it derogates from the principles of the VAT Directive only to a limited and appropriate extent.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

The proposal provides that the period of application of the decision is to expire automatically on the date of entry into force of provisions establishing harmonised rules enabling all the Member States to apply the special derogating measure sought.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT)[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) The Kingdom of Sweden (hereinafter 'Sweden') and the United Kingdom of Great Britain and Northern Ireland (hereinafter 'the United Kingdom') were authorised, by Council Decision 2007/133/EC,[3] by derogation from Article 167 of Directive 2006/112/EC, to postpone the right of deduction of value added tax (VAT) until it has been paid to the supplier of goods or of services, in respect of taxable persons using an optional cash accounting scheme under which, in accordance with Article 66(b) of that Directive, VAT on their supplies of goods and of services becomes chargeable on receipt of the payment. In order to qualify for this scheme, their annual turnover must not exceed SEK 3 000 000 for Sweden and GBP 1 350 000 for the United Kingdom.

(2) Sweden and the United Kingdom have requested authorisation to extend this special derogating measure by letters registered by the Commission's Secretariat-General on 3 March 2009 for Sweden and on 15 January 2009 for the United Kingdom. The latter Member State has also asked that the ceiling for the annual turnover for the scheme be raised to GBP 1 500 000.

(3) In accordance with Article 395(2) of Directive 2006/112/EC, by letters of 9 July 2009 the Commission informed the other Member States of the request made by Sweden and the United Kingdom and, by letters of 13 July 2009 notified Sweden and the United Kingdom that it had all the information it considered necessary for appraisal of the request.

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1 OJ L 347, 11.12.2006, p. 1.
2 OJ C , p. .
3 OJ L 57, 24.2.2007, p. 12.

(4) The cash accounting scheme is a simplified optional scheme intended for small undertakings which do not qualify for tax exemption. It enables such taxable persons to apply a simple rule based on the date of payment for their input and output transactions, to determine at what point they must exercise their right to deduct VAT and pay the tax to the revenue authorities. This scheme thus constitutes for those taxable persons a simplification measure which can, furthermore, create a cash-flow advantage for them.

(5) On 28 January 2009, the Commission proposed a directive (COM(2009) 21 final) amending Directive 2006/112/EC as regards the rules on invoicing and enabling the Member States to postpone the right to deduct VAT arising until it has been paid to the supplier in respect of taxable persons with an annual turnover not exceeding a ceiling, which could be fixed by Member States at up to EUR 2 000 000, and accordingly entitled to use an optional scheme under which the VAT to which their transactions are liable does not become chargeable until they have received the payment.

(6) The special derogating measure does not affect the amount of VAT revenue collected by Sweden or the United Kingdom at the final consumption stage and has no impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 167 of Directive 2006/112/EC, Sweden and the United Kingdom are authorised to postpone the right of deduction of the value added tax of the taxable persons, as defined in the second paragraph, until it has been paid to their suppliers.

The taxable persons concerned must have opted for a scheme under which the value added tax on their supplies of goods and of services becomes chargeable on receipt of the payment. Under the scheme, their annual turnover must not exceed SEK 3 000 000 for Sweden and GBP 1 500 000 for the United Kingdom.

Article 2

This Decision shall apply from 1 January 2010 until the date of entry into force of the provisions of a directive authorising the Member States to postpone the right of deduction of value added tax arising until it has been paid to the supplier in respect of taxable persons whose annual turnover does not exceed a certain ceiling and who therefore benefit from an optional scheme according to which the tax on their supplies of goods and of services becomes chargeable when they have received the payment. In any event, this Decision shall apply until 31 December 2012 at the latest.

Article 3

This Decision is addressed to the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

For the Council
The President