COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.11.2009
COM(2009)641 final

Proposal for a

COUNCIL DECISION

authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 of Council Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. BACKGROUND TO 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 Portuguese Republic ('Portugal') was authorised by Council Decision 2004/738/EC to apply until 31 December 2009 a special optional scheme for doorstep sales whereby, firstly, by way of derogation from Article 21(1)(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, any firm operating in this sector which has been authorised to apply this scheme will be liable for the VAT payable on goods supplied by its resellers to final consumers. Secondly, by way of derogation from Article 22 of the Directive, the resellers will be exempt from the obligations laid down in that Article for those supplies. In order to obtain such an authorisation, the firm must derive its entire turnover from doorstep sales by resellers working in their own name and on their own account. Moreover, all products sold by the firm must appear in a pre-established list of the prices applicable at the final consumption stage, and the firm must sell its products direct to resellers who, in turn, sell direct to final consumers.

By letter registered by the Secretariat-General of the Commission on 30 June 2009, Portugal requested an extension of this special scheme for derogating from Articles 193 and 250 of the VAT Directive and, by additional letter registered by the Secretariat-General of the Commission on 9 September 2009, requested that resellers, by way of derogation from Article 168 of the VAT Directive, should not be allowed to deduct the VAT payable on the goods covered by the measure.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States of Portugal's request, by letter of 27 October 2009. By letter of 29 October 2009, the Commission notified Portugal that it had all the information it considered necessary for appraisal of the request.

In support of its request for an extension, Portugal stated that the provisions of the VAT Directive imposed a liability for VAT on taxable persons who do not have an adequate structure for fulfilling the various obligations connected with its application and who conduct their business under special conditions that have the effect of significantly increasing the risks of fraud. They include taxable persons working on their own account who engage in direct doorstep sales to their clients of products supplied by firms that have chosen this specific channel for promoting and selling their goods. Portugal considers it necessary to maintain the above measures in order to simplify the collection of VAT from taxable persons operating in this sector and to ensure more effective control.

Portugal states that these measures do not affect the amount of VAT revenue collected at the stage of final consumption and do not, therefore, have any effect on the European Communities' own resources obtained from VAT.

The special optional scheme which is the subject of this request has the effect of exempting resellers from the obligation to submit a VAT return and pay VAT on supplies to final consumers of goods which they have received from the authorised firm. This simplifies the practicalities of collecting VAT, to the benefit of these taxable persons. By making the authorised firm liable for VAT instead of the numerous travelling salesmen, and by making it therefore responsible for fulfilling the corresponding requirement to submit a VAT return and pay the tax, this scheme also ensures that the VAT collected at the retail stage on the sale of goods coming from the authorised firm is actually paid to the Treasury, thus preventing tax fraud. It also simplifies the practicalities of collecting VAT, to the benefit of the administration.

In so far as the resellers who obtain their supplies from an authorised firm are exempt from the obligation to submit a VAT return and pay the VAT payable on the supply to final consumers of the goods they have received from that firm, it is legitimate, in the interests of simplification, that they should not exercise their right to deduct VAT on these purchases of goods and that they should also be exempt from the requirement to submit the VAT return required for determining the amount to be deducted. Consequently this right should instead be exercised by the authorised firm, which will then take responsibility for complying with the corresponding obligation to submit a VAT return. This measure does not affect any right to deduct VAT which the resellers might have for other purchases of goods and services, which will be exercised according to the ordinary rules.

Bearing in mind the provisions of Article 395 of the VAT Directive and the arguments put forward by Portugal, the Commission believes that the derogation requested meets the conditions laid down in that Article and, in particular, that it simplifies the procedure for collecting the tax and helps to prevent tax fraud, without affecting the amount of tax revenue collected at the stage of final consumption. Consequently, the Commission has no objection to this request and therefore believes it must present the corresponding proposal to the Council.

The Commission is of the opinion, however, that the period of application of this derogation should be limited so that a regular assessment may be made, based on the relevant information provided by Portugal, of whether the grounds that justify the measure today continue to obtain.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

The proposal for a decision is intended to extend the application of a measure to simplify the collection of VAT and prevent tax fraud in a specific, limited economic sector. It would therefore have a positive impact, particularly on the taxable persons operating in that sector and the Member State in question. There was no need to consult external experts or interested parties or 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 Portugal to apply a special measure derogating from Articles 168, 193 and 250 of the VAT Directive in order to maintain and amend a special, optional scheme in the doorstep sales sector, whereby firms that satisfy certain conditions and are authorised to apply the scheme will, firstly, by way of derogation from Article 193 of the Directive, be made liable for VAT on the supplies of goods to final consumers by their resellers, and secondly, by way of derogation from Article 168 of the Directive, be given the right to deduct the tax payable or paid by their resellers for the corresponding goods that have been supplied to them. Finally, the system is intended, by way of derogation from Article 250 of the Directive, to exempt resellers from the obligation to submit a VAT return, laid down in that Article, in respect of the goods which the authorised firm has supplied to them and the supply of the same goods to the final consumers, and consequently to transfer that obligation to the firm in question.

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 and prevention of tax fraud, because it involves only a specific, limited economic sector and a small number of taxable persons for whom, moreover, adoption of this scheme is optional. 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 for the period of application of the decision to expire on 31 December 2012.

Proposal for a

COUNCIL DECISION

authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 of Council Directive 2006/112/EC on the common system of value added tax

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 Portuguese Republic ('Portugal') was authorised by Council Decision 2004/738/EC[3] to apply until 31 December 2009 a special optional scheme for the taxation of doorstep sales, whereby, firstly, by way of derogation from Article 21(1)(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment[4], any firm operating in this sector which has been authorised to apply this scheme will be liable for the VAT payable on goods supplied by its resellers to final consumers. Secondly, by way of derogation from Article 22 of the Directive, the resellers will be exempt from the obligations laid down in that Article for those goods supplied. In order to obtain such an authorisation, the firm must derive its entire turnover from doorstep sales by resellers working in their own name and on their own account. Moreover, all products sold by the firm must appear in a pre-established list of the prices applicable at the final consumption stage and the firm must sell its products direct to resellers who, in turn, sell direct to final consumers.

(2) By letter registered by the Secretariat-General of the Commission on 30 June 2009, Portugal requested an extension of this special scheme for derogating from Articles 193 and 250 of Directive 2006/112/EC and, by additional letter registered by the Secretariat-General of the Commission on 9 September 2009, requested that resellers, by way of derogation from Article 168 of Directive 2006/112/EC, should not be allowed to deduct the VAT payable on the goods covered by the measure.

---

1 OJ L 347, 11.12.2006, p. 1.
2 OJ C , p. .
3 OJ L 325, 28.10.2004, p. 62.
4 OJ L 145, 13.6.1977, p. 1. Directive repealed by Directive 2006/112/EC.

(3) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of Portugal's request, by letter of 27 October 2009. By letter of 29 October 2009, the Commission notified Portugal that it had all the information it considered necessary for appraisal of the request.

(4) This special scheme has the effect of conferring on duly authorised firms, rather than numerous travelling salesmen, the right to deduct VAT payable or paid by these resellers on the goods these firms have supplied to them, and making the firms liable for the VAT payable on the supply of these goods to the final consumers by the resellers. These authorised firms are also responsible for fulfilling the corresponding obligations to submit a VAT return and pay VAT, from which their resellers are exempt.

(5) This scheme therefore ensures that the VAT collected at the retail sale stage on sales of products coming from these firms is actually paid to the Treasury, thereby helping to prevent tax fraud. It also benefits the administration by simplifying the arrangements for collecting VAT and reduces the resellers' obligations in relation to VAT.

(6) The derogation will not alter the amount of VAT collected at the stage of final consumption and will not have a negative effect on the European Communities' own resources obtained from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Portugal is hereby authorised to apply a special scheme for the taxation of doorstep sales that contains provisions derogating from Directive 2006/112/EC.

Firms whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account may request authorisation from the administration to apply the special scheme provided the following conditions are met:

(a) all products sold by the firm appear in a pre-established list of the prices applicable at the final consumption stage;

(b) the firm sells its products direct to resellers who, in turn, sell direct to final consumers.

Article 2

The firms authorised to apply this special scheme shall be entitled, by way of derogation from Article 168 of Directive 2006/112/EC, to deduct the VAT payable or paid by their resellers for the goods which they have supplied to them and shall be liable, by way of derogation from Article 193 of the said Directive, to the VAT payable on the supply of these goods to the final consumers by their resellers.

Article 3

The resellers who obtain their supplies from a firm authorised to apply this special scheme shall be exempt from the obligation to submit a VAT return, set out in Article 250 of Directive 2006/112/EC, in relation to the goods which they have received from that firm and the supply of those goods to final consumers. That obligation shall be fulfilled by the authorised firm.

Article 4

This Decision shall apply from 1 January 2010 until 31 December 2012.

Article 5

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

For the Council
The President