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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

in accordance with Article 395 of Council Directive 2006/112/EC

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1. BACKGROUND

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the VAT Directive), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. As this procedure provides for derogations from the general principles of VAT, in accordance with the consistent rulings from the European Court of Justice, such derogations should be proportionate and limited in scope.

By letter registered at the Commission on 14 January 2014, Estonia requested on the basis of Article 395 of the VAT Directive to be authorised to apply the reverse charge mechanism to supplies of precious stones with the aim of preventing tax fraud. However, since not enough information was provided regarding the fraud situation in the sector, the Commission sent a letter on 13 March 2014 requesting additional information in this respect. By letter registered at the Commission on 7 May 2014, Estonia provided further information in reply to this request.

In accordance with the second paragraph of Article 395 of that Directive, the Commission informed the other Member States by letter dated 10 June 2014 of the request made by Estonia. By letter dated 12 June 2014, the Commission notified Estonia that it had all the information it considered necessary for appraisal of the request.

2. REVERSE CHARGE

The person liable for the payment of VAT pursuant to Article 193 of the VAT Directive is the taxable person supplying the goods or services. The purpose of the reverse charge mechanism is to shift that liability onto the taxable person to whom the supplies are made.

Missing trader fraud occurs when traders evade paying VAT to the tax authorities after selling their products. Their customers, however, are entitled to a tax deduction as they are in possession of a valid invoice. In the most aggressive cases of such tax evasion the same goods or services are, via a "carousel" scheme (which involves the goods or services being traded between Member States) supplied several times without payment of VAT to the tax authorities. By designating the person to whom the goods or services are supplied as the person liable for the payment of VAT in such cases, the reverse charge mechanism has been found to eliminate the opportunity to engage in that form of tax evasion.

3. THE REQUEST

Estonia requests, under Article 395 of the VAT Directive, that the Council, acting upon a proposal of the Commission, would authorise the application of a special

measure derogating from Article 193 of the VAT Directive as regards the application of the reverse charge mechanism in relation to supplies of precious stones.

On the basis of information provided by Estonia, it appears that it is envisaged to apply the reverse charge mechanism to supplies of precious metals from 1 July 2014 on the basis of Article 199a(1)(j) of the VAT Directive, as inserted by the 'Reverse Charge Directive'[1]. The application of this mechanism to precious stones, which is not foreseen in the VAT Directive, is expected by the Estonian authorities to complement this measure.

4. THE COMMISSION'S VIEW

When the Commission receives requests in accordance with Article 395, these are examined to ensure that the basic conditions for their granting are fulfilled i.e. whether the proposed specific measure simplifies procedures for taxable persons and/or the tax administration or whether the proposal prevents certain types of tax evasion or avoidance. In this context, the Commission has always taken a limited, cautious approach to ensure that derogations do not undermine the operation of the general VAT system, are limited in scope, necessary and proportionate.

The requested measure is essentially linked to the fact that, as mentioned, the reverse charge mechanism will be applied to precious metals as from 1 July 2014. As the reverse charge mechanism always entails a certain risk that the fraud is shifted towards other products, Estonia would want a similar measure for precious stones as traders in precious metals and precious stones often seem to be the same.

At this stage, however, Estonia was not yet in a position to provide precise information about the (possible) fraud situation regarding precious stones as checks are currently still being carried out. These checks started in the second half of 2013 but no information is available for previous years. From what is available, it appears that Estonia has detected one so-called carousel scheme for precious stones involving another Member State. As regards the number of transactions involving precious stones, Estonia reported that they vary between three and nine per month between July 2013 and January 2014, but with an increasing value.

As to possible conventional measures to tackle the problem in the sector, Estonia did not demonstrate that particular measures had been applied, implemented or even foreseen for the near future. It was only stated that, after the application period of the requested derogation, it would be possible to control the sector via normal control procedures, such as routine inspections and auditing.

On the basis of these elements, it is the Commission's view that the need for a derogation in this field has not been established. In fact, the very limited number of transactions carried out by only a few taxable persons, often already known and identified for their activities in the sector of precious metals, should in principle allow for an adequate follow-up and control of the sector via conventional measures, as was foreseen after the application period of the requested derogation. At the same time, and although reference was made to one particular fraud case, it was not

[1] As inserted by Council Directive 2013/43/EU of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (OJ L 201, 26.7.2013, p. 4)

demonstrated that the overall existing or potential fraud situation would require a specific derogating measure in the meantime.

5. CONCLUSION

On the basis of the above-mentioned elements, the Commission objects to the request made by Estonia.