



Brussels, 16.11.2012
COM(2012) 667 final

2012/0316 (NLE)

Proposal for a

COUNCIL DECISION

**authorising Slovenia to apply a special measure derogating from Article 287 of Directive
2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC¹ of 28 November 2006 on the common system of value added tax, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating from the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

By letter registered with the Commission on 30 July 2012, Slovenia requested an authorisation to apply a measure derogating from Article 287 of Directive 2006/112/EC, allowing Slovenia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000.

In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 18 September 2012 of the request made by Slovenia. The Commission notified Slovenia by letter dated 19 September 2012 that it had all the information necessary to consider the request.

General context

Chapter 1 of Title XII of Directive 2006/112/EC allows for the possibility of 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 cannot deduct the VAT on his inputs.

Under Article 287 of Directive 2006/112/EC, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision. As regards Slovenia, this threshold is established at an amount of EUR 25 000 pursuant to point 15 of Article 287 of Directive 2006/112/EC.

In the current economic and political climate, Slovenia would like to raise this threshold to EUR 50 000. The introduction of such a threshold will simplify the VAT system for small enterprises by significantly reducing the burdens on those businesses eligible for the scheme by releasing them from many of the VAT obligations under the normal VAT arrangements. The system would be optional for taxable persons. According to the Slovenian authorities, the special measure pursued would only have a negligible effect on the overall amount of VAT revenue of Slovenia collected at the stage of final consumption (not more than 0.3%).

¹ OJ 347, 11.12.2006, p.1.

Existing provisions in the area of the proposal

In 2004, the Commission made a proposal to - inter alia - increase the annual turnover threshold available to Member States (COM(2004) 728 final²) for the exemption from VAT of taxable persons to EUR 100 000.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposal for a Council Decision aims at introducing a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 50 000 and therefore has a potential positive impact.

Because of the narrow scope of the derogation, and its limited application in time, the impact will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal aims to authorise Slovenia to introduce a simplification measure derogating from Article 287 of Directive 2006/112/EC so as to allow for the exemption from VAT of taxable persons with an annual turnover no higher than EUR 50 000.

Legal basis

Article 395(1) of Council Directive 2006/112/EC.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0728:FIN:EN:PDF>

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

This Decision concerns an authorisation granted to a Member State on its own request and does not constitute any obligation.

Given the narrow scope of the derogation, the special measure is proportionate to the aim pursued.

Choice of instruments

Proposed instrument: Council Decision.

Other means would not be adequate for the following reasons:

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT rules is only possible upon authorization of the Council acting unanimously on a proposal from the Commission. A Council Decision is the most suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal will not adversely affect the Union's own resources from VAT because Slovenia will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, EURATOM) 1553/89.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

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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 tax³, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 30 July 2012, Slovenia requested authorisation to apply a measure derogating from Article 287 of Directive 2006/112/EC, allowing Slovenia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Slovenia by letter dated 18 September 2012. By letter dated 19 September 2012, the Commission notified Slovenia that it had all the information necessary to consider the request.
- (3) Under Article 287 of Directive 2006/112/EC, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision. Slovenia has requested that its corresponding threshold, which is established at EUR 25 000 pursuant to point 15 of Article 287, be increased to EUR 50 000.
- (4) A higher threshold for the special scheme for small enterprises is a simplification measure as it may significantly reduce the VAT obligations of small businesses. The special scheme is optional for taxable persons.
- (5) In its proposal for a Directive simplifying value added tax obligations of 29 October 2004⁴, the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or

³ OJ 347, 11.12.2006, p.1.

⁴ COM(2004) 728 final.

the equivalent in national currency, with the possibility of updating this amount each year. The request submitted by Slovenia is in line with that proposal.

- (6) The derogation will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from paragraph 15 of Article 287 of Directive 2006/112/EC, Slovenia is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000.

Article 2

This Decision shall apply until the date of entry into force of Union rules amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2015, whichever date is earlier.

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels,

*For the Council
The President*