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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 September 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 398 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION 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

Delegations will find attached document COM(2024) 398 final.

Encl.: COM(2024) 398 final

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Brussels, 9.9.2024
COM(2024) 398 final

2024/0221 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] ('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 3 April 2024, Croatia requested an extension of the derogation from Article 26(1), point (a), Article 168 and Article 168a of the VAT Directive in order to continue to restrict the right to deduct the input VAT on the purchase and lease of passenger cars, including the purchase of all goods and services supplied in relation thereto. Together with the request for extension, Croatia submitted a report including a review of the percentage foreseen for the limitation of the right of deduction.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 14 May 2024 of the request made by Croatia. By letter dated 15 May 2024, the Commission notified Croatia 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, this system is difficult to apply, in particular 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.

Croatia is currently authorised by Council Implementing Decision 2018/1994[2] to restrict to 50 % the right of deduction of VAT paid on the purchase and leasing of specified passenger cars, including the purchase of all goods and services supplied in relation thereto, when those cars are not wholly used for business purposes. The special measure also relieves taxable persons

[1] OJ L 347, 11.12.2006, p. 1.

[2] Council Implementing Decision (EU) 2018/1994 of 11 December 2018 authorising Croatia to introduce a special measure 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 320, 17.12.2018, p. 35-36.

from having to treat the non-business use of such passenger cars as a supply of services. Passenger cars covered by this measure are motor vehicles intended for the transport of persons with a maximum of eight seats in addition to the driver's seat. If passenger cars are used for certain specific activities, they are excluded from the restriction to the right to deduct and are treated under the normal rules. This applies to vehicles used for the training of drivers, vehicle testing, repair services, an economic activity involving the transport of passengers and goods, the transport of deceased or rent, as well as to vehicles purchased for the purpose of resale. This authorisation is set to expire on 31 December 2024 following its prolongation, approved by Council Implementing Decision (EU) 2021/1997 of 15 November 2021[3].

The present request by Croatia to prolong further the special measure is based on the same grounds as those presented in the previous request. The request is accompanied by a report including a review of the percentage limitation applied on the right of deduction, as required by Article 6 of Council Implementing Decision 2018/1994/EU. Croatia considers that the conditions for the application of the special measure continue to apply and that the currently applied 50 % input VAT deduction limit continues to be the most appropriate.

Croatia explained that, based on data provided by both taxable persons and tax administrations, passenger cars forming part of business assets keep being used for private purposes at an average of 50 %. In this regard, Croatia submitted two surveys carried out in the beginning of 2024 on the use of passenger cars used for business and private use, indicating that setting the percentage of the right to deduction of input tax at 50 % still appears realistic.

Given the positive impact of the special measure on the administrative burden of taxpayers and tax authorities alike, it is proposed to authorise the extension of the current derogation measure. The authorisation should be valid for another limited period, i.e. until 31 December 2027, 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 31 March 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 (Estonia[4], Italy[5], Latvia[6], Hungary[7], Poland[8] and Romania[9]).

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3 OJ L 408, 17.11.2021, p. 1-2.

4 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).

5 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).

6 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).

7 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).

8 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

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. There are therefore a number of "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 deduct[10], 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 aim 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 % 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

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(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).

9 Council Implementing Decision (EU) 2020/1262 of 4 September 2020 amending Implementing Decision 2012/232/EU authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 296, 10.09.2020, p. 6-7).

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)

made by Croatia 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 Croatian Chamber of Economy conducted at the beginning of 2024 a survey to determine if the percentage of 50% was still relevant. A questionnaire was sent to 7,389 business entities, and 585 replies were received. Further, an independent company, Promocija plus Ltd., carried out in 2024 a survey on the use of cars for business and private purposes on a sample of 600 subjects, who use an official car in their household. Based on the analysis carried out on the results of both surveys, Croatia concludes that, in the case of mixed use of a car, the use for business purposes remains at the average of 50%. Therefore, the percentage of the right to deduction of input tax in the amount of 50% remains realistic and grounded on performed analyses.

While the limitation of 50% on the right of deduction of input tax on purchase and lease of passenger cars, including the purchase of all goods and services supplied in relation thereto reduced the VAT state budget revenue in the average annual amount of HRK 410 million, approximately EUR 54.4 million, the increase in the price of cars have led to an increase in the VAT collected from passenger cars and its components. Therefore, the measure has not led to a significant impact on the state budget, while reducing the administrative burden derived from the measures necessary to control the correct application of the deduction of the input VAT for both taxable persons and tax administration.

The solution has been identified by Croatia as a suitable measure and is comparable to other past and present derogations.

- **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 31 December 2027.

In case Croatia would consider another extension of the special measure beyond 2027, a report including a review of the percentage limit should be submitted to the Commission together with the extension request, no later than 31 March 2027.

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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 tax[1], 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 establish taxable persons' right to deduct value added tax (VAT) charged on supplies of goods and services received 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 put to use for private purposes of taxable persons or their staff or, more generally, for purposes other than those of their business.

(2) Council Implementing Decision (EU) 2018/1994[2] authorises Croatia to limit to 50 % the right to deduct VAT paid on the purchase and leasing of specified passenger cars with a maximum of eight seats in addition to the driver's seat, including the purchase of all goods and services supplied in relation thereto, when those cars are not wholly used for business purposes. The authorisation also relieves taxable persons from having to treat the non-business use of such passenger cars as a supply of services for consideration. Implementing Decision (EU) 2018/1994 is due to expire on 31 December 2024.

(3) By letter registered with the Commission on 3 April 2024, Croatia requested an authorisation to continue to apply the derogation from Article 26(1), point (a), and Articles 168 and 168a, of Directive 2006/112/EC in order to restrict the right of deduction in relation to expenditure related to certain passenger cars not wholly used for business purposes ('the special measure').

(4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission, by letter dated 14 May 2024, transmitted the request made by Croatia to the other Member States. By letter dated 15 May 2024, the Commission notified

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

[2] Council Implementing Decision (EU) 2018/1994 of 11 December 2018 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 320, 17.12.2018, p. 35, ELI: http://data.europa.eu/eli/dec_impl/2018/1994/oj).

Croatia that it had all the information it considered necessary for appraisal of the request.

(5) In accordance with Article 6, second paragraph, of Implementing Decision (EU) 2018/1994, Croatia submitted a report including the review of the percentage laid down for the limitation of the right of deduction. Based on currently available information, Croatia confirmed that the limit of 50 % is still justifiable and remains appropriate.

(6) Given the positive impact of the special measure on the administrative burden of taxpayers and tax authorities alike by simplifying VAT collection and preventing tax evasion through incorrect record keeping, Croatia should be authorised to continue to apply the special measure. The extension of the special measure should be limited in time, until 31 December 2027, to allow for an evaluation of its effectiveness and of the appropriate percentage.

(7) In the event that Croatia considers that an extension of the special measure is necessary in addition to the one provided for under this Decision, it should submit the request for an extension, accompanied by a report that includes a review of the percentage applied, to the Commission by 31 March 2027.

(8) The special measure 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.

(9) Implementing Decision (EU) 2018/1994 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 6 of Implementing Decision (EU) 2018/1994 is replaced by the following:

'*Article 6*

This Decision shall apply from 1 January 2019 until 31 December 2027.

Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2027 and shall be accompanied by a report that includes a review of the percentage set out in Article 1.'.

Article 2

This Decision is addressed to the Republic of Croatia.

Done at Brussels,

For the Council
The President