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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Estonia to apply a special 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

Delegations will find attached document COM(2025) 29 final.

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2025/0014 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Estonia to apply a special 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

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive[1]'), the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to apply special measures that derogate 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 28 March 2024, Estonia requested an authorisation to continue to apply a measure derogating from the overall principles governing the right of deduction of input VAT in relation to expenditure connected with passenger cars not wholly used for business purposes (the "special measure"). The Commission requested more information on 3 April 2024. Estonia replied on 28 June 2024. The Commission requested again additional clarification on 28 August 2024, which Estonia provided in a reply registered with the Commission on 24 September 2024.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 17 October 2024 of the request made by Estonia. By letter dated 18 October 2024, the Commission notified Estonia 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

Articles 168 and 168a of the VAT Directive provide that a taxable person is entitled to deduct the VAT charged on purchases made for the purpose of taxed transactions. 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 administrative burden to both the business and the administration in maintaining and checking them. Moreover, incorrect records keeping can lead to tax evasion or avoidance.

Pursuant to Article 395 of the VAT Directive, Member States may apply special 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.

Estonia was authorised to apply such a special measure by Council Implementing Decision 2014/797/EU[2]. The validity of Council Implementing Decision 2014/797/EU was extended by Council Implementing Decision 2017/1854/EU[3] until 31 December 2020. The special

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

[2] Council Implementing Decision 2014/797/EU of 7 November 2014 authorising the Republic of Estonia to apply a 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 330, 15.11.2014, p. 48).

[3] Council Implementing Decision (EU) 2017/1854 of 10 October 2017 amending Implementing Decision 2014/797/EU authorising the Republic of Estonia to apply a measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EU on the common system of value added tax (OJ L 265, 14.10.2017, p. 17).

measure was then granted again in 2021 by Council Implementing Decision (EU) 2021/1998 of 15 November 2021[4] and is valid until 31 December 2024.

Estonia has requested to continue to apply the special measure after 31 December 2024 and informed the Commission that the grounds for granting the special measure are the same as set out in the original request that led to the Council Implementing Decision 2014/797/EU. Estonia presented data suggesting that, from the moment of the implementation of the derogation under Council Implementing Decision 2014/797/EU, the vast majority of company cars continued to be used for private purposes, confirming that the derogation is justified. Estonia also indicated that limiting the deduction of input VAT simplifies the calculation of VAT for all parties, while preventing tax evasion resulting from incorrect accounting.

This special measure applies to the purchase, leasing, intra-Community acquisition, and importation of certain passenger cars as well as certain expenditure related thereto when those cars are not wholly used for business purposes. In turn, the businesses are relieved from accounting for VAT on private use. The special measure should apply to all passenger cars with a maximum of eight seats in addition to the driver's seat, not exceeding 3 500 kilograms, and which are not used exclusively for business purposes. However, passenger cars which are used for certain specific activities would be treated under the normal rules: cars purchased for resale, hire or lease, cars used for transportation of passengers for a fee (such as taxis), and cars used for driving lessons.

According to Estonia, the deduction limit of the special measure should remain fixed at 50%. To justify this, Estonia indicates that the situation has remained unchanged compared to when the special measure was firstly introduced in 2014 and that there is no reason to believe that this pattern will change in the coming years. It also indicates that the private use of company cars that are not used exclusively for business purposes, accounts for approximately 60% of their total use and that based on indirect evidence and assumptions available to the Estonian tax authorities, a 50 % input VAT deduction limit is considered the most appropriate, in order to exclude the possibility of overestimating the proportion of private use of passenger cars.

- **Consistency with existing policy provisions in the policy area**

Special measures derogating from the provisions of the VAT Directive, and further extensions, in relation to the right of deduction, similar to the one whose extension is here requested by Estonia, have been granted to other Member States (Hungary[5], Latvia[6], Croatia[7], Poland[8], Italy[9] and Romania[10]).

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4 The validity of Council Implementing Decision 2014/797/EU had expired before Estonia submitted, in February 2021, the request to further extend its temporal scope. The request of February 2021 was therefore treated as an original request to apply a measure derogating from the overall principles governing the right to deduct input VAT in relation to expenditure connected with passenger cars not wholly used for business purposes. It is 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) that granted the authorisation to Estonia.

5 Council Implementing Decision (EU) 2021/1774 of 5 October 2021 amending Implementing Decision (EU) 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).

6 Council Implementing Decision (EU) 2021/1968 of 9 November 2021 amending Implementing Decision (EU) 2015/2429 authorising Latvia to introduce a special measure derogating from point (a) of

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 proposal falls under the exclusive competence of the European Union as the granting of the extension of the special measure cannot be achieved by Estonia. The intervention of the Commission is necessary to present a proposal to the Council, who may authorise Estonia to extend the special measure.

• Proportionality

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

The special measure is limited in its scope and therefore proportionate to the aim pursued, i.e. 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 secure the VAT collection in a specific sector.

• Choice of the instrument

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, the granting of a special measure derogating from the provisions of the VAT Directive 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. This proposal is based on a request made by Estonia and concerns only this Member State.

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) 2024/2884 of 5 November 2024 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 (OJ L, 2024/2884, 13.11.2024).

[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 (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) 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).

[10] Council Implementing Decision (EU) 2024/1641 of 24 May 2024 authorising Romania to apply special measures derogating from Article 26(1), point (a), and Article 168 of Directive 2006/112/EC on the common system of value added tax, (OJ L, 2024/1641, 6.6.2024).

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal is designed to simplify and secure 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, to prevent VAT evasion through incorrect record keeping. It has, therefore, a potential positive impact for both businesses and tax administrations. The solution has been identified by Estonia as a suitable measure and is comparable to other past and present special measures derogating from the provisions of the VAT Directive.

4. BUDGETARY IMPLICATIONS

The special measure will only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will have not adversely 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 Estonia would consider another extension of the special measure beyond 2027, a report including a review of the percentage limit of deduction right must 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 a right for taxable persons to deduct value added tax (VAT) charged on supplies to them of goods and services that are used for the purposes of their taxed transactions. Pursuant to Article 26(1), point (a), of that Directive, the use of business assets for private use of taxable persons or their staff or, more generally, for purposes other than those of their business is to be treated as a supply of services.

(2) Council Implementing Decision (EU) 2021/1998[2] authorised Estonia, until 31 December 2024, to limit to 50 % the right to deduct VAT on expenditure on passenger cars not wholly used for business purposes where that expenditure covers the purchase, leasing, intra-Community acquisition or importation of passenger cars not wholly used for business purposes, as well as on expenditure related to the maintenance and repair of such cars and to the purchase of fuel for them. It also authorised Estonia to not treat as supplies of services for consideration the use for private purposes of a passenger car included in the assets of a taxable person's business, where that car has been subject to a limitation authorised under Article 1 of that Decision ('the special measure').

(3) By letter registered by the Commission on 28 March 2024, Estonia submitted a request, in accordance with Article 395(2), first subparagraph, of Directive 2006/112/EC, to the Commission to continue to apply the special measure ('the extension request'). By letter dated 3 April 2024, the Commission requested more information. Estonia replied on 28 June 2024. By letter dated 28 August 2024, the Commission requested additional clarification, which Estonia provided by letter registered by the Commission on 24 September 2024.

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

[2] 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, ELI: http://data.europa.eu/eli/dec_impl/2021/1998/oj).

(4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the extension request to the other Member States by letter dated 17 October 2024. By letter dated 18 October 2024, the Commission notified Estonia that it had all the information necessary to consider the extension request.

(5) In accordance with Article 4 of Implementing Decision (EU) 2021/1998, Estonia submitted, together with the extension request, a report including the review of the percentage set for the limitation of the right to deduct VAT referred to in Article 1 of that Implementing Decision. Based on currently available information, namely tax audit experience and statistical data relating to private use of passengers cars, Estonia claims that the limit of 50% is still justifiable and remains appropriate.

(6) The special measure authorised by Implementing Decision (EU) 2021/1998 have expired on 31 December 2024. Given the positive impact on the administrative burden of the taxpayers and of tax authorities by simplifying VAT collection and preventing tax evasion through incorrect record keeping, the Commission considers it appropriate to grant the special measure.

(7) The special measure should be limited to the time needed to evaluate its effectiveness and the appropriateness of the percentage limitation. Estonia should therefore be authorised to apply the special measure until 31 December 2027.

(8) The special measure is proportionate to the objectives pursued, namely, to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance, since it is limited in time and scope. In addition, the special measure does not give rise to the risk that fraud would shift to other sectors or to other Member States.

(9) In the event that Estonia considers that an extension of the authorisation beyond 2027 is necessary, it should, by 31 March 2027, submit to the Commission a request for an extension accompanied by a report that includes a review of the percentage limit applied.

(10) The special measure will only 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,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 168 and 168a of Directive 2006/112/EC, Estonia is authorised to limit to 50 % the right to deduct the value added tax on expenditure on passenger cars not wholly used for business purposes where that expenditure covers the purchase, leasing, intra-Community acquisition or importation of passenger cars not wholly used for business purposes, as well as on expenditure related to the maintenance and repair of such cars and to the purchase of fuel for them.

Article 2

By way of derogation from Article 26(1), point (a), of Directive 2006/112/EC, Estonia shall not treat as supplies of services for consideration the use for non-business purposes of a passenger car included in the assets of a taxable person's business, where that car has been subject to a limitation authorised under Article 1 of this Decision.

Article 3

1. This Decision shall apply only to passenger cars with a maximum authorised weight not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat.

2. This Decision shall not apply to the following categories of passenger cars:

(a) cars purchased for resale, hire or lease;

(b) cars used for the transportation of passengers for a fee, including taxi services;

(c) cars used for the provision of driving lessons.

Article 4

1. This Decision shall take effect on the date of its notification.

2. This Decision shall apply until 31 December 2027.

3. 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 which includes a review of the percentage set out in Article 1.

Article 5

This Decision is addressed to the Republic of Estonia.

Done at Brussels,

For the Council
The President