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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 68 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Denmark to apply a special measure derogating from Article 75 of Council Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2018) 68 final.

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EUROPEAN
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Brussels, 13.2.2018
COM(2018) 68 final

2018/0027 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Denmark to apply a special measure derogating from Article 75 of Council Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter "the VAT Directive"), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply 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.

By letter registered with the Commission on 21 November 2017, Denmark requested authorisation to prolong Council Decision (EU) 2015/992[1] and to apply a measure derogating from Article 75 of the VAT Directive.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 7 December 2017 and by letter dated 8 December 2017 France, Germany, Sweden and Czech Republic of the request made by Denmark. By letter dated 11 December 2017, the Commission notified Denmark that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In order to simplify VAT collection and combat tax evasion, Denmark requested in 2011 a derogation which would allow the introduction of a flat-rate scheme for the private use of light goods vehicles with a maximum authorised weight of up to three tonnes which have been registered solely for business use. The derogation request was approved by Council Implementing Decision 2012/447/EU of 24 July 2012[2]. Denmark requested the prolongation of the measure which was approved by Council Implementing Decision (EU) 2015/992 of 19 June 2015[3]. The latter Council Implementing Decision expired on 31 December 2017.

Without such derogating measure the Danish legislation implies that any private use of such a vehicle registered solely for business purposes would have as a consequence that the taxable person loses in full the right of deduction of the VAT on the purchase cost of the vehicle. Denmark makes use of a standstill provision under Article 176 of the VAT Directive regarding the deduction of VAT on the purchase and running costs of light goods vehicles with a maximum authorised weight of up to three tonnes. If a business registers such a light goods vehicle as being solely for business purposes, it will be authorised to deduct in full the VAT on the purchase of the vehicle as well as the running costs. However, a business which registers a light goods vehicle as being both for business and personal use is not authorised to deduct the VAT on the purchase cost, but can deduct in full the VAT on the running costs of the vehicle.

The Danish system as described above can be complicated and costly to administer, both for the taxable person and for the tax administration. Denmark has therefore requested to apply a simplified procedure as previously granted by Council Implementing Decision 2012/447/EU and subsequently by Council Implementing Decision (EU) 2015/992.

The flat-rate system used in Denmark could be used by a taxable person for up to twenty days per calendar year for a cost of DKK 40 per day. The amount of DKK 40 per day would cover only VAT and has been determined by the Danish Government on the basis of an analysis of

[1] OJ L 159, 25.06.2015, p. 66.
[2] OJ L 202, 28.07.2012, p. 24.
[3] OJ L 159, 25.06.2015, p. 66.

national statistics. A similar payment, under separate national legislation, would be required to cover income tax on the disposal of a company car, and a surcharge to the circulation tax. Should the taxable person use the vehicle for more than twenty days during a calendar year, the standstill rules would apply, and the taxable person would lose in full the right of deduction of the purchase costs of the vehicle.

The Danish authorities have developed an electronic system whereby taxable persons can pay the daily flat-rate online. The authorities consider the system to simplify the accounting obligations for the taxable persons as well as the tax authorities' duty to collect and charge the tax.

The simplified procedure is optional. The taxable person would therefore still be able to register their light goods vehicle for both business and private use if that suits their circumstances.

As requested by Article 3 of Council Implementing Decision (EU) 2015/992, Denmark submitted, together with the prolongation request, a report on the review of the measure. According to the Danish authorities, the simplified procedure has worked very well the last years and they find good reasons to continue with such a procedure. As the adoption of the derogating measure by the Commission will take place after the expiry of Council Implementing Decision (EU) 2015/992 (i.e. after 31 December 2017), this proposal cannot prolong the previous measure.

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

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 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[4], 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 proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

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

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

[4] 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)

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. to simplify VAT obligations and VAT collection, as well as combatting tax evasion.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of the VAT Directive, derogation from common VAT rules is only possible upon authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a Request made by Denmark and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal is designed to counter VAT evasion and to simplify the procedure for charging tax and has, therefore, a potential positive impact for both businesses and administrations. The solution has been identified by Denmark as a suitable measure. Denmark submitted the report on the review of the measure according to which the simplified procedure has worked very well the last years and there are good reasons to continue with such a procedure.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implication for the EU budget.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2020.

In case Denmark would consider an extension of the derogating measure beyond 2020, a report including a review of the measure should be submitted to the Commission together with the extension request and this no later than 31 March 2020.

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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) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 21 November 2017, Denmark has requested, in accordance with Article 395(2) of Directive 2006/112/EC, an authorisation to apply a measure derogating from Article 75 of that Directive governing the right to deduct input VAT.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission, by letters dated 7 December 2017 and 8 December 2017, transmitted to the other Member States the request submitted by Denmark and by letter dated 11 December 2017, notified Denmark that it had all the information that it considered necessary to consider the request.

(3) Without a derogating measure, the legislation in Denmark implies that if a light goods vehicle with a maximum authorised weight of up to three tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is authorised to deduct, in full, the input VAT on the purchase and running costs of the vehicle. If such a vehicle is subsequently used for private purposes, the taxable person loses the right to deduct the VAT incurred on the purchase cost of the vehicle.

(4) To mitigate the consequences of this regime, Denmark has requested authorisation to apply a special measure derogating from Article 75 of Council Directive 2006/112/EC. The derogation was granted by Council Implementing Decision 2012/447/EU[2] and subsequently by Council Implementing Decision (EU) 2015/992 of 19 June 2015[3]. The latter Council Implementing Decision expired on 31 December 2017.

(5) The measure would allow taxable persons, who have registered a vehicle for business purposes only, to use the vehicle for non-business purposes, and to calculate the taxable amount of the deemed supply pursuant to Article 75 of Council Directive 2006/112/EC on a daily flat-rate basis, rather than lose their right to deduct the VAT incurred on the purchase cost of the vehicle.

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1 OJ L 347, 11.12.2006, p. 1.
2 OJ L 202, 28.07.2012, p. 24
3 OJ L 159, 25.06.2015, p. 66.

(6) This simplified calculation method should, however, be limited to twenty days of non-business use for each calendar year, and the flat-rate amount of VAT to be paid should be fixed at DKK 40 for each day of non-business use. This amount has been determined by the Danish Government on the basis of an analysis of national statistics.

(7) This measure, which should apply to light goods vehicles with a maximum authorised weight of up to three tonnes, aims to simplify the VAT obligations of taxable persons who make occasional non-business use of a vehicle registered for business purposes. However, it would remain possible for a taxable person to choose to register a light goods vehicle as being for both business and private use. In doing so, the taxable person would lose the right to deduct the VAT on the purchase of the vehicle but would not be required to pay a daily charge for any private use.

(8) Allowing a measure which ensures that a taxable person who makes occasional non-business use of a vehicle registered for business purposes is not deprived of the full right to deduct the input VAT on that vehicle is consistent with the general rules on deduction as laid down by Council Directive 2006/112/EC.

(9) The authorisation should be valid for a limited period.

(10) In the event that Denmark requests a further extension of the derogating measure beyond 2020, it should submit a report to the Commission together with the extension request no later than by 31 March 2020.

(11) It is considered that the derogation would only have a negligible effect on the overall amount of VAT 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 derogation from Article 75 of Council Directive 2006/112/EC, where a taxable person uses for private purposes, or those of his staff, or more generally for purposes other than those of his business, a light goods vehicle which has been registered as being solely for business use, Denmark is authorised to determine the taxable amount by reference to a flat rate for each day of such use.

The flat rate per day as referred to in the first paragraph shall be DKK 40.

Article 2

The measure referred to in Article 1 shall only apply to light goods vehicles with a maximum authorised total weight of three tonnes.

This measure shall not apply where the private use exceeds 20 days per calendar year.

Article 3

This Decision shall take effect on the day of its notification.

This Decision shall expire on 31 December 2020.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2020 and shall be accompanied by a report which includes a review of the measure.

Article 4

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels,

For the Council
The President