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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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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 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

Delegations will find attached document COM(2024) 154 final.

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EUROPEAN
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Brussels, 8.4.2024
COM(2024) 154 final

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Proposal for a

COUNCIL IMPLEMENTING DECISION

**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**

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 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 14 September 2023, Romania requested an extension of the derogation from Article 168 and Article 26(1)(a) of the VAT Directive in order to continue to restrict the right to deduct the input VAT on expenditure related to motor vehicles not used exclusively for business purposes, and to relieve taxable persons from having to treat the private use of such vehicles as a supply of services for consideration. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 9 November 2023 of the request made by Romania. By letter dated 10 November 2023, the Commission notified Romania 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 VAT Directive provides that a taxable person is entitled to deduct VAT charged on purchases made for the purposes 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 additional burden to both the business and the administration in maintaining and checking them.

Romania was authorised on the basis of Council Implementing Decision 2012/232/EU² to apply a special measure limiting to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as on expenditure related thereto, including the purchase of fuel, where such vehicles are not used exclusively for business purposes. The special measure did not apply to motorised road vehicles with a maximum permissible laden mass of more than 3 500 kg or with more than nine seats including the driver's seat. In addition, some categories of vehicles were specifically excluded from this restriction on the right of deduction, such as vehicles used exclusively for emergency, security, protection or courier services, vehicles used by sales and purchasing agents, vehicles used for the transport of passengers and taxis, vehicles used for instruction by driving schools, vehicles used for hire or leasing or vehicles used as commodities for trading purposes. At the same time, taxable persons were relieved from accounting for tax on the private use of a motorised road vehicle where it has been subject to this restriction. The period of validity of these special measures was extended by Council

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Decision 2012/232/EU of 26 April 2012 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 117, 1.05.2012, p. 7).

Implementing Decision (EU) 2015/156 of 27 January 2015³ until 31 December 2017, by Council Implementing Decision (EU) 2017/2012 of 7 November 2017⁴ until 31 December 2020 and by Council Implementing Decision (EU) 2020/1262 of 4 September 2020⁵ until 31 December 2023.

Romania has requested to prolong the authorisation to limit the initial deduction to a set percentage and in turn to relieve the business from accounting for tax on the private use. Romania informed the Commission that the grounds for the prolongation of the special measures are largely the same as described in the initial request. In accordance with Article 4(2) of Council Implementing Decision 2012/232/EU Romania has presented a report on the deduction limit applied by Romania. Romania submits that the special measures have fulfilled their role. The derogation is a simplification which removes the need for the taxable person to keep records of mileage relating to business use and mileage relating to private use of the vehicle. This special measure limiting the right to deduct VAT creates the conditions for preventing tax evasion, which could be generated by recording less than actual personal use.

According to the report submitted by Romania as required by the Council Implementing Decision 2012/232/EU, the share of small enterprises with less than nine employees in Romania is high: 99.7% of all the active enterprises in the industrial sector, the construction sector or the services sector in 2021 were small or medium-sized enterprises; and active enterprises with up to nine employees accounted for 91.1% of all active economic and social operators in those sectors. Romania argues that, in practice, a car owned by such enterprises is often used both for business activities and for personal purposes.

Based on the above, Romania states that the limitation of 50% of the right to deduct VAT still reflects the overall business and private use of vehicles by taxable persons in Romania and that this limit therefore should still be regarded as appropriate.

Given the positive impact of the special measures on the administrative burden of taxpayers and tax authorities alike and on prevention of tax evasion, it is proposed to authorise the special measures.

The special measures should be limited in time to 31 December 2026, in order to allow for a review of the necessity and effectiveness of the special measures and whether the 50% restriction is still a correct reflection of the overall apportionment between business and private use. Any extension request should be accompanied by a report which includes a review of the percentage applied and should be sent to the Commission with that request by 31 March 2026.

³ Council Implementing Decision (EU) 2015/156 of 27 January 2015 extending the period of validity of 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 26, 31.1.2015, p. 27).

⁴ Council Implementing Decision (EU) 2017/2012 of 7 November 2017 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 292, 10.11.2017, p. 57–58).

⁵ 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, 10.9.2020, p. 6)

- **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.

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 VAT⁶, 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 measures are proportionate to the aim pursued, i.e. to simplify tax collection 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 in specific sectors and would prevent tax evasion inter alia through incorrect record keeping.

The derogation is also limited in time and a report on the functioning and the effectiveness of the measures is to be prepared in case Romania wishes to prolong the special measures.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, derogation from the common VAT rules 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.

⁶ 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)

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

- **Stakeholder consultations**

This proposal is based on a request made by Romania 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 Romania as a suitable measure and is comparable to other past and present derogations.

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 2026.

In case Romania would consider another extension of the special measures beyond 2026, 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 2026.

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 168 of Directive 2006/112/EC establishes a right for taxable persons to deduct from the value added tax (VAT) due or paid in the relevant Member State the 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 goods forming part of the assets of a business for the private use of taxable persons or their staff or, more generally, for purposes other than those of their business, where the VAT on such goods was wholly or partly deductible, is to be treated as a supply of services for consideration.
- (2) Council Implementing Decision 2012/232/EU², authorised Romania to limit to 50 % the right to deduct the VAT on the purchase, intra-Community acquisition, importation, hire or leasing of certain motorised road vehicles as well as the VAT charged on expenditure related to those vehicles, where such vehicles are not used exclusively for business purposes, and to relieve taxable persons from having to treat the use of such vehicles for purposes other than those of their business as a supply of services for consideration pursuant to Article 26(1), point (a), of Directive 2006/112/EC.
- (3) By letter registered with the Commission on 14 September 2023, Romania requested an authorisation, in accordance with Article 395(2), first subparagraph, of Directive 2006/112/EC, to continue to apply the special measures derogating from Article 26(1), point (a), and Article 168 of Directive 2006/112/EC in order to restrict the right of deduction in relation to expenditure on certain motorised road vehicles not used exclusively for business purposes and to relieve taxable persons from having to treat the use of such vehicles for purposes other than those of their business as a supply of services for consideration ('special measures').
- (4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request submitted by Romania to the other Member

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

² Council Implementing Decision 2012/232/EU of 26 April 2012 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 117, 1.5.2012, p. 7, ELI: http://data.europa.eu/eli/dec_impl/2012/232/oj).

States by letter dated 9 November 2023. By letter dated 10 November 2023, the Commission notified Romania that it had all the information it considered necessary for appraisal of the request.

- (5) Pursuant to Article 4(2) of Implementing Decision 2012/232/EU, Romania submitted, together with the extension request, a report to the Commission on the application of that Implementing Decision. Based on currently available information, Romania states that the limit of 50 % is still justifiable and remains appropriate.
- (6) The special measures authorised by Implementing Decision 2012/232/EU have expired on 31 December 2023. Given the positive impact for both businesses and administrations, it is appropriate to grant the special measures.
- (7) The special measures should be limited to the time needed to evaluate the effectiveness of those special measures and the appropriateness of the percentage limitation. Romania should therefore be authorised to apply the special measures until 31 December 2026.
- (8) The special measures are proportionate to the objectives pursued, i.e. to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance, since they are limited in time and scope. In addition, the special measures do not give rise to the risk that fraud would shift to other sectors or to other Member States.
- (9) In the event that Romania considers that an extension of the special measures beyond 2026 is necessary, it should submit a request for an extension to the Commission by 31 March 2026, together with a report which includes a review of the percentage restriction applied on the right to deduct VAT.
- (10) According to information provided by Romania, the special measures will only have a negligible effect on the overall amount of tax revenue that Romania collects 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 Article 168 of Directive 2006/112/EC, Romania is authorised to limit to 50 % the right to deduct the VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as the VAT charged on expenditure related to those vehicles, where the vehicle is not used exclusively for business purposes.

Article 2

1. Article 1 shall not apply to motorised road vehicles with a maximum permissible laden mass of more than 3 500 kg or with more than nine seats including the driver's seat.
2. Article 1 shall not apply to the following categories of motorised road vehicles:
 - (a) vehicles used exclusively for emergency services, for security, protection and courier services;

- (b) vehicles used by sales agents and by purchasing agents;
- (c) vehicles used for the transport of passengers for consideration, including taxi services;
- (d) vehicles used for the supply of services for consideration, including hire or driving lessons provided by driving schools;
- (e) vehicles used for hire or leasing;
- (f) vehicles used as commodities for trading purposes.

Article 3

By way of derogation from Article 26(1), point (a), of Directive 2006/112/EC, Romania is authorised not to treat as a supply of services for consideration the private use by a taxable person or his staff or, more generally, for purposes other than those of his business, of a vehicle to which the restriction referred to in Article 1 of this Decision applies.

Article 4

Romania shall notify the national measures implementing the special measures for the derogations referred to in Articles 1 and 3 to the Commission.

Article 5

1. This Decision shall take effect on the date of its notification.
2. This Decision shall apply until 31 December 2026.
3. If Romania considers that an extension of the special measures laid down in Articles 1 and 3 is necessary, it shall submit a request for extension to the Commission by 31 March 2026, together with a report which includes a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision.

Article 6

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President