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Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax, with regard to the duration of the obligation to respect a minimum standard rate

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 97 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹ (hereinafter "the VAT Directive") provides that from 1 January 2011 until 31 December 2015 the standard rate may not be less than 15%.

This provision was based on Article 93 of the Treaty establishing the European Community (the EC Treaty). As from 1 December 2009, Article 93 of the EC Treaty is replaced by Article 113 of the Treaty on the Functioning of the European Union (TFEU). Article 113 TFEU stipulates that the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes to the extent that such harmonisation is necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition.

With a view to establishing the internal market on 1 January 1993, the Commission presented proposals intended to set up a definitive system of tax harmonisation.

However, when it became clear that it would be impossible to adopt the Commission's proposals before 1 January 1993, the Council decided to adopt a transitional system. With regard to VAT rates, it adopted Directive 92/77/EEC².

That Directive introduced a system of minimum rates. It stipulated that from 1 January 1993 to 31 December 1996, the standard rate could not be set lower than 15% in any Member State. This provision has been extended five times and applies until 31 December 2015.

Recent modifications to the VAT Directive³ have implemented taxation at the place of destination, as this results in only few possibilities for cross-border transactions seeking lower VAT rates, a behaviour that may lead to distortions of competition.. However, it is common practice in the field of indirect taxes, both for excise duties and VAT, to set minimum rates, notably on account of the fact that VAT at origin, rather than destination, is still applied to cross-border shopping and distance sales below a threshold. Hence, a minimum standard rate applied in all Member States – as is currently the case – provides a useful safeguard to the proper functioning of the internal market.

Considering that all Member States currently levy a standard rate above 15%, the current arrangement for a minimum standard rate of 15% also ensures room for manoeuvre for Member States, allowing for VAT reforms intending to reduce the standard rate by broadening the VAT base and limiting the use of reduced rates.

On 6 December 2011 the Commission adopted a Communication on the future of VAT⁴ which proposed that the origin principle be abandoned and described several ways of achieving taxation at destination. In 2016 the Commission will publish an Action Plan for a simple, efficient and fraud-proof definitive system of Value Added Tax tailored to the single market. The Action Plan will set out the directions for future work following the achievements attained since the 2011 Communication. It will in particular set out the main

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 316, 31.10.1992, p. 1.

³ Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20.2.2008, p.11)

⁴ COM (2011) 851

features of the definitive VAT regime for intra-EU trade that the Commission wants to propose and the reforms it envisages to adapt the existing rules on VAT rates to a definitive regime characterised by the destination principle. This review of rules on VAT rates will address two key issues: whether greater autonomy in rate-setting ('enhanced flexibility') can be granted to Member States, and how to deal with the temporary derogations allowing for exemptions, zero rates and super reduced rates, that would have to be reconsidered upon the introduction of the definitive VAT regime.

In these circumstances, and pending the decisions on the final shape of the definitive regime, it appears appropriate to maintain the principle of a minimum standard VAT rate of 15%, and to propose that the current arrangements be extended for [two years until 31 December 2017]. This time frame ensures that stakeholders enjoy the necessary legal certainty, and should allow a more comprehensive discussion on VAT rates in connection with the forthcoming Action Plan on VAT.

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

By prolonging an existing provision (Article 97 of the VAT Directive), the proposal is consistent with current legislation.

- **Consistency with other Union policies**

Not relevant.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Directive amends the VAT Directive. The legal basis is Article 113 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union. The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons:

The European Union has already laid down harmonised provisions on the application of VAT rates, in the VAT Directive. These provisions may only be amended or extended by a European Union act and Member State legislation cannot deviate from the harmonised rules.

Therefore, only European Union action can achieve the objectives of the proposal and ensure equal treatment of citizens in the European Union. The proposal therefore complies with the subsidiarity principle.

- **Proportionality**

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

The present proposal maintains the current situation, whereby Member States apply a standard VAT rate at a minimum of 15%.

Given that the proposal only extends the period during which an existing provision applies, the measure is proportionate to the aim pursued. The proposal involves no financial cost to the European Union and no new financial burden is placed on businesses or on consumers.

- **Choice of the instrument**

The proposed instrument is a Directive. No other means would be adequate, as this proposal modifies provisions concerning VAT rates already enacted in a Directive.

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

- **Ex-post evaluations/fitness checks of existing legislation**

The current minimum standard VAT rate has been prolonged five times. This sixth prolongation maintains the current satisfactory situation and provides legal certainty for stakeholders, while allowing the definitive VAT regime for intra-EU trade to enter into force on the basis of a reviewed set of rules for standard and reduced VAT rates.

- **Stakeholder consultations**

Considering that the proposal only prolongs the current situation for a limited amount of time, that no specific complaint or request was reported to the Commission concerning the rules on applying the standard VAT rate and that a broader evaluation of the rates system is foreseen in connection with the Action Plan on VAT, there was no need for a stakeholder consultation at this point in time.

- **Collection and use of expertise**

Considering that no specific complaint or request was reported to the Commission concerning the rules on applying the standard VAT rate, there was no need for collection and use of external expertise.

- **Impact assessment**

The measure concerned purely aims to prolong the temporary provision concerning the length of time during which the current minimum standard VAT rate is to be applied. Such an extension simply maintains the current situation concerning the standard VAT rate.

In any case, no economic, social, regional or environmental impacts should be expected from the proposed measure given that no changes are required compared to the status quo.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT and involves no regulatory burden.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the European Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Given that the Commission will review all of the rules on VAT rates in 2016, it is not necessary to specifically evaluate the prolongation of the minimum standard rate.

- **Explanatory documents (for directives)**

Currently all Member States comply with the minimum 15% VAT rate. There is no need for explanatory documents on transposition.

- **Detailed explanation of the specific provisions of the proposal**

Article 1

Article 1 proposes that the current minimum standard rate of VAT in Member States, set at 15%, be extended from 1 January 2016 to 31 December 2017.

Article 2

Article 2 provides for the transposition of the Directive.

Article 3

Article 3 provides for the entry into force of the Directive.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Article 97 of Council Directive 2006/112/EC⁷ provides that from 1 January 2011 until 31 December 2015 the standard rate may not be less than 15%.
- (2) The standard rate of value added tax (VAT) currently in force in Member States, combined with the mechanism of the transitional system has ensured that this system has functioned to an acceptable degree. With new rules on the place of supply of services which favour taxation at the place of consumption, the possibilities for exploiting differences in VAT rates through relocation have been limited further and potential distortions of competition reduced.
- (3) To prevent growing divergence in standard VAT rates applied by Member States from leading to structural imbalances in the Union and distortions of competition in some sectors of activity, it is common practice in the field of indirect taxes to set minimum rates. It is still necessary to do so for VAT.
- (4) Pending the final arrangement of a definitive VAT regime for intra-Union trade, it would be premature to set a permanent standard rate level or to consider changing the minimum rate level.
- (5) It is therefore appropriate to maintain the current minimum standard rate at 15% for a further period long enough to ensure legal certainty, while allowing further review.
- (6) This does not preclude a further revision of VAT legislation before 31 December 2017 to address the final arrangement of a definitive VAT regime for intra-Union trade.
- (7) Directive 2006/112/EC should therefore be amended accordingly,

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 97 of Directive 2006/112/EC is replaced by the following:

"Article 97

From 1 January 2016 until 31 December 2017, the standard rate may not be lower than 15 %."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2016 at the latest. They shall forthwith communicate to the Commission the text of those provisions.
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*