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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**in accordance with Article 395 of Council Directive 2006/112/EC**

## **1. BACKGROUND**

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the VAT Directive), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. As this procedure provides for derogations from the general principles of VAT, in accordance with the consistent rulings of the Court of Justice of the European Union, such derogations should be proportionate and limited in scope.

By letter registered with the Commission on 19 July 2016, Italy requested an authorisation to apply a measure derogating from Article 193 of the VAT Directive authorising Italy to apply the reverse charge mechanism for supplies of goods and services to consortia by their members. Since the information submitted by Italy was not sufficient to consider the request, several letters were sent by the Commission to Italy requesting additional clarifications and several oral exchanges regarding the request took place between Italy and the Commission. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 28 March 2018 of the request made by Italy. By letter dated 3 April 2018, the Commission notified Italy that it had all the information it considered necessary for appraisal of the request.

As a general rule, the person liable for the payment of VAT to the tax authorities under Article 193 of the VAT Directive is the taxable person supplying the goods. The purpose of the derogation requested by Italy is to place that liability on the taxable persons (consortia in this case) to whom the supplies are made by their members (the so-called reverse charge mechanism). The aim of the requested derogation is the fight against tax evasion.

## **2. REVERSE CHARGE**

The person liable for the payment of VAT pursuant to Article 193 of the VAT Directive is the taxable person supplying the goods or services. The purpose of the reverse charge mechanism is to shift that liability onto the taxable person to whom the supplies are made.

By designating the person to whom the goods or services are supplied as the person liable for the payment of VAT, the supplier does not charge and receive VAT from the customer. The supplier can, therefore, not disappear with the VAT amount without paying it to the Treasury. In this sense, the reverse charge mechanism has been found effective as a temporary tool for fighting fraud.

### **3. THE REQUEST**

Italy requested a special measure derogating from Article 193 of the VAT Directive as regards the application of the reverse charge mechanism for supplies of goods and services to consortia<sup>12</sup> by their members.

Italy submits in its request that the introduction of the reverse charge for supplies of goods and services between consortia members and consortia would ensure the immediate curbing of evasion schemes such as failure to declare and/or non-payment of VAT to the State by consortia members. It could additionally provide a deterrent for possible fraudsters and the tax control to become more effective due to the limited number of consortia to be audited.

### **4. THE COMMISSION'S VIEW**

When the Commission receives requests in accordance with Article 395, these are examined to ensure that the basic conditions for their granting are fulfilled i.e. whether the proposed specific measure simplifies procedures for taxable persons and/or the tax administration or whether the proposal prevents certain types of tax evasion or avoidance. In this context, the Commission has always taken a restrictive, cautious approach to ensure that derogations do not undermine the operation of the general VAT system, are limited in scope, necessary and proportionate.

Any derogation from the system of fractionated payment can, therefore, not be more than a last resort and an emergency measure and must offer guarantees as to the necessity and exceptional nature of the derogation granted.

Notwithstanding several Commission's requests, neither the nature nor the extent of possible fraud problems arising in the relation between consortia and their members has been demonstrated by Italy.

It is difficult to see how VAT fraud problems can indeed occur in the relationship between the consortia and the members; the former supposed to act on behalf of the members. Furthermore, given this particular relationship, it should be possible for Italy to tackle the fraud by adequate control measures. In any case, the Commission remains available when requested to provide Italy necessary assistance to counter the problems of VAT evasion.

Consequently, as it is not demonstrated by Italy that the derogating measure is requested in order to fight fraud or in order to simplify procedures for taxable persons and/or tax administrations, as required by Article 395 of the VAT Directive, the request does not fulfil the conditions laid down in this Article.

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<sup>1</sup> Permanent consortium is a joint organisation made up of several entities created to regulate or conduct a specific phase of activity for the different firms involved.

**5. CONCLUSION**

On the basis of the above-mentioned elements, the Commission objects to the request made by Italy.