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**Subject: State Aid SA.57511 (2020/N) – Cyprus  
COVID-19: Waiver of interests and penalties for late payment of VAT**

Excellency,

**1. PROCEDURE**

- (1) By electronic notification of 29 May 2020, Cyprus notified the *Law amending legislation on VAT* (“the measure”) under Section 3.9 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).<sup>1</sup>
- (2) The Cypriot authorities confirm that the notification does not contain confidential information.
- (3) Cyprus exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

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<sup>1</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended by the Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1–9 and the Communication from the Commission - Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 164/03, OJ C 164, 13.5.2020, p. 3–15.

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Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

- (4) As a result of the COVID-19 outbreak, all schools, hotels and non-essential shops and amenities (including shopping malls, restaurants, coffee shops, bars, hair salons, museums, libraries, cinemas and theatres) have been shut down as of 16 March 2020. In addition, as of 24 March 2020 construction sites have been closed. The lockdown was extended to 30 April 2020.
- (5) Cyprus considers that the coronavirus outbreak is affecting the real economy. The baseline scenario of the Ministry of Finance forecast a GDP contraction of 7% in 2020 compared to 2019.
- (6) The Government has taken measures to mitigate the economic effects of the crisis by protecting businesses, jobs and incomes. While some of the measures adopted by the government aim to sustain jobs, enterprises face other on-going expenditure such as rents, storage costs, insurance payments and utility bills. These costs affect negatively the liquidity and working capital of enterprises.
- (7) The notified measure thus forms part of an overall package of measures which aim to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (8) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2 and Section 3.9 of the Temporary Framework.

### **2.1. The nature and form of aid**

- (9) The measure provides aid in the form of a suspension of payment of amounts of VAT due in relation to the tax periods ending on 29 February 2020, 31 March 2020 and 30 April 2020. More precisely, the notified measure waives normally applicable interests and penalties (see recital 20 below) in case of late payment of VAT due in relation to the tax periods mentioned above.

### **2.2. Legal basis**

- (10) The legal basis for the measure is the *Law amending legislation on VAT* of 27 March 2020<sup>3</sup> (N. 24(I)/2020, “the law of 27 March 2020”) amending Articles 45(3) and 46A of the *VAT Law of 2000*<sup>4</sup> (“the VAT law”).

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>3</sup> N. 24(I)/2020 Νόμος που τροποποιεί τους περί φόρου περί προστιθέμενης αξίας Νόμους του 2000 έως (Αρ. 3) του 2019 , Ε.Ε., Παρ.Ι(Ι), Αρ.4748, 27/3/2020.

<sup>4</sup> N. 95(I)/2000, Ε.Ε., Παρ.Ι(Ι), Αρ.3417, 7/7/2000.

### **2.3. Administration of the measure**

- (11) The Cypriot tax administration is responsible for administering the measure.

### **2.4. Budget and duration of the measure**

- (12) The estimated budget of the measure is € 33 million.
- (13) Aid may be granted under the measure until no later than 10 November 2020.

### **2.5. Beneficiaries**

- (14) The beneficiaries of the measure are undertakings of all sizes active in Cyprus, except undertakings active in certain sectors (see recital 15 below).

### **2.6. Sectoral and regional scope of the measure**

- (15) The measure is open to all undertakings except undertakings active (i) in listed sectors, in particular the retail sector (“the excluded sectors”)<sup>5</sup> and (ii) in the financial sector. Cyprus explained that undertakings in the excluded sectors were not particularly hit by the crisis because they continued to operate during the Cyprus “lockdown”, either through their stores or e-stores. The measure thus targets undertakings particularly affected by the coronavirus crisis.
- (16) The measure applies to the whole territory of Cyprus<sup>6</sup>.

### **2.7. Basic elements of the measure**

- (17) In principle, undertakings in Cyprus must file VAT declarations and pay VAT every 3 months. Payments and declarations are to be made at the latest on the 10<sup>th</sup> day of the second month following the end of the tax period.
- (18) Taxpayers are divided into 3 groups with different (staggered) tax periods and dates of declaration/payment. Each of the 3-month tax periods for which the notified measure will apply thus refers to one of the 3 groups of undertakings.
- For the tax period ending on 29 February 2020, the VAT payment was due on 10 April 2020.
  - For the tax period ending on 30 March 2020, the VAT payment was due on 10 May 2020.

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<sup>5</sup> The sectors identified as being less affected by the coronavirus crisis and excluded from the measure are the following (cf. NACE Codes): 35111- Production of electricity, 36001- Collection and distribution of water, 47111- Groceries and super-markets selling a large variety of goods, of which food products, beverages or tobacco are predominant, 47112- Kiosks, 47191-Retail sale of a large variety of goods of which food products, beverages or tobacco should not be predominant, 47211- Retail sale of fruit and vegetables, 47221- retail sale of meat and meat products, 47231- Retail sale of fish, crustaceans and molluscs, 47241- Retail sale of bread, rolls and similar products of bakery, 47242-retail sale of cakes, flour confectionery, sugar confectionery, 47301-Retail sale of automotive fuel, 47411- Retail sale of computers, peripheral units and software incl. videogames, 47611- Retail sale of books, 47621- Retail sale of newspapers and stationery, 47651- Retail sale of games and toys excluding videogames, 47731-Pharmacies, 61101- Cyprus Telecommunications Authority, 61201- Design and programming of systems to use, made-to-order software based on orders from specific users and web-page design

<sup>6</sup> It applies to all areas of the Republic of Cyprus under government control.

- For the tax period ending on 31 April 2020, the VAT payment is due on 10 June 2020.
- (19) If the undertaking does not pay VAT on the due date, it is normally subject to a series of monetary charges and penalties (hereinafter “interests and penalties”):
- (i) it is subject to an additional tax equal to 10% of the VAT amount due (Article 45(3) of the VAT law);
  - (ii) it shall pay interest of up to 9% per annum on the amount of VAT payable from the day the said amount became due (Article 45(4) of the VAT law);
  - (iii) it can be subject to a fine of up to five thousand pounds, (Article 46(9) of the VAT law).
  - (iv) In addition, any person who fails to pay any amount of additional tax or monetary charge or interest shall be liable to a fine of 10% of the amount due (Article 46(10A) of the VAT law).
- (20) According to the notified law, “*the provisions of Article 45(3) and (4) and Article 46 (9) and (10A) shall not apply with regard to fiscal periods ending on 29 February 2020, 31 March 2020 and 30 April 2020, provided that the taxable person shall pay the VAT amount due until 10 November 2020*”. This new legal provision “*does not apply to taxable persons with economic activity codes*” exhaustively listed in the law (see recital 15 above).
- (21) As a consequence, the interests and penalties normally due when the tax is not paid on the due date of the three tax periods at stake will not be applied if the VAT is paid by 10 November 2020. If the VAT due is paid by 10 November 2020, the measure thus amounts to a deferral of VAT until 10 November 2020.

## **2.8. Cumulation**

- (22) The Cypriot authorities stated that aid granted under the measure may not be cumulated with aid under *de minimis* Regulations<sup>7</sup> or the General Block Exemption Regulation<sup>8</sup> or other provisions of the Temporary Framework. Cyprus

<sup>7</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

<sup>8</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

also confirms that, in any event, the Cypriot authorities will comply with all applicable cumulation rules in line with point 20 of the Temporary Framework.

## **2.9. Monitoring and reporting**

- (23) The Cypriot authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (24) The Commission observes that Cyprus has started to grant the aid under the scheme before the Commission has adopted its decision<sup>9</sup>. The Commission regrets that Cyprus put the aid scheme into effect, in breach of Article 108(3) of the TFEU. However, it has decided, on the basis of the assessment below, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

### **3.2. Existence of State aid**

- (25) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (26) The measure is imputable to the State, since it is based on a national tax law and it is administered by a State authority. It is financed through State resources, since the State foregoes revenues when it does not apply the interest and penalties normally due in case of late payment of VAT.
- (27) The measure confers an advantage on its beneficiaries in the form of exemption from payment of normally applicable financial sanctions in case of late payment of VAT: additional tax of 10% of the amount due, interests on the amount due (until it is ultimately paid) and fines. The measure thus relieves those beneficiaries of costs, which they would have had to normally bear.
- (28) The advantage granted by the measure is *prima facie* selective, since it is awarded only to certain undertakings. The measure excludes a list of sectors (see recital 14 above). In the light of the general VAT rules laid down by the VAT law, according to which financial sanctions (additional tax, fines) and interests are due in case of late payment, the advantaged undertakings benefit from a derogation to the normally applicable VAT rules, although these undertakings are in the same legal and factual situation as other undertakings being subject to the VAT system.

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<sup>9</sup> The measure was put into effect (it deferred the payment of VAT already due) before it was notified to and approved by the Commission.

The Cypriot authorities did not provide any justification based on the nature or the general scheme of the tax system. Accordingly, the tax advantage is selective.

- (29) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (30) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Cypriot authorities do not contest that conclusion.

### **3.3. Compatibility**

- (31) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (32) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (33) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in Section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (34) The measure notified by Cyprus aims at easing the liquidity constraints of undertakings at a time when the normal functioning of credit markets is severely disturbed by the coronavirus outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States (see recital 6).
- (35) The measure is one of a series of measures conceived at national level by the Cypriot authorities to remedy a serious disturbance in the economy (see recital 7 above). The importance of easing liquidity constraints is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Cypriot economy because it will benefit all the economic sectors except a limitative list of sectors which did not need support as they were not particularly hit by the coronavirus outbreak and its consequences.
- (36) Furthermore, the measure meets the requirements of a specific category of aid (“*Aid in the form of tax deferrals*”) described in Section 3.9 of the Temporary Framework. In particular:
- The waiver of interests and penalties in case of delayed payment of VAT is a “*measure provided for in relation to fiscal and social obligations intended to ease the liquidity constraints faced by the beneficiaries*” within the meaning of Section 3.9 of the Temporary Framework.

- In accordance with point 41 of the Temporary Framework, the aid under the scheme will be granted before 31 December 2020 (see recital 13) and the waiver of interests and penalties will end on 10 November 2020 (see recital 21) so that the end date of the aid scheme (date on which the taxpayers will need to pay the VAT due) will not be later than 31 December 2022.
- The measure applies to undertakings that are particularly affected by the coronavirus outbreak, e.g. all undertakings except the ones active in the sectors that were not particularly hit by the crisis as they continued to operate during the Cyprus “lockdown”, either through their stores or e-stores. By allowing (without incurring sanctions or interests) undertakings to defer the payment of the VAT due, the scheme will effectively ease the liquidity constraints faced by the beneficiaries and contribute to preserve the economic continuity during and after the coronavirus outbreak.

(37) The Cypriot authorities stated that the aid under the measure will not be cumulated with any other aid (recital 22). Cyprus also confirms that, in any event, the Cypriot authorities will comply with all applicable cumulation rules in line with point 20 of the Temporary Framework. The Cypriot authorities also confirmed that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital 23).

(38) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President