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# COUNCIL DECISION

**of 20 October 2009**

**authorising the Federal Republic of Germany to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax**

(2009/791/EC)

(OJ L 283, 30.10.2009, p. 55)

Amended by:

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**of 20 October 2009**

**authorising the Federal Republic of Germany to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax**

(2009/791/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2006/112/EC [1], and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) By letter registered with the Secretariat-General of the Commission on 19 December 2008, the Federal Republic of Germany (hereinafter Germany) requested authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC governing the right of deduction and previously granted by Decision 2004/817/EC [2] under the then applicable Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [3].

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Germany in a letter dated 3 June 2009. By a letter dated 9 June 2009, the Commission notified Germany that it had all the information that it considered necessary to consider the request.

(3) The derogating measure is intended to exclude VAT borne on goods and services completely from the right of deduction when the goods and services are used more than 90 % for the private purposes of the taxable person, or of his employees, or for non-business purposes in general.

(4) The measure derogates from Article 168 of Directive 2006/112/EC establishing the general principle of the right of deduction and is intended to simplify the procedure for charging VAT. The amount of tax due at the final consumption is only affected to a negligible extent.

[1] OJ L 347, 11.12.2006, p. 1.
[2] OJ L 357, 2.12.2004, p. 33.
[3] OJ L 145, 13.6.1977, p. 1.

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(5) The legal and factual situation which justified the current application of the simplification measure in question has not changed and continues to exist. Germany should therefore be authorised to apply the simplification measure during a further period, but limited in time in order to allow an evaluation of the measure.

(6) The derogation will not adversely affect the Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

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*Article 1*

By way of derogation from Articles 168 and 168a of Directive 2006/112/EC, Germany is authorised to exclude VAT borne on goods and services from the right to deduct VAT when the goods and services in question are used more than 90 % for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes.

*Article 2*

1. This Decision shall expire on the date as from which Member States shall or may apply Union rules governing restrictions on a taxable person's right of deduction adopted by the Council after this Decision takes effect, or on 31 December 2015, whichever is the earlier.

2. Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2015.

Such request shall be accompanied by a report which includes a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.

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*Article 3*

This Decision is addressed to the Federal Republic of Germany.