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COUNCIL IMPLEMENTING DECISION

of 19 January 2010

authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 of Directive 2006/112/EC on the common system of value added tax

(2010/39/EU)

(OJ L 19, 23.1.2010, p. 5)

Amended by:

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authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 of Directive 2006/112/EC on the common system of value added tax

(2010/39/EU)

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 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]), and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Portuguese Republic (hereinafter referred to as Portugal) was authorised by Council Decision 2004/738/EC ([2]) to apply until 31 December 2009 a special optional scheme for the taxation of doorstep sales, whereby, firstly, by way of derogation from Article 21(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 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]), any firm operating in this sector which has been authorised to apply this scheme is liable for the value added tax (VAT) payable on goods supplied by its resellers to final consumers. Secondly, by way of derogation from Article 22 of the said Directive, the resellers are exempt from the obligations laid down in that Article for those goods supplied. In order to obtain such an authorisation, the firm must derive its entire turnover from doorstep sales by resellers working in their own name and on their own account. Moreover, all products sold by the firm must appear in a pre-established list of the prices applicable at the final consumption stage and the firm must sell its products direct to resellers who, in turn, sell direct to final consumers.

(2) By letter registered by the Secretariat-General of the Commission on 30 June 2009, Portugal requested an extension of this special scheme for derogating from Articles 193 and 250 of Directive 2006/112/EC and, by additional letter registered by the Secretariat-General of the Commission on 9 September 2009, requested that resellers, by way of derogation from Article 168 of Directive 2006/112/EC, should not be allowed to deduct the VAT payable on the goods covered by the derogation.

([1]) OJ L 347, 11.12.2006, p. 1.
([2]) OJ L 325, 28.10.2004, p. 62.
([3]) OJ L 145, 13.6.1977, p. 1.

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(3) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of that request, by letter of 27 October 2009. By letter of 29 October 2009, the Commission notified Portugal that it had all the necessary information.

(4) This special scheme has the effect of conferring on duly authorised firms, rather than numerous travelling salesmen, the right to deduct VAT payable or paid by these resellers on the goods these firms have supplied to them, and making the firms liable for the VAT payable on the supply of these goods to the final consumers by the resellers. These authorised firms are also responsible for fulfilling the corresponding obligations to submit a VAT return and pay VAT, from which their resellers are exempt.

(5) This special scheme therefore ensures that the VAT collected at the retail sale stage on sales of products coming from these firms is actually paid to the Treasury, thereby helping to prevent tax fraud. It also benefits the administration by simplifying the arrangements for collecting VAT and reduces the resellers obligations in relation to VAT.

(6) The derogation will not alter the amount of VAT collected at the stage of final consumption and will not have a negative effect on the European Union's own resources obtained from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Portugal is hereby authorised to apply a special scheme for the taxation of doorstep sales that contains provisions derogating from Directive 2006/112/EC.

Firms whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account may request authorisation from the administration to apply the special scheme provided the following conditions are met:

(a) all products sold by the firm appear in a pre-established list of the prices applicable at the final consumption stage;

(b) the firm sells its products direct to resellers who, in turn, sell direct to final consumers.

Article 2

The firms authorised to apply this special scheme shall be entitled, by way of derogation from Article 168 of Directive 2006/112/EC, to deduct the VAT payable or paid by their resellers for the goods which they have supplied to them and shall be liable, by way of derogation from Article 193 of the said Directive, for the VAT payable on the supply of these goods to the final consumers by their resellers.

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Article 3

The resellers who obtain their supplies from a firm authorised to apply this special scheme shall be exempt from the obligation to submit a VAT return, set out in Article 250 of Directive 2006/112/EC, in relation to the goods which they have received from that firm and the supply of those goods to final consumers. That obligation shall be fulfilled by the authorised firm.

Article 4

This Decision shall take effect on the date of its notification to the Portuguese Republic.

It shall apply from 1 January 2010 until ►**M1** 31 December 2015 ◄.

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Article 4a

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2015 and shall be accompanied by a report on the application of that measure.

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Article 5

This Decision is addressed to the Portuguese Republic.

Article 6

This Decision shall be published in the *Official Journal of the European Union*.