COUNCIL IMPLEMENTING DECISION

of 27 September 2010

authorising the Republic of Poland to introduce a special measure derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax

(2010/581/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) 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) By letter registered with the Secretariat-General of the Commission on 16 November 2009, Poland requested authorisation to introduce a special measure derogating from the provisions of Directive 2006/112/EC governing the right to deduct input tax ('the special measure').

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Poland by letter dated 14 December 2009. By letter dated 17 December 2009, the Commission notified Poland that it had all the information that it considered necessary to consider the request.

(3) Poland applies a limitation of the VAT deduction for passenger cars. However, some motor vehicles other than passenger cars are, by the nature of their design, also suited to use for both private and business purposes.

(4) Currently, where a taxable person intends to use for private purposes a vehicle other than a passenger car on which he has deducted the input tax in full or in part on the purchase, intra-Community acquisition, import, hire or lease, he is required to account for output tax on that use. However, the private use is difficult for the taxable person to establish with any degree of accuracy, and for the tax authorities to monitor.

(5) In order to simplify the procedure for collecting value added tax (VAT) and to prevent tax evasion and avoidance, Poland seeks a derogation in order to restrict the right of deduction of VAT with respect to motor vehicles other than passenger cars which may be used for both business and private purposes to 60 % of the VAT incurred on their purchase, intra-Community acquisition, import, hire or lease, up to a maximum of PLN 6 000, intended to prevent the excessive deduction of VAT with respect to luxury cars, which are more likely to be used for private purposes. The taxable person would subsequently no longer be required to account for output tax on the private use of the vehicle.

(6) The special measure should only apply to motor vehicles other than passenger cars with a maximum load capacity of over 500 kg and a maximum weight of 3,5 tonnes. Vehicles intended to perform a specific function such as roadside assistance vehicles, hearses, and loading vehicles, and vehicles for resale or hire should not fall under the derogation.

(7) The authorisation should be valid for a limited period and should therefore expire on 31 December 2013. In light of the experience gained up to that date an assessment may be made whether or not the derogation remains justified.

(8) The derogation has no negative impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 168 of Directive 2006/112/EC, the Republic of Poland is hereby authorised to restrict to 60 % the right to deduct VAT on the purchase, intra-Community acquisition, import, hire or lease of motor vehicles other than passenger cars, up to a maximum of PLN 6 000.

This restriction shall only apply to motor vehicles other than passanger cars with a maximum authorised carrying capacity of over 500 kg and a maximum weight of 3,5 tonnes.

([1]) OJ L 347, 11.12.2006, p. 1.

Article 2

Article 1 shall not apply to the following categories of vehicles:

(a) vehicles purchased for resale, hire or lease;

(b) vehicles, which in accordance with criteria established in fiscal provisions can be considered as vehicles intended in principle for the carriage of goods;

(c) vehicles intended to perform a specific function;

(d) vehicles designed for the carriage of at least 10 persons, including the driver.

Article 3

By way of derogation from Article 26(1)(a) of Directive 2006/112/EC, the Republic of Poland is authorised not to treat as a supply of services for consideration the private use by a taxable person or his staff or, more generally, for purposes other than those of his business, of a vehicle for which the restriction referred to in Article 1 of this Decision applies.

Article 4

This Decision shall take effect on the day of its notification.

It shall expire on 31 December 2013.

Article 5

This Decision is addressed to the Republic of Poland.

Done at Brussels, 27 September 2010.

For the Council
The President
K. PEETERS