COUNCIL IMPLEMENTING DECISION (EU) 2015/2349

of 10 December 2015

authorising Hungary to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

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 letters registered with the Commission on 23 December 2014 and 8 May 2015, Hungary requested authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC as regards the person liable for payment of value added tax (VAT).

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 2 July 2015, of the request made by Hungary. By letter dated 7 July 2015, the Commission notified Hungary that it had all the information it considered necessary to consider the request.

(3) Article 193 of Directive 2006/112/EC provides that the taxable person supplying goods or services is, as a general rule, liable for the payment of the VAT to the tax authorities. The purpose of the derogation requested by Hungary is to make the recipient liable for the payment of VAT in relation to supply of staff.

(4) According to information provided by Hungary, a number of traders in the sector of temporary employment agencies engage in fraudulent activities by supplying services without paying the VAT over to the tax authorities. Since this type of activity does not necessarily require important input or investment, the VAT these agencies receive often greatly exceeds the deductible VAT they have paid to their suppliers. A number of these agencies, often with little or no assets, disappear after a short period of even only a few months, making the recovery of unpaid VAT difficult or impossible.

(5) By designating the person to whom these services are supplied as the person liable for the payment of VAT in such cases, the derogation would eliminate the opportunity to engage in that form of tax evasion. For a number of situations of supply of staff, listed in point (a) of Article 199(1) of Directive 2006/112/EC, it is already possible to indicate the recipient as the person liable for the payment of VAT. The derogating measure is therefore applicable to situations of supply of staff not already covered by Directive 2006/112/EC.

(6) The derogating measure will not have an adverse effect on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, Hungary is authorised to provide that the person liable for payment of VAT is the taxable person to whom supplies of staff, engaged in activities other than those covered by point (a) of Article 199(1) of Directive 2006/112/EC, are made.

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

Article 2

This Decision shall expire on 31 December 2017.

Article 3

This Decision is addressed to Hungary.

Done at Brussels, 10 December 2015.

For the Council
The President
F. BAUSCH