COUNCIL IMPLEMENTING DECISION (EU) 2017/2013

of 7 November 2017

authorising the Kingdom of the Netherlands to introduce a special 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,

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) Article 193 of Directive 2006/112/EC provides that the taxable person supplying the goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.

(2) Pursuant to Article 199a(1)(g) of Directive 2006/112/EC, Member States may provide that the person liable for payment of VAT on supplies of telecommunication services is the taxable person to whom the supply is made (reverse charge mechanism). The Netherlands does not make use of this option.

(3) Instances of fraud have recently been discovered in the telecommunication services sector in the Netherlands. Consequently, the Netherlands would like to introduce the reverse charge mechanism to domestic supplies of telecommunication services.

(4) Pursuant to Article 199a(1) of Directive 2006/112/EC, it is only possible to apply the reverse charge mechanism until 31 December 2018 and the minimum period of application is 2 years. As the condition of the minimum period of application cannot be fulfilled, the Netherlands cannot apply the reverse charge mechanism based on Article 199a(1)(g) of that Directive.

(5) Consequently, by letter registered with the Commission on 11 July 2017 the Netherlands requested a derogation from Article 193 of Directive 2006/112/EC to be authorised to apply the reverse charge mechanism to the supplies of telecommunication services based on Article 395 of that Directive.

(6) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 5 September 2017 of the request made by the Netherlands. By letter dated 6 September 2017, the Commission notified the Netherlands that it had all the information it considered necessary for the appraisal of the request.

(7) The aim of the requested derogation is to prevent the VAT fraud in the sector of telecommunication services. Although the supplies of telecommunication services are susceptible to fraud and are being closely monitored, the Netherlands recently discovered fraudulent schemes of trade in call minutes involving a number of missing traders and buffer companies. Those schemes result in the significant loss of tax revenue.

(8) Based on the information submitted by the Netherlands, the conventional methods of fraud detection and prevention are not effective, as the services involved come from outside the Union and are not mentioned in anyregister or listing. The payments are made via payment platforms at bank accounts outside the Union making the transactions more difficult to detect and making it impossible to obtain information from banks. The Netherlands point out that without a reverse charge mechanism for the services concerned the tax loss will increase exponentially.

(9) The Netherlands should therefore be authorised to apply the reverse charge mechanism to supplies of telecommunication services until 31 December 2018.

(10) The derogation has no adverse impact on the Union's own resources accruing from VAT,

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

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, the Netherlands is authorised to designate the recipient of the supply as the person liable to pay VAT to the tax authorities in the case of supplies of telecommunication services.

Article 2

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

It shall expire on 31 December 2018.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 7 November 2017.

For the Council
The President
T. TÕNISTE