COUNCIL IMPLEMENTING DECISION (EU) 2018/1487

of 2 October 2018

amending Implementing Decision 2009/1013/EU authorising the Republic of Austria to continue to apply a measure derogating from Articles 168 and 168a 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 the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By virtue of Council Implementing Decision 2009/1013/EU ([2]), the Republic of Austria (Austria) was authorised to apply a special measure derogating from Directive 2006/112/EC ('special measure'). The application of the special measure was subsequently extended by Council Implementing Decision 2012/705/EU ([3]) until 31 December 2015 and by Council Implementing Decision (EU) 2015/2428 ([4]) until 31 December 2018.

(2) The special measure derogates from Articles 168 and 168a of Directive 2006/112/EC which govern taxable persons' right to deduct value added tax (VAT) charged on goods and services supplied to them for the purposes of their taxed transactions. The special measure is intended to exclude VAT borne on goods and services from the right of deduction where those goods and services are used by taxable persons for more than 90 % for their private purposes or for the purposes of their employees, or in general for non-business purposes or non-economic activities.

(3) The objective of the special measure is to simplify the procedure for charging and collecting VAT.

(4) By letter registered with the Commission on 23 March 2018, Austria requested authorisation to continue to apply the special measure, in accordance with Article 395(2) of Directive 2006/112/EC.

(5) By letter registered with the Commission on 4 April 2018, Austria sent a report on the application of the special measure including a review of the apportionment rate applied on the right to deduct VAT as required by Article 2 of Implementing Decision 2009/1013/EU.

(6) The Commission transmitted the request made by Austria to the other Member States by letter dated 11 April 2018, in accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC. By letter dated 12 April 2018, the Commission notified Austria that it had all the information necessary to consider the request.

(7) According to the information provided by Austria, the legal and factual situation which justified the current application of the special measure has not changed, but continues to exist. Austria should therefore be authorised to continue to apply the special measure for a further period of time, but that period should be limited in time until 31 December 2021 in order to allow for a review of the necessity and effectiveness of the special measure and of the apportionment rate between the business and non-business use that it is based upon.

(8) Where Austria considers that a further extension of the authorisation beyond 2021 is necessary, a report on the application of the measure, which includes a review of the apportionment rate applied, should be submitted to the Commission together with the extension request by no later than 31 March 2021 in order to allow sufficient time for the Commission to examine the request.

([1]) OJ L 347, 11.12.2006, p. 1.
([2]) Council Implementing Decision 2009/1013/EU of 22 December 2009 authorising the Republic of Austria to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 348, 29.12.2009, p. 21).
([3]) Council Implementing Decision 2012/705/EU of 13 November 2012 amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 319, 16.11.2012, p. 8).
([4]) Council Implementing Decision (EU) 2015/2428 of 10 December 2015 amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 334, 22.12.2015, p. 12).

(9) The special measure will only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will not have adverse effects on the Union's own resources accruing from VAT.

(10) Implementing Decision 2009/1013/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Articles 1 and 2 of Implementing Decision 2009/1013/EU are replaced by the following:

'*Article 1*

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

Article 2

This Decision shall expire on 31 December 2021.

Any request for the extension of the derogating measure provided for in this Decision shall be submitted to the Commission by 31 March 2021 at the latest.

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

Article 2

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

This Decision shall apply from 1 January 2019.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Luxembourg, 2 October 2018

For the Council
The President
H. LÖGER