DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2018/485

of 19 March 2018

authorising Denmark to apply a special measure derogating from Article 75 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 letter registered with the Commission on 21 November 2017, in accordance with Article 395(2) of Directive 2006/112/EC, Denmark requested authorisation to apply a special measure governing the right to deduct input VAT, derogating from Article 75 of that Directive.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, by letters dated 7 December 2017 and 8 December 2017, the Commission transmitted the request submitted by Denmark to the other Member States and, by letter dated 11 December 2017, notified Denmark that it had all the information necessary to consider the request.

(3) Without a derogating measure, the legislation in Denmark provides that if a light goods vehicle with a maximum authorised total weight of 3 tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is allowed to deduct the full input VAT on the purchase and running costs of the vehicle. If such a vehicle is subsequently used for private purposes, the taxable person loses the right to deduct the VAT incurred on the purchase cost of the vehicle.

(4) To mitigate the consequences of that regime, Denmark has requested authorisation to apply a special measure derogating from Article 75 of Directive 2006/112/EC. The derogation was granted by Council Implementing Decision 2012/447/EU ([2]) and subsequently by Council Implementing Decision (EU) 2015/992 ([3]). The latter Decision expired on 31 December 2017.

(5) The measure would allow taxable persons who have registered a vehicle only for business purposes to use the vehicle for private purposes, and to calculate the taxable amount of the deemed supply of services pursuant to Article 75 of Directive 2006/112/EC on a daily flat-rate basis, rather than lose their right to deduct the VAT incurred on the purchase cost of the vehicle.

(6) This simplified calculation method should, however, be limited to 20 days of use for private purposes for each calendar year, and the flat-rate amount of VAT to be paid should be fixed at DKK 40 for each day of use for private purposes. This amount has been set by the Danish Government on the basis of an analysis of national statistics.

(7) This measure, which should apply to light goods vehicles with a maximum authorised total weight of 3 tonnes, aims to simplify the VAT obligations of taxable persons who make occasional use for private purposes of a vehicle that was registered only for business purposes, thus simplifying the procedure for collecting VAT. However, it would remain possible for a taxable person to choose to register a light goods vehicle as being used for both business and private purposes. In doing so, the taxable person would lose the right to deduct the VAT incurred on the purchase cost of the vehicle but would not be required to pay a daily charge for any use for private purposes.

([1]) OJ L 347, 11.12.2006, p. 1.
([2]) Council Implementing Decision 2012/447/EU of 24 July 2012 authorising Denmark to introduce a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 202, 28.7.2012, p. 24).
([3]) Council Implementing Decision (EU) 2015/992 of 19 June 2015 authorising Denmark to introduce a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 159, 25.6.2015, p. 66).

(8) Authorising a measure which ensures that a taxable person who makes occasional use for private purposes of a vehicle registered only for business purposes is not deprived of the full right to deduct the input VAT on that vehicle is consistent with the general rules on deduction as laid down by Directive 2006/112/EC.

(9) The authorisation should be valid for a limited period and should therefore expire on 31 December 2020.

(10) In order to ensure that the objectives pursued by the measure are achieved, including ensuring an uninterrupted application of the previously authorised derogation and providing legal certainty with regard to the tax period, it is appropriate that this Decision applies from 1 January 2018. As Denmark requested the renewal of the authorisation on 21 November 2017 and continued to apply the legal regime established in its national law on the basis of the previously authorised derogation as from 1 January 2018, the legitimate expectations of the persons concerned are duly respected.

(11) In the event that Denmark requests a further extension of the derogating measure beyond 31 December 2020, it should submit a report to the Commission together with the extension request by 31 March 2020.

(12) It is considered that the derogation would only have a negligible effect on the overall amount of VAT revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 75 of Directive 2006/112/EC, where a taxable person uses a light goods vehicle, which has been registered as being solely for business use, for private purposes, or those of his staff, or more generally for purposes other than those of his business, Denmark is authorised to determine the taxable amount by reference to a flat rate for each day of such use.

The flat rate per day as referred to in the first paragraph shall be DKK 40.

Article 2

The measure referred to in Article 1 shall only apply to light goods vehicles with a maximum authorised total weight of 3 tonnes.

This measure shall not apply where the use for private purposes exceeds 20 days per calendar year.

Article 3

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

It shall apply from 1 January 2018 to 31 December 2020.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2020 and shall be accompanied by a report which includes a review of the measure.

Article 4

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 19 March 2018.

For the Council
The President
R. PORODZANOV