COUNCIL IMPLEMENTING DECISION (EU) 2018/486

of 19 March 2018

authorising Hungary to apply 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, 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) Pursuant to Article 193 of Directive 2006/112/EC, any taxable person carrying out a taxable supply of goods or services, as a general rule, is liable for the payment of value added tax (VAT) to the tax authorities.

(2) In order to combat VAT fraud in the sector of temporary employment agencies, in 2014 Hungary requested authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC to provide that, for supplies of staff engaged in activities other than those covered by point (a) of Article 199(1) of that Directive, the person liable for payment of VAT is the taxable person to whom the supplies are made ('reverse charge mechanism'). The authorisation was granted by Council Implementing Decision (EU) 2015/2349 ([2]) and expired on 31 December 2017.

(3) By letter registered with the Commission on 26 June 2017, Hungary has requested authorisation to apply a special measure derogating from Article 193 of Directive 2006/112/EC in order to make the recipient liable for the payment of VAT for the supply of staff.

(4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, by letter dated 11 December 2017, the Commission transmitted the request submitted by Hungary to the other Member States. By letter dated 12 December 2017, the Commission notified Hungary that it had all the information necessary to consider the request.

(5) 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 applicable VAT to the tax authorities. Since this type of activity does not necessarily require large input costs or investments, the VAT these agencies receive often exceeds largely the deductible VAT they have paid to their suppliers. A number of these agencies, which often have little or no assets, subsequently disappear after only a few months, making the recovery of unpaid VAT difficult or impossible.

(6) By designating the person to whom such 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. Hungary submitted that after the introduction of the reverse charge mechanism for the supply of staff in Hungary, the number of employment agencies decreased, suggesting a cleansing of the market. According to Hungary, the reverse charge mechanism has proven to be an appropriate and effective tool in combating fraudulent practices in the temporary employment agencies sector.

(7) Based on information provided by Hungary, a significant number of measures were introduced to combat VAT fraud, and other anti-fraud measures with particular focus on temporary employment agencies are planned by Hungary. Notwithstanding those measures, Hungary considers that, to further reduce the damage done to the sector, the protective reverse charge mechanism should continue to apply.

([1]) OJ L 347, 11.12.2006, p. 1.
([2]) 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 (OJ L 330, 16.12.2015, p. 53).

(8) For a number of situations involving the supply of staff, listed in point (a) of Article 199(1) of Directive 2006/112/EC, it is already possible to specify the recipient as the person liable for the payment of VAT. Therefore, in order to prevent tax evasion, Hungary should be authorised to apply the reverse charge mechanism to supplies of staff not already covered by Directive 2006/112/EC.

(9) The derogation should be limited in time 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 Hungary requested the renewal of the authorisation on 26 June 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) The measures to be undertaken by Hungary should eliminate fraud in the sector concerned and, therefore, no further derogation from Article 193 of Directive 2006/112/EC should be required with regard to the supply of staff.

(12) The derogation has no adverse impact 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.

Article 2

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

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

Article 3

This Decision is addressed to Hungary.

Done at Brussels, 19 March 2018.

For the Council
The President
R. PORODZANOV