COUNCIL IMPLEMENTING DECISION (EU) 2019/1594

of 24 September 2019

amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 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 168 of Directive 2006/112/EC establishes a right for taxable persons to deduct value added tax (VAT) charged on supplies to them of goods and services that are used for the purposes of their taxed transactions. Pursuant to Article 26(1)(a) of that Directive, the use of business assets for the private use of taxable persons or their staff or, more generally, for purposes other than those of their business is to be treated as a supply of services.

(2) By Council Implementing Decision 2013/805/EU ([2]), Poland was authorised, until 31 December 2016, to limit to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire or leasing of certain motorised road vehicles, and on expenditure related to those vehicles, where such vehicles are not entirely used for business purposes, and to relieve taxable persons from having to treat non-business use of such vehicles as a supply of services in accordance with Article 26(1)(a) of Directive 2006/112/EC (the 'derogating measures').

(3) By Council Implementing Decision (EU) 2016/1837 ([3]), the derogating measures were extended until 31 December 2019.

(4) By letter registered with the Commission on 14 January 2019, Poland requested authorisation to continue to apply the derogating measures for a further period until 31 December 2022.

(5) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, by letters dated 15 April 2019, the Commission informed the other Member States of the request made by Poland. By letter dated 16 April 2019, the Commission notified Poland that it had all the information necessary to consider the request.

(6) Poland's request was accompanied by a report on the application of Implementing Decision 2013/805/EU, including a review of the percentage limitation applied to the right to deduct VAT. Based on the information currently available, Poland considers that a rate of 50 % is still justified. It also considers that the derogation from the requirement in Article 26(1)(a) of Directive 2006/112/EC is still necessary to avoid double taxation. Those derogating measures are justified by the need to simplify the procedure for collecting VAT and to prevent tax evasion resulting from incorrect record-keeping and false tax declarations.

(7) Extension of the derogating measures should be limited to the time needed to evaluate the effectiveness of those measures and the appropriateness of the percentage limitation. Poland should therefore be authorised to continue to apply the derogating measures until 31 December 2022.

(8) A deadline should be set for requesting authorisation for any further extension of the derogating measures beyond 2022. Poland should also be required to submit a report accompanying any such request, including a review of the percentage limitation applied on the right to deduct VAT.

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

([2]) Council Implementing Decision 2013/805/EU of 17 December 2013 authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 353, 28.12.2013, p. 51).

([3]) Council Implementing Decision (EU) 2016/1837 of 11 October 2016 authorising the Republic of Poland to continue to apply measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 280, 18.10.2016, p. 28).

(9) The extension of the derogating measures will have only a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the Union's own resources accruing from VAT.

(10) Implementing Decision 2013/805/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Implementing Decision 2013/805/EU is replaced by the following:

'*Article 3*

This Decision shall expire on 31 December 2022.

Any request for authorisation to extend the derogating measures authorised by this Decision shall be submitted to the Commission by 1 April 2022. Such request shall be accompanied by a report including a review of the percentage limitation 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.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels, 24 September 2019.

For the Council
The President
K. KULMUNI