COUNCIL IMPLEMENTING DECISION (EU) 2019/310

of 18 February 2019

authorising Poland to introduce a special measure derogating from Article 226 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) By letter registered with the Commission on 15 May 2018 Poland requested an authorisation to introduce a special measure derogating from Article 226 of Directive 2006/112/EC in order to apply a split payment mechanism ('the special measure'). The special measure should require the inclusion of a special statement that value added tax (VAT) has to be paid to the blocked VAT account of the supplier on invoices issued in relation to the supplies of goods and services susceptible to fraud and generally covered by the reverse charge mechanism and by the joint and several liability in Poland. Poland requested the special measure for period of three years, from 1 January 2019 to 31 December 2021.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request of Poland to other Member States by letters dated 3 September 2018. By letter dated 4 September 2018, the Commission notified Poland that it had all the information necessary to consider the request.

(3) Poland has already taken numerous measures to fight fraud. It has introduced, the reverse charge mechanism and joint and several liability of the supplier and the customer, the Standard Audit File, tighter rules for the VAT registration and de-registration of taxable persons, increased number of audits among others. However, Poland nonetheless considers that those measures are insufficient to prevent VAT fraud.

(4) Poland is of the view that the application of the special measure will eliminate VAT fraud. Since under the split payment mechanism the amount of VAT deposited on a separate VAT account of a supplier (taxable person) can be used for restricted purposes only, namely for the payment of the VAT liability to the tax authority or for the payment of VAT on invoices received from suppliers, it is better guaranteed that the tax authorities will receive the whole VAT amount which should be transferred by the taxable person to the Polish State Treasury.

(5) Poland introduced the voluntary split payment mechanism on 1 July 2018. Poland considers that in areas particularly exposed to VAT fraud, the special measure should be introduced. Those areas are sectors of economy such as steel, scrap, electronics, gold, non-ferrous metals, fuels, and plastics. Those areas are generally covered by the reverse charge mechanism and by joint and several liability of the supplier and the customer in Poland.

(6) The special measure will apply to supplies between taxable persons, of goods and services listed in the Annex in business-to-business (B2B) supplies, and will cover only electronic bank transfers.

(7) Where a surplus of input tax in excess of the output tax that is recognised by the supplier in the VAT return as a refundable amount, the payment of such refund is normally carried out within 60 days to supplier's regular account. However, Poland has informed the Commission that, for the transactions covered by the special measure, at the request of a supplier who holds a blocked VAT account, the refund is to take place within 25 days.

(8) Suppliers are not to incur costs on opening and operating the VAT bank account, as the VAT account is to be free from any commissions and fees by the bank.

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

(9) The special measure is to apply to all suppliers, including those suppliers who are not established in Poland, as they have to hold a bank account operated pursuant to Polish Banking Law. In this respect, Poland confirmed that the suppliers will not incur any additional costs relating to the obligation of opening a bank account in Poland, since those suppliers will be able to open and hold the bank account for VAT payments in Poland free of charge.

(10) The special measure as envisaged by Poland will impose significant changes on suppliers. The system has already been operating since 1 July 2018 on a voluntary basis, and taxable persons have had the opportunity to become acquainted with it.

(11) The Commission is of the view that the special measure for supplies of goods and services susceptible to fraud is likely to bring effective results in the fight against VAT fraud. The derogations are usually granted for a limited period of time. The special measure should therefore be authorised from 1 March 2019 until 28 February 2022.

(12) Given the novelty and the broad scope of the special measure, it is important to ensure necessary follow-up. In particular, such follow-up needs to focus on the impact of the special measure on the level of VAT fraud and on the taxable persons regarding the refunds of VAT, the administrative burden, costs for taxable persons among others. Poland should therefore provide a report on the impact of the special measure 18 months after the entry into force of the special measure in Poland.

(13) The special measure will not negatively affect the overall amount of tax 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 226 of Directive 2006/112/EC, Poland is authorised to introduce a special statement that VAT shall be paid to the separate and blocked VAT bank account of the supplier opened in Poland on invoices issued in relation to supplies between taxable persons of goods and services listed in the Annex to this Decision where payments for supplies are made by electronic bank transfers.

Article 2

Poland shall notify the national measure referred to in Article 1 to the Commission.

Within 18 months after the entry into force in Poland of the measure referred to in Article 1, Poland shall submit a report to the Commission on its overall impact on the level of VAT fraud and on the taxable persons concerned.

Article 3

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

This Decision shall apply from 1 March 2019 to 28 February 2022.

Article 4

This Decision is addressed to the Republic of Poland.

Done at Brussels, 18 February 2019.

For the Council
The President
N. BĂDĂLĂU

ANNEX

List of supplies of goods and services covered by Article 1

Article 1 shall apply to the following supplies of goods and services described according to the Polish Classification of Products and Services (PKWiU):

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
1	24.10.12.0	Ferro-alloys
2	24.10.14.0	Pig iron pellets and powder, specular pig iron or steel
3	24.10.31.0	Flat rolled products of non-alloy steel, not further worked than hot-rolled, of a width of >= 600 mm
4	24.10.32.0	Flat rolled products of non-alloy steel, not further worked than hot-rolled, of a width of < 600 mm
5	24.10.35.0	Flat rolled products of other alloy steel, not further worked than hot-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
6	24.10.36.0	Flat rolled products of other alloy steel, not further worked than hot-rolled, of a width of < 600 mm, excluding products of electrical silicon steel
7	24.10.41.0	Flat rolled products of non-alloy steel, not further worked than cold-rolled, of a width of >= 600 mm
8	24.10.43.0	Flat rolled products of non-alloy steel, not further worked than cold-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
9	24.10.51.0	Flat rolled products of non-alloy steel, of a width of >= 600 mm, clad, plated or coated
10	24.10.52.0	Flat rolled products of other alloy steel, of a width of >= 600 mm, clad, plated or coated
11	24.10.61.0	Bars and rods, hot rolled, in irregularly wound coils, of non-alloy steel
12	24.10.62.0	Other bars and rods of steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
13	24.10.65.0	Bars and rods, hot rolled, in irregularly wound coils, of other alloy steel
14	24.10.66.0	Other bars and rods of other alloy steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
15	24.10.71.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of non-alloy steel
16	24.10.73.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of other alloy steel
17	24.31.10.0	Cold drawn bars and solid profiles of non-alloy steel
18	24.31.20.0	Cold drawn bars and solid profiles of alloy steel, other than stainless steel
19	24.32.10.0	Flat cold rolled steel products, uncoated, of a width of < 600 mm
20	24.32.20.0	Flat cold-rolled steel products, clad, plated or coated, of a width of < 600 mm

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
21	24.33.11.0	Open sections cold formed or folded of non-alloy steel
22	24.33.20.0	Ribbed sheets of non-alloy steel
23	24.34.11.0	Cold drawn wire of non-alloy steel
24	24.41.10.0	Unwrought silver or in semi-manufactured form, or in powder form
25	ex 24.41.20.0	Unwrought gold or in semi-manufactured form, or in powder form, excluding investment gold within the meaning of Article 121 of the Act, subject to item 27
26	24.41.30.0	Unwrought platinum or in semi-manufactured form or in powder form
27	Irrespective of PKWiU symbol	Investment gold within the meaning of Article 121 of the Act
28	ex 24.41.40.0	Base metals or silver, plated with gold, in semi-manufactured form — exclusively silver, gold plated, in semi-manufactured form
29	ex 24.41.50.0	Base metals plated with silver and base metals, silver or gold, plated with platinum, in semi-manufactured form — exclusively gold and silver plated, in semi-manufactured form
30	24.42.11.0	Unwrought aluminium
31	24.43.11.0	Unwrought lead
32	24.43.12.0	Unwrought zinc
33	24.43.13.0	Unwrought tin
34	24.44.12.0	Copper, unrefined; copper anodes for electrolytic refining
35	24.44.13.0	Refined copper and copper alloys, unwrought; master alloys of copper
36	24.44.21.0	Copper powders and flakes
37	24.44.22.0	Copper bars, rods and profiles
38	24.44.23.0	Copper wire
39	24.45.11.0	Unwrought nickel
40	ex 24.45.30.0	Other non-ferrous metals and products made of the same; cermets; ashes and residues containing metals and metal compounds — exclusively non-precious metal waste and scrap
41	ex 26.11.30.0	Electronic integrated circuits — exclusively processors
42	ex 26.20.11.0	Portable data-processing machines, weighing <= 10 kg, such as laptops and notebooks; Handheld computers (such as notebooks) and similar — exclusively portable computers such as tablets, notebooks, laptops
43	ex 26.30.22.0	Cellular phones or other wireless networks — only mobile phones, including smartphones
44	ex 26.40.60.0	Video game consoles (such as those used with a television set or a stand-alone screen) and other gaming or gambling apparatus with electronic display — excluding parts and accessories

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
45	ex 32.12.13.0	Jewellery and parts thereof as well as other jewellery and parts thereof, of gold and silver or precious metal plated — exclusively parts of jewellery and parts of other gold, silver and platinum jewellery, i.e. unfinished or incomplete jewellery and distinct parts of jewellery including covered or plated with precious metal
46	38.11.49.0	Wrecks, other than vessels and floating structures, for dismantling
47	38.11.51.0	Glass waste
48	38.11.52.0	Paper and paperboard waste
49	38.11.54.0	Other rubber waste
50	38.11.55.0	Plastic waste
51	38.11.58.0	Metal-containing waste other than hazardous waste
52	38.12.26.0	Hazardous metal waste
53	38.12.27	Waste and defective electric cells and accumulators; spent galvanic cells and batteries and electric accumulators
54	38.32.2	Metal secondary raw materials
55	38.32.31.0	Secondary raw material of glass
56	38.32.32.0	Secondary raw material of paper and paperboard
57	38.32.33.0	Secondary raw material of plastic
58	38.32.34.0	Secondary raw material of rubber
59	24.20.11.0	Line pipe of a kind used for oil or gas pipelines, seamless, of steel
60	24.20.12.0	Casing, tubing and drill pipe, of a kind used in the drilling for oil or gas, seamless, of steel
61	24.20.13.0	Other tubes and pipes, of circular cross section, of steel
62	24.20.31.0	Line pipe of a kind used for oil or gas pipelines, welded, of an external diameter of <= 406,4 mm, of steel
63	24.20.33.0	Other tubes and pipes, of circular cross section, welded, of an external diameter of <= 406,4 mm, of steel
64	24.20.34.0	Tubes and pipes, of non-circular cross-section, welded, of an external diameter of <= 406,4 mm, of steel
65	24.20.40.0	Tube or pipe fittings of steel, not cast
66	ex 25.11.23.0	Other structures and parts of structures, plates, rods, angles, shapes and the like, of iron, steel or aluminium — only of steel
67	ex 25.93.13.0	Cloth, grills, netting and fencing, of iron, steel or copper wire; expanded metal, of iron, steel or copper — only of steel
68		Motor spirit, diesel oil, fuel gas — within the meaning of the provisions on excise duty
69		Heating oil and lubricating oil — within the meaning of the provisions on excise duty

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
70	ex 10.4	Animal and vegetable oils and fats — exclusively rape oil
71	ex 20.59.12.0	Emulsions for surface sensitization for use in photography; chemical preparations for use in photography, not elsewhere classified (n.e.c.) — exclusively toners without a print head for automatic data-processing machines.
72	ex 20.59.30.0	Typewriter ink, draft ink and other inks — exclusively ink cartridges without a print head for automatic data processing machines
73	ex 22.21.30.0	Plates, sheets, film, foil, strip and plastic strips, not reinforced, laminated or combined with other materials
74	ex 26.20.21.0	Memory units — exclusively hard drives (HDDs)
75	ex 26.20.22.0	Solid state storage devices — exclusively SSDs
76	ex 26.70.13.0	Digital cameras and digital camcorders — exclusively digital cameras
77	ex 28.23.26.0	Parts and accessories for photocopiers — exclusively ink cartridges and print heads for printers for automatic data-processing machines, toners with print head for printers for automatic data processing machines
78	ex 58.29.11.0	Operating system software packages — exclusively SSD
79	ex 58.29.29.0	Other software packages — exclusively SSDs
80	ex 59.11.23.0	Other videos and video recordings on disks, magnetic tapes and similar media — exclusively SSDs
81	irrespective of the PKWiU symbol	GHG emission allowance transfer services referred to in the Act of 12 June 2015 on Greenhouse Gas Emission Trading Scheme (Official Journal of 2017 item 568)
82	41.00.30.0	Construction work on residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings)
83	41.00.40.0	Construction work on non-residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings)
84	42.11.20.0	General construction works involving the construction of motorways, roads, streets and other roads for vehicles and pedestrians and the construction of runways
85	42.12.20.0	General construction works involving the construction of railways and subways
86	42.13.20.0	General construction works involving the construction of bridges and tunnels
87	42.21.21.0	General construction works involving the construction of transmission pipelines
88	42.21.22.0	General construction works involving the construction of distribution networks, including auxiliary works
89	42.21.23.0	General construction works involving the construction of irrigation systems (sewers), bus and water lines, facilities for water treatment and sewage treatment and pump stations
90	42.21.24.0	Works involving the drilling of wells and water intakes and installation of septic tanks
91	42.22.21.0	General construction works involving the construction of telecommunications and power transmission lines

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
92	42.22.22.0	General construction works involving the construction of telecommunications and power distribution lines
93	42.22.23.0	General construction works involving the construction of power plants
94	42.91.20.0	General construction works involving the construction of wharves, ports, dams, locks and related hydro-technical facilities
95	42.99.21.0	General construction works involving the construction of production and mining facilities
96	42.99.22.0	General construction works involving the construction of stadiums and sports fields
97	42.99.29.0	General construction works involving the construction of other civil engineering structures
98	43.11.10.0	Works involving demolition of buildings
99	43.12.11.0	Works involving the preparation of the site for construction, excluding earthworks
100	43.12.12.0	Earthworks: digging, ditch digging and earth moving jobs
101	43.13.10.0	Works involving the excavation and geological-engineering drilling
102	43.21.10.1	Works involving the execution of electrical safety installations
103	43.21.10.2	Works involving the implementation of other electrical installations
104	43.22.11.0	Works involving the execution of plumbing and drainage works
105	43.22.12.0	Works involving the execution of heating, ventilation and air conditioning systems
106	43.22.20.0	Works involving the execution of gas installations
107	43.29.11.0	Insulation work
108	43.29.12.0	Installation of fencing
109	43.29.19.0	Other installation works n.e.c.
110	43.31.10.0	Plastering works
111	43.32.10.0	Installation work for carpentry
112	43.33.10.0	Works involving the laying the floor and facing the walls
113	43.33.21.0	Works involving the laying of terrazzo, marble, granite or slate on floors and walls
114	43.33.29.0	Other works involving the laying of floors and walls (including wallpapering), n.e.c.
115	43.34.10.0	Painting works
116	43.34.20.0	Glass-making works
117	43.39.11.0	Works involving the decoration
118	43.39.19.0	Works involving the execution of other finishing works, n.e.c.
119	43.91.11.0	Works involving the construction of roof structures

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
120	43.91.19.0	Works involving other roofing work
121	43.99.10.0	Works involving the installation of damp-proof and waterproof insulation
122	43.99.20.0	Works involving the assembly and dismantling of scaffolding
123	43.99.30.0	Works involving the construction of foundations, including pile driving
124	43.99.40.0	Concrete works
125	43.99.50.0	Works involving erection of steel structures
126	43.99.60.0	Works involving the erection of brick and stone structures
127	43.99.70.0	Works involving the assembly and erection of prefabricated structures
128	43.99.90.0	Works involving the performance of other specialized works, n.e.c.
129	05.10.10.0	Hard coal
130	05.20.10.0	Lignite
131	19.10.10.0	Coke and semi-coke of coal and lignite or of peat; retort carbon
132	19.20.11.0	Briquettes and similar solid fuels manufactured from coal
133	19.20.12.0	Briquettes and similar solid fuels manufactured from lignite
134	ex 26.70.13.0	Digital cameras for photography and digital cameras — exclusively digital cameras
135	26.40.20.0	Television receivers, whether or not combined with radio-broadcast receivers or sound or video recording or reproduction apparatus
136	26.20.1	Computers and other automatic data processing machines
137	30.91.20.0	Parts and accessories of motorcycles and side-cars
138	27.20.2	Electric accumulators and parts thereof
139	28.11.41.0	Parts for spark-ignition internal combustion engines, excluding parts for aircraft engines
140	ex 29.31.10.0	Ignition cable harnesses and other wiring sets of a kind used in vehicles, aircraft or watercraft — exclusively ignition cable harnesses and other wiring sets of a kind used in vehicles
141	29.31.21.0	Sparking plugs; ignition magnetos; magneto-dynamos; magnetic flywheels; distributors; ignition coils
142	29.31.22.0	Starter motors and dual purpose starter-generators; other generators and other equipment for combustion engines
143	29.31.23.0	Electrical signalling equipment, windscreen, defrosters and demisters for motor vehicles
144	29.31.30.0	Parts of other electrical equipment for motor vehicles
145	29.32.20.0	Safety seat belts, airbags and parts and accessories of bodies
146	29.32.30.0	Parts and accessories for motor vehicles n.e.c., excluding motorcycles
147	45.31.1	Trade services of motor vehicle parts and accessories, excluding motorcycles

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
148	45.32.1	Specialised store retail trade services of motor vehicle parts and accessories, excluding motorcycles
149	45.32.2	Other retail trade services of parts and accessories of motor vehicles, excluding motorcycles
150	ex 45.40.10.0	Wholesale trade services of motorcycles and related parts and accessories — exclusively sale of parts and accessories for motorcycles
151	ex 45.40.20.0	Specialised store retail trade services of motorcycles and related parts and accessories — exclusively sale of parts and accessories for motorcycles
152	ex 45.40.30.0	Other retail trade services of motorcycles and related parts and accessories — exclusively retail sale of parts and accessories for motorcycles