COUNCIL IMPLEMENTING DECISION (EU) 2020/1105

of 24 July 2020

amending Implementing Decision (EU) 2017/784 authorising the Italian Republic to apply a special measure derogating from Articles 206 and 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 valued added tax ([1]), and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision (EU) 2015/1401 ([2]), Italy was authorised until 31 December 2017 to require that value added tax (VAT) due on supplies to public authorities was to be paid by those authorities to a separate and blocked bank account of the tax authorities. That special measure constituted a derogation from Articles 206 and 226 of Directive 2006/112/EC in relation to VAT payment and invoicing rules.

(2) By Council Implementing Decision (EU) 2017/784 ([3]), Italy was authorised to apply the special measure until 30 June 2020, and the scope of that special measure was broadened to include supplies to certain companies controlled by public authorities and to companies listed on the stock exchange that are included in the Financial Times Stock Exchange Milano Indice di Borsa ('FTSE MIB') index.

(3) By letter registered with the Commission on 4 December 2019, Italy requested that the authorisation to apply the special measure be prolonged until 31 December 2023 and that the scope of the special measure be restricted to supplies of goods and services to public authorities only. By letter registered with the Commission on 27 March 2020, Italy modified its request so as to make the requested prolongation identical in scope to the authorisation granted by Implementing Decision (EU) 2017/784.

(4) By letter dated 5 May 2020, the Commission informed the other Member States of the request made by Italy. By letter dated 6 May 2020, the Commission notified Italy that it had all the information necessary to consider the request.

(5) The special measure is part of a package of measures introduced by Italy in order to counter tax fraud and evasion. That package of measures, including an electronic invoicing obligation as authorised by Council Implementing Decision (EU) 2018/593 ([4]), has replaced other control measures and allows the Italian tax authorities to cross-check the different operations declared by the operators and to monitor their VAT payments.

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

([2]) Council Implementing Decision (EU) 2015/1401 of 14 July 2015 authorising Italy to introduce a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 217, 18.8.2015, p. 7).

([3]) Council Implementing Decision (EU) 2017/784 of 25 April 2017 authorising the Italian Republic to apply a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax and repealing Implementing Decision (EU) 2015/1401 (OJ L 118, 6.5.2017, p. 17).

([4]) Council Implementing Decision (EU) 2018/593 of 16 April 2018 authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ L 99, 19.4.2018, p. 14).

(6) Italy considers that, in the context of the package of measures implemented, mandatory electronic invoicing reduces the time needed by the tax administration to become aware of the existence of a potential case of tax fraud or evasion. However, Italy also considers that, in the absence of the split payment mechanism introduced by the special measure, recovery from the tax fraudsters or evaders once the cross-check has been carried out could be impossible if they are insolvent. Thus, the split payment mechanism, as an *ex ante* measure, has proved to be more effective than mandatory electronic invoicing which is an *ex post* measure. The definitive data on the effectiveness of the special measure show that it has been even more effective than expected.

(7) One of the effects of the measure is that suppliers, being taxable persons, are not able to offset the VAT paid on their input with the VAT received on their supplies. Such suppliers may constantly be in a credit position and may need to ask for an effective refund of the VAT paid on their input from the tax administration. According to the information provided by Italy, taxable persons carrying out transactions subject to the split payment mechanism are entitled to receive the payment of the relevant VAT credits as a priority, within the limit of the credit deriving from such transactions. This practice implies that refund requests related to the split payment mechanism are processed with priority both during preliminary investigation and during the payment of sums due from non-priority refunds.

(8) According to recital (7) of Implementing Decision (EU) 2017/784, once the system composed by the package of control measures Italy intended to apply was fully implemented, there should be no more need to derogate from Directive 2006/112/EC in order to apply the split payment. Therefore, Italy offered assurance that it would not seek to renew the derogation allowing the application of the split payment mechanism. However, given that it is still early to fully assess the effectiveness of these measures due to their recent implementation, and in view of the time of difficulties that Italy is experiencing due to the COVID-19 pandemic, which makes it more difficult for taxable persons to implement the changes required in their invoicing systems, and for the tax administrations to adapt their control and IT-systems, the removal of the measure could have significant negative effects in the fight against tax evasion and the collection of VAT, as well as on the administrative costs for taxable persons under the current circumstances. It is therefore appropriate to prolong the authorisation to derogate from Directive 2006/112/EC.

(9) The requested derogation should be limited in time to allow an assessment as to whether the special measure is appropriate and effective. The authorisation should therefore be prolonged until 30 June 2023, which would leave sufficient time to assess the effectiveness of the measures implemented by Italy with the aim of reducing tax evasion in the sectors concerned.

(10) To guarantee the necessary follow-up within the framework of the requested derogation and in particular to assess the impact on VAT refunds to taxable persons covered by that derogation, Italy should be required to submit a report to the Commission by September 2021 on the overall situation of, and in particular the average time needed for, VAT refunds to taxable persons, and on the effectiveness of the special measure and any other measures implemented by Italy with the aim of reducing tax evasion in the sectors concerned. That report should include a list of the different measures implemented, together with their date of entry into force.

(11) The special measure is proportionate to the objectives pursued since it is limited in time and restricted to sectors which pose considerable problems as regards tax evasion. In addition, the special measure does not create a risk that tax evasion would shift to other sectors or other Member States.

(12) Due to the difficulties caused by the COVID-19 pandemic, the process for the renewal of the derogation took more time than expected and was not finalised by 30 June 2020. Without retroactive application of this Decision, companies applying the split payment mechanism would have to change their invoicing systems to accommodate the changes overnight. The tax administration would have to implement similar adaptations to its systems. Due to those difficulties, it does not seem appropriate to request businesses and tax administration to undertake these changes at this moment. It is therefore appropriate to apply this Decision retroactively to ensure legal continuity of the measure.

(13) The derogation 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.

(14) Implementing Decision (EU) 2017/784 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2017/784 is amended as follows:

(1) in Article 3, the second subparagraph is replaced by the following:

'By 30 September 2021, Italy shall submit a report to the Commission on the overall situation of VAT refunds to taxable persons affected by the measures referred to in Articles 1 and 2 and, in particular, on the average duration of the refund procedure and on the effectiveness of those measures and any other measures implemented by Italy with the aim of reducing tax evasion in the sectors concerned. That report shall include a list of the different measures implemented, together with their date of entry into force.';

(2) in Article 5, the date '30 June 2020' is replaced by the date '30 June 2023'.

Article 2

This Decision shall apply from 1 July 2020.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 24 July 2020.

For the Council
The President
M. ROTH