Council Implementing Decision (EU) 2019/2230 of 19 December 2019 amending Decision 2007/884/EC authorising the United Kingdom to continue to apply a measure derogating from Articles 26(1)(a), 168 and 169 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2019/2230

of 19 December 2019

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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) Articles 168 and 169 of Directive 2006/112/EC establish 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 or for certain other purposes. Point (a) of Article 26(1) of that Directive treats 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 as a supply of services for consideration.

(2) Decision 2007/884/EC[(2)] authorises the United Kingdom to restrict to 50 % the right of the hirer or lessee of a car to deduct VAT under Article 168 or 169 of Directive 2006/112/EC on the cost of hiring or leasing of a car where the car is not used entirely for business purposes. It also authorises the United Kingdom not to treat as supplies of services for consideration the private use of a business car hired or leased by a taxable person. Those measures ('the derogating measures') remove the need for the hirer or lessee of a business car to keep records of private mileage travelled in that car or to account for VAT on the actual private mileage travelled in that car. Decision 2007/884/EC is due to expire on 31 December 2019.

(3) By letter registered with the Commission on 2 April 2019, the United Kingdom requested authorisation to continue to apply the derogating measures authorised by Decision 2007/884/EC.

(4) By letter dated 29 April 2019, the Commission informed the other Member States pursuant to Article 395(2) of Directive 2006/112/EC of the request made by the United Kingdom. By letter dated 2 May 2019, the Commission notified the United Kingdom that it had all the information necessary to consider the request.

Changes to legislation: *There are outstanding changes not yet made to Council Implementing Decision (EU) 2019/2230. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on the European Union (TEU). In accordance with Article 50(3) TEU, the Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. After agreeing a first extension on 22 March 2019, and a second extension on 11 April 2019, the European Council adopted Decision (EU) 2019/1810[(3)] on 29 October 2019, in which it agreed, following a further request by the United Kingdom, to extend the period provided for in Article 50(3) TEU until 31 January 2020.

(6) In accordance with Article 50 TEU, the European Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ('Withdrawal Agreement'). On 11 January 2019, the Council adopted Decision (EU) 2019/274 on the signing of the Withdrawal Agreement[(4)]. Following further negotiations between the negotiators of the Union and of the United Kingdom during the months of September and October 2019, an agreement was reached on a revised text of the Withdrawal Agreement, which was endorsed by the European Council on 17 October 2019. On 21 October 2019, the Council adopted Decision (EU) 2019/1750 on the signing of the revised Withdrawal Agreement[(5)]. Part Four of the Withdrawal Agreement[(6)] provides for a transition period starting on the date of entry into force of the Withdrawal Agreement and ending on 31 December 2020. During the transition period, and unless the Withdrawal Agreement provides otherwise, Union law shall continue to apply to and in the United Kingdom.

(7) This Decision shall, in any event, cease to apply to and in the United Kingdom from the day following that on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU, or, if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) TEU has entered into force, from the day following that on which the transition period ends, or on 31 December 2022, whichever is the earlier.

(8) Alongside its request, the United Kingdom submitted a report to the Commission in accordance with Article 3, second paragraph, of Decision 2007/884/EC including a review of the percentage restriction applied on the right to deduct VAT. The information provided by the United Kingdom shows that a percentage restriction of 50 % still remains a fair reflection of actual circumstances as regards the ratio of business to non-business use of the vehicles affected by the derogating measures. Extension of the derogating measures should, however, be limited to the time needed to evaluate the effectiveness of the derogating measures and the appropriateness of the percentage. The United Kingdom should therefore be authorised to continue to apply the derogating measures for a limited period of time.

(9) A deadline should be set for requesting authorisation for any further extension of the derogating measures beyond 2022, if applicable. The United Kingdom should also be