Council Implementing Decision (EU) 2019/2138 of 5 December 2019 amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2019/2138

of 5 December 2019

amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 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 the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 168 of the Directive 2006/112/EC establishes a right for taxable persons to deduct value added tax (VAT) charged on supplies of goods or services that they use for the purposes of their taxed transactions. Point (a) of Article 26(1) of that Directive treats the use of business assets by taxable persons or their staff for private purposes or, more generally, for purposes other than those of their business as a supply of services for consideration.

(2) Council Decision 2007/441/EC[(2)] authorises Italy to limit the right under Article 168 of Directive 2006/112/EC to deduct VAT to 40 % in the case of VAT charged on certain expenditure on certain motorised road vehicles not wholly used for business purposes. For vehicles subject to that 40 % limit, Italy is required to relieve taxable persons from having to treat their use for private purposes as a supply of services for consideration in accordance with point (a) of Article 26(1) of Directive 2006/112/EC. Decision 2007/441/EC, which has been extended several times, is due to expire on 31 December 2019.

(3) By letter registered with the Commission on 12 April 2019, Italy requested authorisation to continue to apply the derogating measures authorised by Decision 2007/441/EC ('the derogating measures') for a further period until 31 December 2022.

(4) By letter dated 13 May 2019, the Commission transmitted to the other Member States, pursuant to the second subparagraph of Article 395(2) of Directive 2006/112/EC, the request that had been made by Italy. By letter dated 14 May 2019, the Commission notified Italy that it had all the information it considers necessary for appraisal of the request.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2019/2138. (See end of Document for details)*

(5) Together with the request, Italy submitted a report to the Commission, in accordance with the second subparagraph of Article 6 of Decision 2007/441/EC, including a review of the percentage restriction applied on the right to deduct VAT. Based on the information currently available, Italy maintains that a rate of 40 % is still justified. Italy also maintains that suspending the requirement to account for VAT on the private use of a motor vehicle subject to that 40 % limit is still necessary to ensure that the measure is complete and consistent. According to Italy, this would prevent double taxation. Italy also maintains that 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.

(6) An extension of the derogating measures should be limited to the time needed to evaluate the effectiveness of the derogating measures and the appropriateness of the percentage. Italy should therefore be authorised to continue to apply the derogating measures until 31 December 2022.

(7) A deadline should be set for requesting authorisation for any further extension of the derogating measures beyond 2022 which Italy may consider necessary. Moreover, pursuant to the second subparagraph of Article 6 of Decision 2007/441/EC, Italy should be required to submit a report together with any such extension request, including a review of the percentage restriction applied on the right to deduct VAT.

(8) The derogating measures will only have 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.

(9) Decision 2007/441/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2007/441/EC is amended as follows:

(1) Article 6 is replaced by the following:

Article 6

Any request for authorisation to extend the derogating measures provided for in this Decision shall be submitted to the Commission by 1 April 2022. The request shall be accompanied by a report including a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision.;

(2) Article 7 is replaced by the following:

Article 7

This Decision shall expire on 31 December 2022..

Article 2

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

It shall apply from 1 January 2020.