Council Implementing Decision (EU) 2018/2060 of 20 December 2018 amending Decision 2009/791/EC authorising Germany to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2018/2060

of 20 December 2018

amending Decision 2009/791/EC authorising Germany to continue to apply a measure derogating from Articles 168 and 168a 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) Articles 168 and 168a of Directive 2006/112/EC govern the right of taxable persons to deduct value added tax (VAT) charged on goods and services supplied to them for the purposes of their taxed transactions. Germany was authorised to introduce a derogating measure intended to exclude VAT borne on goods and services from the right of deduction where those goods and services are used by the taxable person for more than 90 % for his private purposes or for purposes of his employees, or in general for non-business purposes or non-economic activities.

(2) Initially, Council Decision 2000/186/EC[(2)] authorised Germany to introduce and apply special measures derogating from Articles 6 and 17 of Council Directive 77/388/EEC[(3)] until 31 December 2002. Council Decision 2003/354/EC[(4)] authorised Germany to apply a measure derogating from Article 17 of Directive 77/388/EEC until 30 June 2004. Council Decision 2004/817/EC[(5)] extended the authorisation until 31 December 2009.

(3) By means of Council Decision 2009/791/EC[(6)] Germany was authorised to continue to apply a special measure derogating from Article 168 of Directive 2006/112/EC until 31 December 2012. Council Implementing Decision 2012/705/EU[(7)] authorised Germany to apply a special measure derogating from Articles 168 and 168a until 31 December 2015, and Council Implementing Decision (EU) 2015/2428[(8)] until 31 December 2018.

(4) By letter registered with the Commission on 10 September 2018, Germany requested the authorisation to continue to apply the special measure derogating from Articles 168 and 168a of Directive 2006/112/EC in order to entirely exclude from the right of deduction the VAT borne on goods and services that are used by a taxable person for more than 90 % for private or non-business purposes, including non-economic

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2018/2060. (See end of Document for details)*

activities. The request was accompanied by a report on the application of the special measure, including a review of the apportionment rate applied on the right to deduct VAT as required by Article 2 of Decision 2009/791/EC.

(5) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request made by Germany to the other Member States, by letters dated 14 September 2018. By letter dated 17 September 2018, the Commission notified Germany that it had all the necessary information for the appraisal of the request.

(6) According to Germany, the special measure has proven very effective in simplifying the collection of VAT and preventing tax evasion and avoidance. The measure reduces the administrative burden for businesses and tax administrations, as there is no need for any monitoring of the subsequent use of the goods and services to which the exclusion from deduction applied at the time of their acquisition. Germany should therefore be authorised to continue to apply the special measure for a further limited period until 31 December 2021.

(7) In the event that Germany considers that an extension beyond 2021 is necessary, it should, by 31 March 2021, submit to the Commission a request for an extension accompanied by a report on the application of the special measure that includes a review of the apportionment rate applied.

(8) The special measure will have no adverse impact on the Union's own resources accruing from VAT.

(9) Decision 2009/791/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision 2009/791/EC is replaced by the following:

Article 2

This Decision shall expire on 31 December 2021.

Any request for the extension of the derogating measure provided for in this Decision shall be submitted to the Commission by 31 March 2021.

Such request shall be accompanied by a report on the application of this measure which includes a review of the apportionment rate 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.

It shall apply from 1 January 2019.

Article 3

This Decision is addressed to the Federal Republic of Germany.