Council Implementing Decision (EU) 2018/1994 of 11 December 2018 authorising Croatia to introduce a special measure derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2018/1994

of 11 December 2018

authorising Croatia to introduce a special measure derogating from point (a) of Article 26(1) and Article 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 Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by that person for the use of that person's taxed transactions. Point (a) of Article 26(1) of that Directive contains a requirement to account for VAT when a business asset is put to use for private purposes of the taxable person or his staff or, more generally, for purposes other than those of his business.

(2) By letter registered with the Commission on 22 December 2016, Croatia requested authorisation to apply a special measure derogating from the provisions of Directive 2006/112/EC governing the right to deduct input tax in relation to the purchase and leasing of aircrafts, vessels and personal cars, including the purchase of accessories for such goods as well as services supplied in relation thereto. After a number of discussions with the Commission, Croatia submitted a modified request limited to passenger cars, which was registered with the Commission on 17 September 2018.

(3) The Commission transmitted the request of Croatia to other Member States by letter dated 21 September 2018. By letter dated 24 September 2018, the Commission notified Croatia that it had all the information it considered necessary for the appraisal of the request.

(4) Taxable persons in Croatia cannot deduct VAT related to passenger cars used partially for business purposes. Croatia intends to modify its legislation and allow the deduction of input VAT relating to passenger cars.

(5) Croatia claims that it is often difficult to accurately determine the extent to which cars are used for private or professional purposes and that, even where it is possible, this is often burdensome. Croatia therefore considers that it would be appropriate to apply the

fixed percentage for the VAT deduction. Based on estimations, Croatia submits that the 50 % limit is appropriate.

(6) According to Croatia, the application of the fixed percentage limit for the VAT deduction will not result in an additional administrative burden or additional costs for businesses or tax authorities, while the VAT deduction will be possible. The introduction of the VAT deduction will reduce the interest of taxpayers to procure goods and services related to passenger cars from persons performing a non-registered activity.

(7) Croatia therefore requested authorisation, based on Article 395 of Directive 2006/112/EC, to apply a special measure derogating from point (a) of Article 26(1) and Article 168 of that Directive in order to limit the right of deduction on passenger cars to a set percentage (‘the special measure’).

(8) The restriction on the right of deduction should apply to VAT paid on the purchase and lease of personal cars, including the purchase of all goods and services supplied in relation thereto. Passenger cars covered are considered to be motor vehicles intended for the transport of persons with a maximum of eight seats in addition to the driver's seat.

(9) The special measure is designed to simplify the procedure for charging tax and to counter VAT evasion while allowing the deduction of VAT on passengers cars used partially for business purposes. Given the potential positive impact for both businesses and administrations, it is appropriate to grant the special measure.

(10) The special measure should apply from 1 January 2019 and should be limited in time to 31 December 2021, so that it can be assessed whether the 50 % restriction is a correct reflection of the overall apportionment between business and private use.

(11) In the event that Croatia considers that an extension of the special measure beyond 2021 is necessary, it should, by 31 March 2021, submit to the Commission a request for an extension accompanied by a report that includes a review of the percentage applied.

(12) The special measure will have only a negligible effect on 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 168 of Directive 2006/112/EC, Croatia is authorised to limit to 50 % the right to deduct the value added tax (VAT) on expenditure related to passenger cars not wholly used for business purposes.

Article 2

By way of derogation from point (a) of Article 26(1) of Directive 2006/112/EC, Croatia shall not treat as supplies of services for consideration the use for non-business purposes of a passenger car included in the assets of a taxable person's business where that car has been subject to a limitation authorised under Article 1 of this Decision.