Council Implementing Decision (EU) 2018/1920 of 4 December 2018 amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2018/1920

of 4 December 2018

amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 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) On 15 May 2006 the Council, by means of Decision 2006/388/EC[(2)], authorised Lithuania to apply a measure derogating from Article 21 of Directive 77/388/EEC[(3)] to designate the taxable person to whom the supplies of goods or services are made in certain instances as the person liable to pay value added tax (VAT).

(2) By means of Council Implementing Decision 2010/99/EU[(4)], Lithuania was, by way of derogation from Article 193 of Directive 2006/112/EC, authorised until 31 December 2012 to apply a special measure in order to continue to designate the taxable person to whom the following supplies of goods and services are made as the person liable for payment of VAT: supplies of goods and services by a taxable person while under an insolvency procedure or a restructuring procedure subject to judicial oversight and supplies of timber ('the special measure'). The authorisation to apply the special measure was subsequently extended by Council Implementing Decision 2012/704/EU[(5)] until 31 December 2015 and by Council Implementing Decision (EU) 2015/2395[(6)] until 31 December 2018.

(3) By letter registered with the Commission on 27 April 2018, Lithuania requested authorisation to continue to apply the special measure. By letter registered with the Commission on 23 July 2018, Lithuania submitted a report on the application of the special measure as required by the third paragraph of Article 2 of Implementing Decision 2010/99/EU.

(4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Lithuania by letters dated 16 August 2018, with the exception of Spain and Cyprus, which were informed by letters dated 17 August 2018. By letter dated 20 August 2018,

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2018/1920. (See end of Document for details)*

the Commission notified Lithuania that it had all the information it considers necessary for appraisal of the request.

(5) Taxable persons under insolvency procedures or restructuring procedures are often prevented from paying VAT invoiced on their supplies of goods and services by financial difficulties. Lithuania also faces problems in the timber market, because of the nature of the market and the businesses involved. The market is dominated by small local companies, often resellers and intermediaries, which the tax authorities have found difficult to control. The most common form of evasion involves the invoicing of supplies followed by the disappearance of the business without paying tax but leaving the customer in receipt of a valid invoice for tax deduction. According to Lithuania, this situation, which has justified the application of the special measure, has not changed. The investigations and the analysis of the application of the special measure carried out by the Lithuanian tax authorities have revealed its effectiveness in preventing VAT fraud in respect of taxable persons under insolvency or restructuring procedures as well as of timber transactions.

(6) Lithuania should therefore be authorised to apply the special measure for a further limited period until 31 December 2021.

(7) Derogations are in general authorised for a limited period of time to allow an assessment of whether specific special measures are appropriate and effective. Derogations grant Member States time to introduce other conventional measures to tackle the problem in question until the expiry of specific special measures, thus making an extension of a derogation redundant. A derogation allowing for use to be made of the reverse charge mechanism is only authorised exceptionally for specific areas where fraud occurs and constitutes a means of last resort. Lithuania should therefore implement other conventional measures to fight and prevent the further spread of VAT fraud with regard to supplies of goods and services by taxable persons under insolvency or restructuring procedures and supplies of timber until the expiry of the special measure and consequently should no longer need to derogate from Article 193 of Directive 2006/112/EC with regard to such supplies.

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

(9) Implementing Decision 2010/99/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision 2010/99/EU, the second paragraph is replaced by the following:

It shall apply until 31 December 2021..

Article 2

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

It shall apply from 1 January 2019.