Council Implementing Decision (EU) 2018/1919 of 4 December 2018 amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2018/1919

of 4 December 2018

amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 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) Point (14) of Article 287 of Directive 2006/112/EC authorises Poland to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 10 000 at the conversion rate on the day of its accession.

(2) By virtue of Council Decision 2009/790/EC[(2)], Poland was authorised to exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 30 000 at the conversion rate on the day of its accession from VAT, until 31 December 2012. The authorisation to apply that special measure was subsequently extended by Council Implementing Decision 2012/769/EU[(3)] until 31 December 2015 and by Council Implementing Decision (EU) 2015/1173[(4)] until 31 December 2018. Council Implementing Decision (EU) 2016/2090[(5)] increased the exemption threshold to the equivalent in national currency of EUR 40 000.

(3) By letter registered with the Commission on 15 May 2018, Poland requested authorisation to continue to exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000 from VAT.

(4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request of Poland to the other Member States by letter dated 20 July 2018, with the exception of Spain, to which the request was transmitted by letter of 23 July 2018. By letter dated 23 July 2018, the Commission notified Poland that it had all the information necessary for the appraisal of the request.

(5) From the information provided by Poland it appears that the reasons for the derogation request remain largely unchanged. It simplifies the burden on business for a higher

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2018/1919. (See end of Document for details)*

number of taxable persons who have a limited business activity. It also results in the reduction of the administrative burden on the tax administration by limiting the need to control small taxable persons, which is relatively costly in comparison with the amount of VAT at stake. That special measure is fully optional for taxable persons.

(6) Given that the higher threshold has resulted in reduced VAT obligations for small businesses, whilst such businesses may still opt for the normal VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Poland should be authorised to apply the special measure for a further limited period until 31 December 2021.

(7) As Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises are subject to review, it is possible that a directive amending those Articles will be adopted and will set a date from which Member States are to apply national provisions before the period of validity of the derogation expires on 31 December 2021. In that case, this Decision should cease to apply.

(8) The derogation has no impact on the Union's own resources accruing from VAT because Poland is to carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89[(6)].

(9) Decision 2009/790/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision 2009/790/EC is replaced by the following:

Article 2

This Decision shall apply from 1 January 2010 until the earlier of the following two dates:

(a) 31 December 2021;

(b) the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises..

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 Republic of Poland.

Done at Brussels, 4 December 2018.

For the Council

The President

H. LÖGER