DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2022/559

of 5 April 2022

amending Implementing Decision (EU) 2019/310 as regards the authorisation granted to Poland to continue to apply the special measure derogating from Article 226 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) By letter registered with the Commission on 26 July 2021, Poland requested an authorisation to continue to apply a special measure derogating from Article 226 of Directive 2006/112/EC in order to apply a split payment mechanism ('the special measure'). The special measure requires the inclusion of a special statement that value added tax (VAT) has to be paid to the blocked VAT account of the supplier on invoices issued in relation to the supplies of goods and services susceptible to fraud and generally covered by a reverse charge mechanism and by joint and several liability in Poland. Poland requested the extension of the special measure for a period of three years, from 1 March 2022 to 28 February 2025.

(2) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Poland to other Member States by letter dated 27 October 2021. By letter dated 28 October 2021, the Commission notified Poland that it had all the information necessary to consider the request.

(3) Pursuant to Article 2 of Council Implementing Decision (EU) 2019/310 ([2]), Poland submitted a report to the Commission regarding the overall impact of the special measure on the level of VAT fraud and on the taxable persons concerned by letter dated 29 April 2021.

(4) Poland has already taken numerous measures to fight fraud. It has, inter alia, introduced the reverse charge mechanism and joint and several liability of the supplier and the customer, the Standard Audit File, tighter rules for the VAT registration and de-registration of taxable persons, and has increased the number of audits. However, Poland nonetheless considers that those measures are insufficient to prevent VAT fraud.

(5) Poland introduced the voluntary split payment mechanism on 1 July 2018 and the mandatory split payment mechanism on 1 March 2019.

(6) The goods and services that fall within the scope of the special measure are listed in the Annex to Implementing Decision (EU) 2019/310 in accordance with the Polish Classification of Goods and Services of 2008 (PKWiU 2008). The Polish Classification of Goods and Services of 2015 (PKWiU 2015) replaced PKWiU 2008 from 1 July 2020. Under PKWiU 2015, the symbols of the statistical classification and the editorial names of certain goods and services that appear in the Annex to Implementing Decision (EU) 2019/310 have been changed. Although the replacement of PKWiU 2008 with PKWiU 2015 did not result in any change to the scope of goods and services covered by the mandatory split payment mechanism, the Annex should be updated and replaced by the Annex to this Decision for the sake of legal certainty.

([1]) OJ L 347, 11.12.2006, p. 1.

([2]) Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 51, 22.2.2019, p. 19).

(7) The special measure will continue to apply to supplies between taxable persons of goods and services listed in the Annex to Implementing Decision (EU) 2019/310, as updated and replaced by the Annex to this Decision, in business-to-business (B2B) supplies, and will cover only electronic bank transfers. The special measure will continue to apply to all suppliers, including to suppliers not established in Poland.

(8) The report submitted by Poland confirmed that the special measure for supplies of goods and services susceptible to fraud brings effective results in the fight against tax fraud.

(9) Authorisations to apply a special measure are in general granted for a limited period of time to allow the Commission to evaluate whether the special measure is appropriate and effective. The authorisation to apply the special measure should therefore be extended until 28 February 2025.

(10) Given the broad scope of the special measure, Poland should, if it requests a further extension of the authorisation to apply the special measure, submit a report with respect to the functioning and the effectiveness of the special measure on the level of VAT fraud and on the taxable persons regarding, inter alia, the refunds of VAT, the administrative burden and costs for taxable persons.

(11) The special measure will not negatively affect 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.

(12) In order to ensure that the objectives pursued by the special measure are achieved, including the uninterrupted application of the special measure, and to provide legal certainty with regard to the tax period, it is appropriate to grant authorisation to extend the special measure with effect from 1 March 2022. As Poland requested authorisation on 26 July 2021 to continue to apply the special measure and has continued to apply the legal regime established under its national law on the basis of Implementing Decision (EU) 2019/310 from 1 March 2022, the legitimate expectations of the persons concerned are duly respected.

(13) Implementing Decision (EU) 2019/310 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2019/310 is amended as follows:

(1) in Article 2, the second paragraph is replaced by the following:

'Where Poland considers that the extension of the measure referred to in Article 1 is necessary, it shall submit a request for an extension to the Commission, together with a report on its overall impact on the level of VAT fraud and on the taxable persons concerned.';

(2) in Article 3, second paragraph, the date '28 February 2022' is replaced by the date '28 February 2025';

(3) the Annex is replaced by the text appearing in the Annex to this Decision.

Article 2

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

Article 3

This Decision is addressed to the Republic of Poland.

Done at Luxembourg, 5 April 2022.

For the Council
The President
B. LE MAIRE

ANNEX

'ANNEX

LIST OF SUPPLIES OF GOODS AND SERVICES COVERED BY ARTICLE 1

Article 1 shall apply to the following supplies of goods and services described according to the Polish Classification of Goods and Services (PKWiU 2015)

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
1	05.10.10.0	Hard coal
2	05.20.10.0	Lignite
3	ex 10.4	Animal and vegetable oils and fats – exclusively rape oil
4	19.10.10.0	Coke and semi-coke of coal and lignite or of peat; retort carbon
5	19.20.11.0	Briquettes, ovoids and similar solid fuels manufactured from coal
6	19.20.12.0	Briquettes, ovoids and similar solid fuels manufactured from lignite
7	ex 20.59.12.0	Emulsions for surface sensitisation for use in photography; chemical preparations for use in photography, not elsewhere classified (n.e.c.) – exclusively toners without a print head for printers for automatic data-processing machines
8	ex 20.59.30.0	Typewriter ink, draft ink and other inks – exclusively ink cartridges without a print head for printers for automatic data processing machines
9	ex 22.21.30.0	Plates, sheets, film, foil, strip and plastic strips, non-cellular, not reinforced, laminated or combined with other materials – exclusively stretch foil
10	24.10.12.0	Ferro-alloys
11	24.10.14.0	Pig iron and specular pig iron or steel, in the form of granules or powder
12	24.10.31.0	Flat rolled products of non-alloy steel, hot-rolled, of a width of >= 600 mm
13	24.10.32.0	Flat rolled products of non-alloy steel, hot-rolled, of a width of < 600 mm
14	24.10.35.0	Flat rolled products of other alloy steel, hot-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
15	24.10.36.0	Flat rolled products of other alloy steel, hot-rolled, of a width of < 600 mm, excluding products of electrical silicon steel
16	24.10.41.0	Flat rolled products of non-alloy steel, cold-rolled, of a width of >= 600 mm
17	24.10.43.0	Flat rolled products of other alloy steel, cold-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
18	24.10.51.0	Flat rolled products of non-alloy steel, of a width of >= 600 mm, clad, plated or coated
19	24.10.52.0	Flat rolled products of other alloy steel, of a width of >= 600 mm, clad, plated or coated
20	24.10.61.0	Bars and rods, hot rolled, in irregularly wound coils, of non-alloy steel

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
21	24.10.62.0	Other bars and rods of steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
22	24.10.65.0	Bars and rods, hot rolled, in irregularly wound coils, of other alloy steel
23	24.10.66.0	Other bars and rods of other alloy steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
24	24.10.71.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of non-alloy steel
25	24.10.73.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of other alloy steel
26	24.20.11.0	Line pipe of a kind used for oil or gas pipelines, seamless, of steel
27	24.20.12.0	Casing, tubing and drill pipe, of a kind used in the drilling for oil or gas, seamless, of steel
28	24.20.13.0	Other tubes and pipes, of circular cross section, seamless, of steel
29	24.20.31.0	Line pipe of a kind used for oil or gas pipelines, welded, of an external diameter of <= 406,4 mm, of steel
30	24.20.33.0	Other tubes and pipes, of circular cross section, welded, of an external diameter of <= 406,4 mm, of steel
31	24.20.34.0	Tubes and pipes, of non-circular cross-section, welded, of an external diameter of <= 406,4 mm, of steel
32	24.20.40.0	Tube or pipe fittings of steel, not cast
33	24.31.10.0	Bars, angles, sections and solid profiles of non-alloy steel, cold drawn
34	24.31.20.0	Bars, angles, sections and solid profiles of other alloy steel, cold drawn
35	24.32.10.0	Flat steel products, not further worked than cold rolled, of a width of < 600 mm, uncoated
36	24.32.20.0	Flat rolled steel products, not further worked than cold rolled, of a width of < 600 mm, clad, plated or coated
37	24.33.11.0	Open sections of non-alloy steel, cold formed or cold folded
38	24.33.20.0	Ribbed sheets of non-alloy steel
39	24.34.11.0	Cold drawn wire of non-alloy steel
40	24.41.10.0	Unwrought silver or in semi-manufactured form or in powder form
41	ex 24.41.20.0	Unwrought gold or in semi-manufactured form or in powder form, excluding investment gold within the meaning of Article 121 of the Act on goods and services tax, subject to item 43
42	24.41.30.0	Unwrought platinum or in semi-manufactured form or in powder form
43	irrespective of the PKWiU symbol	Investment gold within the meaning of Article 121 of the Act on goods and services tax
44	ex 24.41.40.0	Base metals or silver, plated with gold, not further worked than in semi-manufactured form – exclusively silver, gold-plated, not further worked than in semi-manufactured form

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
45	ex 24.41.50.0	Base metals plated with silver and base metals, silver or gold, plated with platinum, not further worked than in semi-manufactured form – exclusively gold and silver, platinum-plated, not further worked than in semi-manufactured form
46	24.42.11.0	Unwrought aluminium
47	24.43.11.0	Unwrought lead
48	24.43.12.0	Unwrought zinc
49	24.43.13.0	Unwrought tin
50	24.44.12.0	Copper, unrefined; copper anodes for electrolytic refining
51	24.44.13.0	Refined copper and copper alloys, unwrought; master alloys of copper
52	24.44.21.0	Powders and flakes of copper and its alloys
53	24.44.22.0	Flat bars, rods, sections and wire rod, of copper and its alloys
54	24.44.23.0	Wires of copper and its alloys
55	24.45.11.0	Unwrought nickel
56	ex 24.45.30.0	Other non-ferrous metals and products made of the same; cermets; ashes and residues containing metals and metal compounds – exclusively non-precious metal waste and scrap
57	ex 25.11.23.0	Other structures and parts of structures; plates, rods, angles, shapes and the like, of iron, steel or aluminium – exclusively of steel
58	ex 25.93.13.0	Cloth, grills, netting and fencing, of iron, steel or copper wire; expanded metal, of iron, steel or copper – exclusively of steel
59	ex 26.11.30.0	Electronic integrated circuits – exclusively processors
60	26.20.1	Computers and other automatic data processing machines and parts and accessories therefor
61	ex 26.20.21.0	Memory units – exclusively hard drives (HDDs)
62	ex 26.20.22.0	Solid state storage devices – exclusively SSDs
63	ex 26.30.22.0	Cellular phones or other wireless networks – exclusively mobile phones, including smartphones
64	26.40.20.0	Television receivers, whether or not combined with radio-broadcast receivers or sound or video recording or reproduction apparatus
65	ex 26.40.60.0	Video game consoles (such as those used with a television set or a stand-alone screen) and other gaming or game of chance apparatus with electronic display – excluding parts and accessories
66	26.70.13.0	Digital cameras and digital camcorders
67	27.20.2	Electric accumulators and parts thereof
68	28.11.41.0	Parts for spark-ignition internal combustion engines, excluding parts for aircraft engines
69	ex 28.23.22.0	Parts and accessories for office machines – exclusively ink cartridges and print heads for printers for automatic data-processing machines, toners with print head for printers for automatic data processing machines

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
70	ex 29.31.10.0	Ignition cable harnesses and other wiring sets of a kind used in vehicles, aircraft or watercraft – exclusively ignition cable harnesses and other wiring sets of a kind used in vehicles
71	29.31.21.0	Sparking plugs; ignition magnetos; magneto-dynamos; magnetic flywheels; distributors; ignition coils
72	29.31.22.0	Starter motors and dual purpose starter-generators; other generators and other equipment for combustion engines
73	29.31.23.0	Electrical signalling equipment, windscreen, defrosters and demisters for motor vehicles
74	29.31.30.0	Parts of other electrical equipment for motor vehicles
75	29.32.20.0	Safety seat belts, airbags and parts and accessories of bodies
76	29.32.30.0	Parts and accessories for motor vehicles n.e.c., excluding motorcycles
77	30.91.20.0	Parts and accessories of motorcycles and side-cars
78	ex 32.12.13.0	Jewellery and other jewellery as well as parts thereof, made of precious metal or metal plated with precious metal – exclusively parts of jewellery and parts of other gold, silver and platinum jewellery, i.e. unfinished or incomplete jewellery and distinct parts of jewellery, including covered or plated with precious metal
79	38.11.49.0	Used vehicles, computers, televisions and other devices intended for scrapping
80	38.11.51.0	Glass waste
81	38.11.52.0	Paper and paperboard waste
82	38.11.54.0	Other rubber waste
83	38.11.55.0	Plastic waste
84	38.11.58.0	Metal-containing waste other than hazardous waste
85	38.12.26.0	Hazardous metal waste
86	38.12.27	Waste and defective electric cells and accumulators; spent galvanic cells and batteries and electric accumulators
87	38.32.2	Metal secondary raw materials
88	38.32.31.0	Secondary raw material of glass
89	38.32.32.0	Secondary raw material of paper and paperboard
90	38.32.33.0	Secondary raw material of plastic
91	38.32.34.0	Secondary raw material of rubber
92		Motor spirit, diesel oil, fuel gas – within the meaning of the provisions on excise duty
93		Heating oil and lubricating oil – within the meaning of the provisions on excise duty
94	ex 58.29.11.0	Operating system software packages – exclusively SSD
95	ex 58.29.29.0	Other software packages – exclusively SSDs
96	ex 59.11.23.0	Other videos and video recordings on disks, magnetic tapes and similar media – exclusively SSDs

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
97	irrespective of the PKWiU symbol	GHG emission allowance transfer services referred to in the Act of 12 June 2015 on Greenhouse Gas Emission Trading Scheme (Official Journal of 2021 item 332)
98	41.00.3	Construction work on residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings)
99	41.00.4	Construction work on non-residential buildings (works on the construction of new buildings, reconstruction or renovation of existing buildings)
100	42.11.20.0	General construction works involving the construction of motorways, roads, streets and other roads for vehicles and pedestrians and the construction of runways
101	42.12.20.0	General construction works involving the construction of railways and subways
102	42.13.20.0	General construction works involving the construction of bridges and tunnels
103	42.21.21.0	General construction works involving the construction of transmission pipelines
104	42.21.22.0	General construction works involving the construction of distribution networks, including auxiliary works
105	42.21.23.0	General construction works involving the construction of irrigation systems (sewers), bus and water lines, facilities for water treatment and sewage treatment and pump stations
106	42.21.24.0	Works involving the drilling of wells and water intakes and installation of septic tanks
107	42.22.21.0	General construction works involving the construction of telecommunications and power transmission lines
108	42.22.22.0	General construction works involving the construction of telecommunications and power distribution lines
109	42.22.23.0	General construction works involving the construction of power plants
110	42.91.20.0	General construction works involving the construction of wharves, ports, dams, locks and related hydro-technical facilities
111	42.99.21.0	General construction works involving the construction of production and mining facilities
112	42.99.22.0	General construction works involving the construction of stadiums and sports fields
113	42.99.29.0	General construction works involving the construction of other civil engineering structures, n.e.c.
114	43.11.10.0	Works involving demolition of buildings
115	43.12.11.0	Works involving the preparation of the site for construction, excluding earthworks
116	43.12.12.0	Earthworks: digging, ditch digging and earth moving jobs
117	43.13.10.0	Works involving the excavation and geological-engineering drilling
118	43.21.10.1	Works involving the execution of electrical safety installations
119	43.21.10.2	Works involving the implementation of other electrical installations
120	43.22.11.0	Works involving the execution of plumbing and drainage works
121	43.22.12.0	Works involving the execution of heating, ventilation and air conditioning systems

Item	PKWiU 2015	Name of goods (group of goods) / services (group of services)
122	43.22.20.0	Works involving the execution of gas installations
123	43.29.11.0	Insulation work
124	43.29.12.0	Installation of fencing
125	43.29.19.0	Other installation works n.e.c.
126	43.31.10.0	Plastering works
127	43.32.10.0	Installation work for carpentry
128	43.33.10.0	Works involving the laying the floor and facing the walls
129	43.33.21.0	Works involving the laying of terrazzo, marble, granite or slate on floors and walls
130	43.33.29.0	Other works involving the laying of floors and walls (including wallpapering), n.e.c.
131	43.34.10.0	Painting works
132	43.34.20.0	Glass-making works
133	43.39.11.0	Works involving the decoration
134	43.39.19.0	Works involving the execution of other finishing works, n.e.c.
135	43.91.11.0	Works involving the construction of roof structures
136	43.91.19.0	Works involving other roofing work
137	43.99.10.0	Works involving the installation of damp-proof and waterproof insulation
138	43.99.20.0	Works involving the assembly and dismantling of scaffolding
139	43.99.30.0	Works involving the construction of foundations, including pile driving
140	43.99.40.0	Concrete works
141	43.99.50.0	Works involving erection of steel structures
142	43.99.60.0	Works involving the erection of brick and stone structures
143	43.99.70.0	Works involving the assembly and erection of prefabricated structures
144	43.99.90.0	Works involving the performance of other specialized works, n.e.c.
145	45.31.1	Trade services of motor vehicle parts and accessories, excluding motorcycles
146	45.32.1	Specialised store retail trade services of motor vehicle parts and accessories, excluding motorcycles
147	45.32.2	Other retail trade services of parts and accessories of motor vehicles, excluding motorcycles
148	ex 45.40.10.0	Wholesale trade services of motorcycles and related parts and accessories – exclusively sale of parts and accessories for motorcycles
149	ex 45.40.20.0	Specialised store retail trade services of motorcycles and related parts and accessories – exclusively sale of parts and accessories for motorcycles
150	ex 45.40.30.0	Other retail trade services of motorcycles and related parts and accessories – exclusively retail sale of parts and accessories for motorcycles'