EUROPEAN COMMISSION

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2010/0161 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Poland to introduce a special measure derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] (hereafter: 'VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Secretariat-General of the Commission on 16 November 2009, the Republic of Poland requested authorisation to introduce a measure derogating from Articles 26(1)(a) and 168 of the VAT Directive.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 14 December 2009 of the request made by the Republic of Poland. By letter dated 17 December 2009 the Commission notified the Republic of Poland that it had all the information necessary to consider the request in the way set out below.

The vast majority of businesses, over 95%, in the Republic of Poland are classified as micro enterprises, many of which are family run businesses, and so the cars owned or leased by these businesses are often used for both business and personal use, whereas larger companies often remunerate their staff through non-financial benefits, such as company cars, which would also be used for both business and personal purposes. In short, the vast majority of cars owned by businesses are used for both business and personal purposes. Currently, a business which uses a vehicle for private purposes should account for output tax on the private use under Article 26(1)(a) of the VAT Directive.

Because the design of certain vehicles make them equally suited to both business and personal use, the Polish authorities state that it is difficult to establish, with any degree of precision, the extent to which a taxable person uses those vehicles for private use. This is the case not only for the taxable persons, but also for the tax authorities, who are required to check the extent of private use.

In order to overcome these difficulties and simplify the application of the VAT system, the Republic of Poland seeks a derogation to waive the taxation of private use of certain vehicles, but also to restrict the input tax deduction on the initial purchase or hire of these vehicles to 60%. This percentage has been assessed by the Polish authorities as the average proportion of time for which these types of vehicles are used for business purposes.

The deduction would be up to a maximum of 6.000 PLN. This figure has been established based on the price of standard car (55.000 PLN), and is intended to

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

prevent the excessive deduction for luxury cars, which are more likely to be used for private purposes.

The vehicles covered by this measure are those with a maximum load capacity of over 500 kg and a total maximum weight of 3.5 tonnes. An exception to this is vehicles which are clearly intended for use solely for a business activity, specifically vehicles purchased for resale or hire; vehicles intended in principle for the carriage of goods; special purpose vehicles (e.g. roadside assistance vehicles, loaders and hearses); and vehicles designed for the carriage of at least 10 persons including the driver. The purpose of this distinction is to restrict the application of the measure to those vehicles which can be used for both business and private use.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

There was no need for consultation or external expertise.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Decision authorises Poland to introduce a special measure derogating from Articles 26 and 168 of the VAT Directive as regards the deduction of VAT incurred in the purchase, acquisition, import, hiring or leasing of certain vehicles.

This Decision is based on Article 395 of the VAT Directive.

This Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the strict limitation in time and in scope, the special measure appears to be proportionate to the aim pursued.

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal has no negative implications for the Union's budget.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

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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[2], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Secretariat-General of the Commission on 16 November 2009, Poland requested authorisation to introduce a special measure derogating from the provisions of Directive 2006/112/EC governing the right to deduct input tax.

(2) The Commission informed the other Member States of the request made by Poland in a letter dated 14 December 2009. By a letter dated 17 December 2009, the Commission notified Poland that it had all the information that it considered necessary to consider the request.

(3) Some vehicles are, by the nature of their design, equally suited to be used for private purposes as for business purposes. Currently, where a taxable person intends to use for private purposes a vehicle on which he has deducted the input tax in full or in part on the purchase, he is required to account for output tax on that use. However, the private use is difficult for the taxable person to establish with any degree of accuracy, and for the tax authorities to monitor.

(4) Therefore, in order to simplify the procedure for collecting value added tax (VAT), Poland seeks a derogation in order to restrict the right of deduction on the purchase of a vehicle used for both business and private purposes to 60 % of the VAT incurred on the purchase, acquisition, import, hire or lease of certain vehicles. The taxable person would subsequently no longer be required to account for output tax on the private use of the vehicle.

(5) The special measure should only apply to vehicles with a maximum load capacity of over 500 kg and a maximum weight of 3.5 tonnes , and for a VAT deduction not

[2] OJ L 347, 11.12.2006, p. 1.

exceeding 6 000 PLN. The maximum figure for the VAT deduction is intended to prevent the excessive deduction of VAT incurred on the purchase or hire of luxury cars, which are more likely to be used for private purposes. Vehicles intended to perform a specific function such as roadside assistance vehicles, hearses, and loading vehicles, and vehicles for resale or hire should not fall under the derogation.

(6) The authorisation should be valid for a limited period and should therefore expire on 31 December 2013. In light of the experience gained up to that date an assessment may be made whether or not the derogation remains justified.

(7) The derogation has no negative impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 168 of Directive 2006/112/EC, Poland is authorised to restrict to 60 % the right to deduct VAT on the purchase, acquisition, import, hire or lease of vehicles, up to a maximum of 6 000 PLN.

This restriction shall only apply to vehicles with a maximum authorised carrying capacity of over 500 kg and a maximum weight of 3.5 tonnes.

Article 2

Article 1 shall not apply to the following categories of vehicles:

(1) vehicles purchased for resale, hire or lease;

(2) vehicles intended for the carriage of goods;

(3) vehicles intended to perform a specific function;

(4) vehicles designed for the carriage of at least 10 persons, including the driver.

Article 3

By way of derogation from Article 26(1)(a) of Directive 2006/112/EC, Poland is authorised to not treat as a supply of services for consideration the private use by a taxable person or of his staff or, more generally, for purposes other than those of his business of a vehicle for which the restriction referred to in Article 1 of this Decision applies.

Article 4

This Decision shall expire on 31 December 2013.

Article 5

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council
The President