

## DECISIONS

## COUNCIL IMPLEMENTING DECISION

of 22 April 2013

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

(2013/191/EU)

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 <sup>(1)</sup>, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letters registered at the Commission on 17 June 2011 and 27 August 2012, Latvia requested authorisation to derogate from the provisions of Directive 2006/112/EC governing the right to deduct input tax in relation to passenger cars.
- (2) The Commission informed the other Member States by letter dated 26 November 2012 of the request made by Latvia. By letter dated 30 November 2012, the Commission notified Latvia that it had all the information it considered necessary to examine the request.
- (3) Articles 168 and 168a of Directive 2006/112/EC establish a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by him and used for the purposes of his taxed transactions. Point (a) of Article 26(1) of that Directive requires taxable persons to account for VAT when a business asset is put to non-business use.
- (4) Non-business use is often very difficult to identify accurately and even where that is possible, the mechanism for doing so is often burdensome. Under the requested authorisation, the amount of VAT on

expenditure eligible for deduction in respect of passenger cars which are not used entirely for business purposes should, with some exceptions, be set at a flat percentage rate. Based on information provided by Latvia, a rate of 80 % is justifiable. At the same time, in order to avoid double taxation, the requirement to account for VAT on the non-business use of passenger cars should be suspended where those cars are subject to limitation authorised by this Decision. That simplification measure removes the need to keep records on the non-business use of business cars and prevents tax evasion through incorrect record keeping.

- (5) The limitation of the right of deduction under the authorisation should apply to VAT paid on the purchase, leasing, intra-Community acquisition and importation of specified passenger cars and on related expenditure, including the purchase of fuel.
- (6) The authorisation should only apply to passenger cars with a maximum authorised weight not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat. Any non-business use of passenger cars exceeding 3 500 kilograms or having more than eight seats in addition to the driver's seat is negligible due to the characteristics of those cars or the type of business for which they are used. A detailed list of categories of passenger cars excluded from the authorisation should also be provided, based on the particular purposes for which they are used.
- (7) In its proposal of 29 October 2004 for a directive amending Directive 77/388/EEC, now Directive 2006/112/EC, with a view to simplifying value added tax obligations, the Commission included provisions aimed at the harmonisation of the categories of expenses for which exclusions to the right of deduction may apply. Under that proposal, exclusions to the right to deduct may be applied to motorised road vehicles. It is therefore appropriate to restrict the application period of this Decision until the proposed directive becomes applicable. However, it is necessary to provide for a specific expiry date for the authorisation, which will apply in the event that the proposed directive has not become applicable by that date, as it will be necessary to

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

review the authorisation and the percentage of overall apportionment between business and non-business use.

- (8) In the event that Latvia considers an extension of the authorisation beyond 2015 to be necessary, it should submit to the Commission, no later than 30 March 2015, a report which includes a review of the percentage applied together with the request for the extension.
- (9) The derogation 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 Articles 168 and 168a of Directive 2006/112/EC, Latvia is authorised to limit to 80 % the right to deduct the value added tax (VAT) on expenditure on 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, Latvia 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.

#### *Article 3*

The expenditure referred to in Article 1 shall cover the purchase, leasing, intra-Community acquisition and importation of passenger cars not wholly used for business purposes as well as expenditure related to the maintenance, repair of and fuel for such cars.

#### *Article 4*

This Decision shall only apply to passenger cars with a maximum authorised weight not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat.

#### *Article 5*

Articles 1 and 2 shall not apply to the following categories of passenger cars:

- (a) cars purchased for resale, hire or lease;
- (b) cars used for transportation of passengers for a fee, including taxi services;
- (c) cars used for the provision of transportation of goods;
- (d) cars used for the provision of driving lessons;
- (e) cars used for the provision of guard services;
- (f) cars used as emergency vehicles;
- (g) cars used as car sales demonstration vehicles.

#### *Article 6*

Any request for the extension of the authorisation provided for in this Decision shall be:

- (a) submitted to the Commission by 30 March 2015; and
- (b) accompanied by a report which includes a review of the percentage set out in Article 1.

#### *Article 7*

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

This Decision shall expire on the date on which Union rules, determining the expenditure relating to motorised road vehicles that is not eligible for full deduction of VAT, become applicable, or on 31 December 2015, whichever is the earlier.

#### *Article 8*

This Decision is addressed to the Republic of Latvia.

Done at Luxembourg, 22 April 2013.

*For the Council*  
*The President*  
E. GILMORE