

COUNCIL IMPLEMENTING DECISION

of 27 September 2010

authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(Only the Dutch version is authentic)

(2010/580/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) thereof,

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 Secretariat-General of the Commission on 29 January 2010, the Kingdom of the Netherlands requested authorisation to apply special tax measures in the ready-to-wear clothing industry as previously authorised for a limited period by Decision 2007/740/EC ⁽²⁾.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 25 February 2010, of the request made by the Kingdom of the Netherlands. By letter dated 2 March 2010, the Commission notified the Kingdom of the Netherlands that it had all the information necessary to consider the request.

(3) The arrangement would authorise the Kingdom of the Netherlands to apply, in the ready-to-wear clothing industry, a scheme for shifting the subcontractor's obligation to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor). The scheme would constitute a reverse charge procedure confined to upstream operations in the commercial chain, and hence it would not apply to operators who sell to the final consumer. The procedure aims at combating frauds of a specific nature in the domestic manufacturing market.

(4) Such arrangements have proven in the past to be an effective prevention measure in a sector in which collecting VAT is made difficult by the problems of identifying and supervising the activities of subcontractors. The requested measure is therefore to be considered as a measure to prevent certain types of tax evasion and avoidance in the ready-to-wear clothing industry.

(5) The location for the manufacture of ready-to-wear clothes is influenced by low labour costs and subcontractors relocate easily from one country to another. Therefore, Decision 2007/740/EC required the Kingdom of the Netherlands to monitor and evaluate the impact of those factors on the effectiveness of the derogation and to submit a report to the Commission by 31 July 2009.

(6) That report indicated that the incidence of fraud has considerably diminished and that the number of ready-to-wear clothing firms qualifying for the reverse charge procedure under Decision 2007/740/EC has steadily declined as a result of the derogating measure and international market developments. Consequently, stability is gradually returning to the ready-to-wear clothing sector in the Kingdom of the Netherlands.

(7) In order to complete that process, the Kingdom of the Netherlands has requested the measure to be extended for a limited period and has announced, at the same time, that a final decision on the possible abolishment of the measure would be taken in 2011. It is therefore appropriate that the derogation continue to apply until 31 December 2012.

(8) In the event that the Kingdom of the Netherlands were to consider another extension of the derogating measure beyond 2012, a new evaluation report should be submitted to the Commission together with that extension request no later than 1 April 2012.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ Council Decision of 13 November 2007 authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 300, 17.11.2007, p. 71).

(9) The derogation will not have an adverse effect on the European Union's own resources accruing from value added tax nor does it affect the amount of VAT charged at the final stage of consumption,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, the Kingdom of the Netherlands is hereby authorised to apply until 31 December 2012, in the ready-to-wear clothing industry, a scheme for shifting the subcontractors' obligations to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

Article 2

Any request for extending the measure beyond 2012 shall be accompanied by the submission of a report to the Commission by the Kingdom of the Netherlands, concerning in particular the effectiveness of the measure and any evidence of the relocation of subcontractors in the ready-to-wear clothing industry to other countries, and shall be sent no later than 1 April 2012.

Article 3

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

It shall apply as from 1 January 2010.

Article 4

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 27 September 2010.

For the Council

The President

K. PEETERS
