

COUNCIL IMPLEMENTING DECISION

of 15 November 2013

authorising the Kingdom of Denmark and the Kingdom of Sweden to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC on the common system of value added tax

(2013/680/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 on 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 letters registered with the Secretariat-General of the Commission on 3 and 4 April 2013 respectively, Denmark and Sweden requested authorisation to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC requiring taxable persons to exercise their right to deduct or obtain a refund of value added tax (VAT) in the Member State where it was paid.

(2) The Commission informed the other Member States by letter dated 12 June 2013 of the requests made by Denmark and Sweden. By letter dated 14 June 2013, the Commission notified Denmark and Sweden that it had all the information it considered necessary for the appraisal of the requests.

(3) Those requests for derogation relate to the recovery of VAT paid on tolls for the use of the Öresund fixed link between Denmark and Sweden. Under the VAT rules on the place of supply of services connected with immovable property, part of the VAT on tolls for the Öresund fixed link is payable to Denmark and part to Sweden.

(4) By way of derogation from the requirement for taxable persons to exercise their right to deduct or obtain a refund of VAT in the Member State where it was paid, Denmark and Sweden were authorised to introduce a

special measure enabling taxpayers to recover VAT from a single administration. The authorisation was first granted by Council Decision 2000/91/EC ⁽²⁾ and extended by Council Decisions 2003/65/EC ⁽³⁾ and 2007/132/EC ⁽⁴⁾.

(5) The legal and factual situation which justified that derogation has not changed and continues to exist. Denmark and Sweden should therefore be authorised to apply the special measure during a further limited period.

(6) The derogation has 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, 169, 170 and 171 of Directive 2006/112/EC, Sweden and Denmark are hereby authorised to apply the following procedure for the recovery of VAT on tolls paid for the use of the Öresund fixed link between the two countries:

(a) taxable persons established in Denmark may exercise their right to deduct the VAT paid when using the part of the link located on Swedish territory by entering it in the periodic returns to be lodged in Denmark;

(b) taxable persons established in Sweden may exercise their right to deduct the VAT paid when using the part of the link located on Danish territory by entering it in the periodic returns to be lodged in Sweden;

⁽²⁾ Council Decision 2000/91/EC of 24 January 2000 authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a special measure derogating from Article 17 of the Sixth Council Directive (77/338/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 28, 3.2.2000, p. 38).

⁽³⁾ Council Decision 2003/65/EC of 21 January 2003 extending the application of Decision 2000/91/EC authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 25, 30.1.2003, p. 40).

⁽⁴⁾ Council Decision 2007/132/EC of 30 January 2007 extending the application of Decision 2000/91/EC authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 57, 24.2.2007, p. 10).

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

- (c) taxable persons who are not established in either of the above Member States must apply to the Swedish authorities to obtain refunds of the VAT on tolls, including that paid for using the section of the link located on Danish territory, under the procedure laid down in Council Directive 2008/9/EC ⁽¹⁾ or Council Directive 86/560/EEC ⁽²⁾.

Article 2

This Decision shall apply from 1 January 2014 until 31 December 2020.

Article 3

This Decision is addressed to the Kingdom of Denmark and to the Kingdom of Sweden.

Done at Brussels, 15 November 2013.

For the Council

The President

R. ŠADŽIUS

⁽¹⁾ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

⁽²⁾ Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ L 326, 21.11.1986, p. 40).