

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 5 May 2009

amending Decision 2007/250/EC authorising the United Kingdom to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(2009/439/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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 Commission,

Whereas:

(1) In a letter registered by the Secretariat-General of the Commission on 28 July 2008, the United Kingdom requested authorisation to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC as regards the person liable for the payment of value added tax (VAT) to the tax authorities and previously provided for by Council Decision 2007/250/EC of 16 April 2007 ⁽²⁾.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter of 17 March 2009 of the request made by the United Kingdom. By letter dated 20 March 2009, the Commission notified the United Kingdom that it had all the information it considered necessary for the appraisal of the request.

(3) The person liable for the payment of VAT under Article 193 of Directive 2006/112/EC is the taxable person supplying the goods. However, the derogating measure enabled the United Kingdom to apply, until 30 April 2009 and under certain conditions, a reverse charge mechanism which implied that the liability for the payment of VAT shifted to the taxable person to whom certain supplies of mobile phones and integrated circuit devices were made, provided the taxable amount of the supply was equal to, or higher than, GBP 5 000.

(4) The purpose of that derogating measure was to deal with certain aggressive forms of tax evasion, and in particular with 'carousel' schemes whereby goods are supplied several times without VAT being paid to the tax authorities while leaving customers with a valid invoice for VAT deduction. The application of the reverse charge, without actual payment of VAT from the customer to the supplier, removes the possibility of that form of tax evasion.

(5) Given the apparent seriousness of VAT fraud in the United Kingdom, as attested by the information submitted by the United Kingdom, and given the measure's expected preventive effect, the measure remains proportionate since the extension of the derogation is limited to a reasonable period and the measure remains targeted in scope. Furthermore, it does not form the basis of an overall measure for a generalised reverse charge system.

(6) The derogation has no negative impact on the Community's own resources accruing from VAT.

(7) Legal continuity of the measure should be ensured,

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ OJ L 109, 26.4.2007, p. 42.

HAS ADOPTED THIS DECISION:

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Article 1

Article 4 of Council Decision 2007/250/EC is replaced by the following:

Article 4

Done at Brussels, 5 May 2009.

This Decision shall expire on 30 April 2011.'

Article 2

This Decision shall apply from 1 May 2009.

For the Council

The President

M. KALOUSEK
