

DECISIONS

COUNCIL IMPLEMENTING DECISION

of 4 October 2012

authorising Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(2012/624/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 ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered at the Commission on 3 February 2012, Hungary requested authorisation to derogate, from 1 July 2012 and for a period of two years, from the provisions of Article 193 of Directive 2006/112/EC governing the person liable for payment of value added tax (VAT) to the tax authorities. In that letter, Hungary mentioned that it will not seek renewal of that authorisation.
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 26 April 2012, of the request made by Hungary and, by letter dated 2 May 2012, notified Hungary that it had all the information it considered necessary for the appraisal of the request. The Commission presented its proposal for authorisation of the derogation to the Council on 29 June 2012.
- (3) The person liable for payment of VAT is, as a general rule, the taxable person supplying the goods, in accordance with Article 193 of Directive 2006/112/EC. The purpose of the derogation requested by Hungary is to place that liability, for a limited period, on the taxable person to whom supplies of certain unprocessed agricultural products in the sectors of cereals and oilseeds are made.
- (4) Within those sectors, Hungary has noted that a number of traders engage in different forms of tax evasion, both domestically and in intra-Community trade, by not paying to the tax authorities the VAT which they have charged on their supplies. Their customers, in so far as they are taxable persons with a full right of deduction, remain entitled to deduct the VAT.

- (5) Designating the taxable person to whom the goods are supplied as liable for payment of VAT instead of the supplier, would be a temporary emergency measure that would remove the opportunity to engage in that form of tax evasion. For the measure to be effective it should cover the 2012 harvest. It should end after a period of two years, which should be sufficient for Hungary to introduce in the agricultural sector definitive measures compatible with Directive 2006/112/EC that would prevent and combat this form of tax evasion.
- (6) To prevent tax evasion being transferred to the processing stage of the products, to other products or sectors, Hungary should introduce suitable control measures and reporting obligations and notify the Commission thereof.
- (7) In order to ensure that the special measure only applies to certain specific agricultural products and to guarantee its legal certainty, the goods covered by the special measure should be determined by using the combined nomenclature laid down in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽²⁾.
- (8) The special measure is proportionate to the objectives pursued since it is limited in time and not intended to apply generally, but only to a number of carefully specified products that are normally not destined for final consumption in unaltered state, and in relation to which tax evasion has caused substantial loss of VAT revenue.
- (9) The special measure 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 Article 193 of Directive 2006/112/EC, Hungary is hereby authorised to designate as the person liable for the payment of VAT, the taxable person to whom the following supplies of goods, as set out in the combined nomenclature established by Regulation (EEC) No 2658/87, are made:

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ OJ L 256, 7.9.1987, p. 1.

CN code	Product
1001	Wheat and meslin
1002	Rye
1003	Barley
1004	Oats
1005	Maize (corn)
1008 60 00	Triticale
1201	Soya beans, whether or not broken
1205	Rape or colza seeds, whether or not broken
1206 00	Sunflower seeds, whether or not broken

Article 2

The authorisation provided for in Article 1 is subject to Hungary introducing appropriate and effective control

measures and reporting obligations with respect to taxable persons that supply goods to which this Decision applies.

Hungary shall notify the Commission of the introduction of the measures and obligations referred to in the first paragraph.

Article 3

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

It shall apply from 1 July 2012 until 30 June 2014.

Article 4

This Decision is addressed to Hungary.

Done at Luxembourg, 4 October 2012.

For the Council

The President

S. CHARALAMBOUS