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(Legislative acts)

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2020/2189

of 18 December 2020

authorising the Netherlands to introduce a special measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax

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 the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Articles 168 and 168a of Directive 2006/112/EC govern the right of taxable persons to deduct value added tax ('VAT') due on goods and services used for the purposes of their taxed transactions.
- (2) By letter registered with the Commission on 30 July 2020, the Netherlands requested authorisation to introduce a special measure derogating from Articles 168 and 168a of Directive 2006/112/EC ('the special measure') in order to exclude VAT due on goods and services from the right to deduct VAT where the goods and services in question are used for more than 90 % for the private purposes of a taxable person or of that person's employees or, in general, for non-business purposes or non-economic activities.
- (3) Pursuant to the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request made by the Netherlands to the other Member States, by letter dated 10 September 2020. By letter dated 11 September 2020, the Commission notified the Netherlands that it had all the information it considered necessary for appraisal of the request.
- (4) The objective of the special measure is to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance. The amount of tax due at the stage of final consumption is only affected to a negligible extent.
- (5) According to the information provided by the Netherlands, the legal and factual situation justifies the application of the special measure. The Netherlands should, therefore, be authorised to introduce the special measure, but limited in time until 31 December 2023. The time limit should be sufficient to allow for a review of the necessity and effectiveness of the special measure and the apportionment rate between business and non-business use upon which it is based.
- (6) In the event that the Netherlands considers that an extension of the special measure beyond 2023 is necessary, it should submit a request to the Commission by 31 March 2023, accompanied by a report on the application of the special measure that includes a review of the apportionment rate applied.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

- (7) The special measure will have only a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the Union's own resources accruing from VAT.
- (8) It is therefore appropriate to authorise the Netherlands to apply the special measure until 31 December 2023,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 168 and 168a of Directive 2006/112/EC, the Netherlands is authorised to exclude VAT due on goods and services from the right to deduct VAT where the goods and services in question are used for more than 90 % for the private purposes of a taxable person or of that person's employees or, in general, for non-business purposes or non-economic activities.

Article 2

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

It shall apply from 1 January 2021 until 31 December 2023.

Any request for authorisation to extend the special measure authorised by this Decision shall be submitted to the Commission by 31 March 2023.

Such request shall be accompanied by a report on the application of the special measure that includes a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 18 December 2020.

For the Council
The President
M. ROTH
