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2023/0291 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2018/485 as regards an extension of the authorisation for Denmark to apply a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] ('the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 21 March 2023, Denmark requested the authorisation to continue to apply a flat-rate scheme for the private use of light goods vehicles with a maximum authorised total weight of three tonnes, which have been registered solely for business use, extending the application of the special measure granted by Council Implementing Decision (EU) 2018/485[2] which derogates from Article 75 of the VAT Directive.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States, except Ireland and Poland, by letter dated 3 May 2023 of the request made by Denmark. Ireland and Poland were informed of Denmark's request by letter dated 4 May 2023. The Commission notified Denmark by letter dated 5 May 2023 that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In order to simplify VAT collection and combat tax evasion, Denmark requested in 2011 a special measure which would allow the introduction of a flat-rate scheme for the private use of light goods vehicles with a maximum authorised total weight of three tonnes which have been registered solely for business use. The request was approved by Council Implementing Decision 2012/447/EU of 24 July 2012[3]. Denmark requested an extension of the special measure three times, which were approved by Council Implementing Decision (EU) 2015/992 of 19 June 2015[4], by Council Implementing Decision (EU) 2018/485 of 19 March 2018 and by Council Implementing Decision 2020/1088 of 22 July 2020 amending Implementing Decision (EU) 2018/485[5]. The Implementing Decision (EU) 2018/445 is set to expire on 31 December 2023.

Without such special measure the Danish legislation implies that any private use of such a vehicle registered solely for business purposes would have as a consequence that the taxable person loses in full the right of deduction of the VAT on the purchase cost of the vehicle. Denmark makes use of a standstill provision under Article 176 of the VAT Directive

1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision (EU) 2018/485 of 19 March 2018 authorising Denmark to apply a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 81, 23.3.2018, p. 13–14), amended by Council Implementing Decision (EU) 2020/1088 of 22 July 2020 (OJ L 239, 24.7.2020, p. 14–15).

3 Council Implementing Decision of 24 July 2012 authorising Denmark to introduce a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 202, 28.7.2012, p. 24-25).

4 Council Implementing Decision (EU) 2015/992 of 19 June 2015 authorising Denmark to introduce a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 159, 25.6.2015, p. 66-67).

5 Council Implementing Decision (EU) 2020/1088 of 22 July 2020 amending Implementing Decision (EU) 2018/485 authorising Denmark to apply a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 239, 24.7.2020, p. 14–15).

regarding the deduction of VAT on the purchase and running costs of light goods vehicles with a maximum authorised weight of up to three tonnes. If a business registers such a light goods vehicle as being solely for business purposes, it will be authorised to deduct in full the VAT on the purchase of the vehicle as well as the running costs. However, a business which registers a light goods vehicle as being both for business and personal use is not authorised to deduct the VAT on the purchase cost but can deduct in full the VAT on the running costs of the vehicle.

The Danish system as described above can be complicated and costly to administer, both for the taxable person and for the tax administration. Denmark has therefore requested to continue to apply a simplified procedure as previously granted by Council Implementing Decision (EU) 2018/485, whose validity was extended by Council Implementing Decision 2020/1088.

According to Article 75 of the VAT Directive, where goods forming part of the assets of a business are used for private purposes, the taxable amount to determine the VAT due shall be the full cost to the taxable person of providing the services. The flat-rate system used in Denmark could be used by a taxable person for up to twenty days per calendar year. Pursuant to this system, the taxable person pays a charge per day for the private use of the vehicle. The flat-rate amount to be paid per day for the use of the vehicle for private purposes is DKK 40, and covers only VAT. This amount has been determined by the Danish Government on the basis of an analysis of national statistics. A similar payment, under separate national legislation, would be required to cover income tax on the disposal of a company car, and a surcharge to the circulation tax. Should the taxable person use the vehicle for private purposes for more than twenty days during a calendar year, the standstill rules would apply, and the taxable person would lose in full the right of deduction of the purchase costs of the vehicle.

The Danish authorities have developed an electronic system whereby taxable persons can pay the daily flat-rate either online or via a mobile app. At the time of payment, the taxable person receives a ‘day voucher’ by way of documentary evidence that the VAT has been paid. The authorities consider the system to simplify the accounting obligations for the taxable persons as well as the tax authorities' duty to charge and collect the tax.

The simplified procedure is optional. The taxable person would therefore still be able to register their light goods vehicle for both business and private use if that suits their circumstances.

As requested by Article 3 of Council Implementing Decision (EU) 2018/485, Denmark submitted, together with the extension request, a report on the review of the measure. According to the Danish authorities, the simplified procedure has worked very well the last years and they find good reasons to continue with such a procedure.

It is therefore appropriate to authorise Denmark to continue to apply the special measure until 31 December 2026.

- **Consistency with existing policy provisions in the policy area**

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure in respect of which VAT is not deductible. Until then, it authorises Member States to maintain the exclusions provided for under their national laws at 1 January 1979. There are therefore a number of 'standstill' provisions restricting the right to deduct in relation to passenger cars.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct[6], such special measure is appropriate in the awaiting of a harmonisation of these rules at EU level.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

- **Subsidiarity (for non-exclusive competence)**

Considering the provision of the VAT Directive on which it is based, the proposal falls under the exclusive competence of the European Union. Hence, the subsidiarity principle does not apply.

- **Proportionality**

The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the limited scope of the special measure, it is proportionate to the aim pursued, i.e. to simplify VAT obligations and VAT collection, as well as combatting tax evasion.

- **Choice of the instrument**

The instrument proposed is a Council Implementing Decision.

Under Article 395 of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

No stakeholder consultation has been conducted. The present proposal is based on a request made by Denmark and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal is designed to counter VAT evasion and to simplify the procedure for charging tax and has, therefore, a potential positive impact for both businesses and administrations. The solution has been identified by Denmark as a suitable measure. Denmark submitted the report on the review of the measure according to which the simplified procedure has worked very well the last years and there are good reasons to continue with such a procedure.

[6] COM (2004) 728 final - Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations (OJ C 24, 29.1.2005, p.10) withdrawn on 21 May 2014 (OJ C 153 21. 05. 2014, p. 3)

According to the data submitted by Denmark, in 2020, 2021 and 2022 respectively, 33 100, 40 000 and 43 500 day vouchers were sold at DKK 225, of which VAT made up DKK 40 per day voucher sold. This means that the measure has been taken up by an increasing number of taxable persons.

- **Fundamental rights**

The proposal does not have any consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

The measure will have no adverse impact on the Union's own resources accruing from VAT.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2026.

In case Denmark would consider an extension of the special measure beyond 31 December 2026, a report including a review of the measure should be submitted to the Commission together with the extension request and this no later than 31 March 2026.

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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 Council Implementing Decision (EU) 2018/485[2], Denmark was authorised to apply a special measure derogating from Article 75 of Directive 2006/112/EC ('the special measure') to apply a flat-rate scheme for the private use of light goods vehicles with a maximum authorised total weight of three tonnes which have been registered solely for business. The special measure authorised by Implementing Decision (EU) 2018/485 is set to expire on 31 December 2023.

(2) By letter registered with the Commission on 21 March 2023, Denmark requested an authorisation in accordance with Article 395(2), first subparagraph, of Directive 2006/112/EC to continue to apply the special measure beyond 31 December 2023.

(3) By letters dated 3 May 2023 and 4 May 2023, the Commission transmitted the request submitted by Denmark to the other Member States in accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC. By letter dated 5 May 2023, the Commission notified Denmark that it had all the information necessary for appraisal of the request.

(4) The continued application of the special measure would allow taxable persons who have registered a vehicle only for business purposes to use the vehicle for private purposes, and to calculate the taxable amount of the deemed supply of services pursuant to Article 75 of Directive 2006/112/EC on a daily flat-rate basis, rather than lose their right to deduct the VAT incurred on the purchase cost of the vehicle.

(5) That simplified calculation method should, however, be limited to 20 days of use for private purposes for each calendar year.

(6) According to the information provided by Denmark in its request, the factual situation which justified the application of the special measure has not changed. Denmark submitted to the Commission, together with the request, a report reviewing the flat-

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision (EU) 2018/485 of 19 March 2018 authorising Denmark to apply a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax (OJ L 81, 23.3.2018, p. 13).

rate amount to be paid per day for the use of the vehicle for private purposes. According to that report, Denmark maintains that the amount of VAT collectable per day remains unchanged at DKK 40.

(7) Denmark indicates that the special measure has worked very well in the last years and has been taken up by an increasing number of taxable persons. Denmark also maintains that the special measure aims to simplify the VAT obligations of taxable persons who make occasional use for private purposes of a vehicle that was registered only for business purposes, thereby simplifying the procedure for collecting VAT. However, it would remain possible for a taxable person to choose to register a light goods vehicle as being used for both business and private purposes. In doing so, the taxable person would lose the right to deduct the VAT incurred on the purchase cost of the vehicle but would not be required to pay a daily charge for any use for private purposes.

(8) Authorising a measure which ensures that a taxable person who makes occasional use for private purposes of a vehicle registered only for business purposes is not deprived of the full right to deduct the input VAT on that vehicle is consistent with the general rules on deduction as set out in Directive 2006/112/EC.

(9) It is therefore appropriate to extend the authorisation set out in Implementing Decision (EU) 2018/485. The extension of the authorisation should be limited in time to allow for an evaluation of the effectiveness and appropriateness of the special measure. The authorisation should therefore expire on 31 December 2026.

(10) In the event that Denmark requests a further extension of the special measure beyond 31 December 2026, it should submit a report to the Commission together with the extension request by 31 March 2026.

(11) It is considered that the extension of the special measure would only have a negligible effect on the overall amount of VAT revenue collected at the stage of final consumption and would have no adverse impact on the Union's own resources accruing from VAT.

(12) Implementing Decision (EU) 2018/485 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 3 of Implementing Decision (EU) 2018/485, the second and third paragraphs are replaced by the following:

‘It shall apply from 1 January 2018 to 31 December 2026.

Any request for extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2026 and shall be accompanied by a report which includes a review of the measure.’.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels,

For the Council
The President