

# DECISIONS

## COUNCIL IMPLEMENTING DECISION (EU) 2018/789

of 25 May 2018

### authorising Hungary to introduce a special measure derogating from Article 193 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 <sup>(1)</sup>, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Article 193 of Directive 2006/112/EC, any taxable person carrying out a taxable supply of goods or services, as a general rule, is liable for the payment of value added tax (VAT) to the tax authorities.
- (2) By letter registered with the Commission on 13 July 2017, Hungary requested an authorisation to introduce a measure derogating from Article 193 of Directive 2006/112/EC ('the special measure') regarding the person liable for payment of VAT in case of certain supplies carried out by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.
- (3) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, by letters dated 15 January 2018 the Commission transmitted the request submitted by Hungary to the other Member States. By letter dated 16 January 2018, the Commission notified Hungary that it had all the information necessary to consider the request.
- (4) Hungary claims that taxable persons in liquidation or under insolvency procedure frequently do not pay the VAT due to the tax authorities. At the same time the purchaser, being a taxable person with the right of deduction, can still deduct the VAT incurred, thus negatively impacting the budget and financing the liquidation. Hungary also registered cases of fraud whereby companies in liquidation would issue fictitious invoices to active companies and greatly reduce their payable tax without the guarantee that the issuer would pay the VAT due.
- (5) In accordance with point (g) of Article 199(1) of Directive 2006/112/EC, Member States may provide that the person liable for the payment of VAT is the taxable person to whom the supply of immovable property sold by a judgement debtor in a compulsory sale procedure is made ('the reverse charge mechanism'). To remedy the losses to public revenues, Hungary has requested a derogation from Article 193 of Directive 2006/112/EC to be authorised in order to introduce the reverse charge mechanism to other supplies by taxable persons under insolvency procedure, namely the supply of capital goods and the supply of other goods or services with an open market value exceeding HUF 100 000.
- (6) On the basis of information provided by Hungary, designating the recipient being a taxable person as the person liable for the payment of VAT in those particular cases will simplify the procedure for collecting VAT and prevent tax evasion and avoidance. Hungary considers that the special measure will also limit losses to public revenues and will result in generating additional revenues.
- (7) Hungary should therefore be authorised to apply the reverse charge mechanism to the supply of capital goods and the supply of other goods or services with an open market value exceeding HUF 100 000 by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.
- (8) The special measure should be limited in time.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

- (9) Given the scope and novelty of the special measure, it is important to evaluate its impact. Therefore, if Hungary would consider an extension of the special measure beyond 2021, it should submit to the Commission a report including a review of the special measure together with the extension request by 31 December 2020 at the latest.
- (10) The special measure will have only a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and 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 authorised to provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

- (a) the supply of capital goods by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency;
- (b) the supply of other goods and services with an open market value exceeding HUF 100 000 at the time of supply by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.

*Article 2*

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

This Decision shall expire on 31 December 2021.

*Article 3*

This Decision is addressed to Hungary.

Done at Brussels, 25 May 2018.

*For the Council*  
*The President*  
V. GORANOV

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