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Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹ ('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 February 2020, 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) 2018/485² 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 by letter dated 2 April 2020 of the request made by Denmark. By letter dated 3 April 2020, the Commission notified Denmark 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 derogation 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 derogation request was approved by Council Implementing Decision 2012/447/EU of 24 July 2012³. Denmark requested twice the prolongation of the measure which were approved by Council Implementing Decision 2015/992/EU of 19 June 2015⁴ and by Council Implementing Decision (EU) 2018/485. The latter Council Implementing Decision is set to expire on 31 December 2020.

Without such derogating 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 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 apply a simplified procedure as previously granted by Council Implementing Decision 2012/447/EU

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 81, 23.3.2018, p. 13-14.

³ OJ L 202, 28.7.2012, p. 24-25.

⁴ OJ L 159, 25.6.2015, p. 66-67.

and subsequently by Council Implementing Decision 2015/992/EU and Council Implementing Decision (EU) 2018/485.

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 collect and charge 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 prolongation 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 derogating measure until 31 December 2023.

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

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions which were in place on 1 January 1979. There are therefore a number of 'stand still' 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 deduct⁵, such derogation 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.

⁵ 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)

- **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 derogation, the special measure 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.

According to the data submitted by Denmark, in 2017, 2018 and 2019 respectively, 22 383, 25 755 and 28 854 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 to the extent expected when it was introduced.

- **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

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2023.

In case Denmark would consider an extension of the derogating measure beyond 2023, 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 2023.

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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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 21 February 2020, Denmark requested, in accordance with the first subparagraph of Article 395(2) of Directive 2006/112/EC, an authorisation to apply a special measure derogating from Article 75 of that Directive governing the right to deduct input value added tax (VAT).
- (2) By letter dated 2 April 2020, the Commission informed the other Member States, pursuant to the second subparagraph of Article 395(2) of Directive 2006/112/EC, of the request submitted by Denmark. By letter dated 3 April 2020, the Commission notified Denmark that it had all the information necessary to consider the request.
- (3) Without a derogating measure, the legislation in Denmark provides that if a light goods vehicle with a maximum authorised total weight of three tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is allowed to deduct the full input VAT on the purchase and running costs of the vehicle. If such a vehicle is subsequently used for private purposes, the taxable person loses the right to deduct the VAT incurred on the purchase cost of the vehicle.
- (4) To mitigate the consequences of that regime, Denmark requested authorisation to introduce a special measure derogating from Article 75 of Directive 2006/112/EC. By Council Implementing Decision 2012/447/EU² Denmark was authorised to introduce the special measure and the authorisation was subsequently extended by Council Implementing Decision (EU) 2015/992 until 31 December 2017³. By Council Implementing Decision (EU) 2018/485⁴ Denmark was authorised to apply the special measure from 1 January 2018 to 31 December 2020.
- (5) The 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

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 202, 28.7.2012, p. 24-25.

³ OJ L 159, 25.6.2015, p. 66-67.

⁴ OJ L 81, 23.3.2018, p. 13-14.

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.

- (6) This simplified calculation method should, however, be limited to twenty days of use for private purposes for each calendar year, and the flat-rate amount of VAT to be paid should be fixed at DKK 40 for each day of use for private purposes. This amount has been set by the Danish Government on the basis of an analysis of national statistics.
- (7) This measure, which should apply to light goods vehicles with a maximum authorised total weight of three tonnes, 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, thus 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 laid down by Directive 2006/112/EC.
- (9) The authorisation should be valid for a limited period and should therefore expire on 31 December 2023.
- (10) In the event that Denmark requests a further extension of the special measure beyond 31 December 2023, it should submit a report to the Commission together with the extension request by 31 March 2023.
- (11) The derogation will only have a negligible effect on the overall amount of VAT revenue collected at the stage of final consumption and has 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 the third paragraphs are replaced by the following:

‘It shall apply from 1 January 2018 to 31 December 2023.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2023 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*