



Council of the
European Union

Brussels, 30 September 2016
(OR. en)

12215/16

Interinstitutional File:
2016/0245 (NLE)

FISC 135
ECOFIN 801

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising the Republic of Poland to continue to apply measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2016/...

of ...

**authorising the Republic of Poland
to continue to apply measures derogating
from point (a) of Article 26(1) and Article 168 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 tax¹, and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006 , p. 1.

Whereas:

- (1) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by him for the purposes of his taxed transactions. Point (a) of Article 26(1) of that Directive lays down a requirement to account for VAT when a business asset is put to use for the private purposes of the taxable person or his staff or, more generally, for purposes other than those of his business.
- (2) By virtue of Implementing Decision 2013/805/EU¹, Poland was authorised, until 31 December 2016, to limit to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire, or leasing of certain motorised road vehicles and expenditure related thereto where such vehicle is not entirely used for business purposes, and to relieve the taxable person from accounting for VAT on the non-business use of vehicles covered by the restriction (the 'derogating measures').
- (3) By letter registered with the Commission on 8 February 2016, Poland requested authorisation to continue to apply the derogating measures.

¹ Council Implementing Decision 2013/805/EU of 17 December 2013 authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 353, 28.12.2013, p. 51).

- (4) 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 6 June 2016, of the request made by Poland. By letter dated 8 June 2016, the Commission notified Poland that it had all the information necessary to consider the request.
- (5) In accordance with the Article 3(2) of Decision 2013/805/EU, Poland submitted, together with the extension request, a report to the Commission on the application of that Decision, including a review of the percentage limitation applied on the right of deduction. Based on currently available information, Poland believes that a rate of 50 % is still justifiable. At the same time, to avoid double taxation, the requirement for accounting for VAT on the non-business use of a motor vehicle should be suspended where it has been subject to that limitation. Those derogating measures can be justified by the need to simplify the procedure for charging VAT and to prevent evasion through incorrect record keeping and false tax declaration.
- (6) The extension of these derogating measures should be limited in time to allow for an evaluation of their effectiveness and of the appropriate percentage; Poland should therefore be authorised to continue to apply the derogating measures until 31 December 2019.

- (7) Where Poland considers that a further extension of the derogating measures beyond 2019 is necessary, a report on the application of the derogating measures, including a review of the percentage applied, should be submitted to the Commission, together with the extension request by no later than 1 April 2019.
- (8) The extension of the derogating measures will only have 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.
- (9) Implementing Decision 2013/805/EU should be therefore amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Implementing Decision 2013/805/EU is replaced by the following:

"Article 3

1. This Decision shall expire on 31 December 2019.
2. Any request for the extension of the derogating measures provided for in this Decision shall be submitted to the Commission by 1 April 2019. Such request shall be accompanied by a report including a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision."

Article 2

This Decision shall apply from 1 January 2017.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council

The President
