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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

COUNCIL IMPLEMENTING DECISION 2014/.../EU

of ...

**authorising the Republic of Estonia to apply a measure
derogating from point (a) of Article 26(1) and 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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p. 1.

Whereas:

- (1) By letter registered with the Commission on 26 May 2014, Estonia requested authorisation to derogate from the provisions of Directive 2006/112/EC governing the right to deduct input tax in relation to passenger cars.
- (2) By letter dated 11 June 2014, the Commission informed the other Member States of the request made by Estonia. By letter dated 12 June 2014, the Commission notified Estonia that it had all the information it considered necessary to consider the request.
- (3) Articles 168 and 168a of Directive 2006/112/EC establish a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by that person for the use of that person's taxed transactions. Point (a) of Article 26(1) of that Directive requires taxable persons to account for VAT when a business asset is put to non-business use.

- (4) Non-business use is often very difficult to identify accurately and even where it is possible, the mechanism for doing so is often burdensome. Under the requested authorisation, the amount of VAT on expenditure eligible for deduction in respect of passenger cars which are not used entirely for business purposes should, with some exceptions, be set at a flat percentage rate. Based on currently available information, the Estonian authorities believe that a rate of 50 % is justifiable. At the same time, in order to avoid double taxation, the requirement of accounting for VAT on the non-business use of passenger cars should be suspended where those cars have been subject to a limitation authorised by this Decision. That simplification measure removes the need to keep records on the non-business use of business cars and prevents tax evasion through incorrect record keeping.
- (5) The limitation of the right of deduction under the requested authorisation should apply to VAT paid on the purchase, leasing, intra-Community acquisition and importation of specified passenger cars and on expenditure related thereto, including the purchase of fuel.

- (6) The requested authorisation should only apply to passenger cars with a maximum authorised weight not exceeding 3500 kilograms and having no more than eight seats in addition to the driver's seat. Any non-business use of passenger cars exceeding 3500 kilograms or having more than eight seats in addition to the driver's seat is negligible due to the characteristics of those cars or the type of business for which they are used. A detailed list of categories of passenger cars not authorised should also be provided, based on their particular use.
- (7) The authorisation should be limited in time until 31 December 2017, to allow for a review of its necessity and effectiveness and the apportionment rate between the business and non-business use that it is based on.
- (8) In the event that Estonia considers an extension of the authorisation beyond 2017 to be necessary, it should submit a report to the Commission, no later than 31 March 2017, which includes a review of the percentage applied together with the request for an extension.
- (9) The derogation will only have 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 Articles 168 and 168a of Directive 2006/112/EC, Estonia is authorised to limit the right to deduct value added tax (VAT) on expenditure on passenger cars not entirely used for business purposes to 50 %.

Article 2

By way of derogation from point (a) of Article 26(1) of Directive 2006/112/EC, Estonia shall not treat the use of a passenger car for non-business purposes, included in the assets of a taxable person's business, as supplies of services for consideration, where that car has been subject to a limitation authorised under Article 1 of this Decision.

Article 3

The expenditure referred to in Article 1 shall cover the purchase, leasing, intra-Community acquisition and importation of passenger cars not wholly used for business purposes and expenditure related thereto, including the purchase of fuel.

Article 4

This Decision shall only apply to passenger cars with a maximum authorised weight not exceeding 3500 kilograms and having not more than eight seats in addition to the driver's seat.

Article 5

Articles 1 and 2 shall not apply to the following categories of passenger cars:

- (a) cars purchased for resale, hire or lease;
- (b) cars used for transportation of passengers for a fee, including taxi services;
- (c) cars used for the provision of driving lessons.

Article 6

1. This Decision shall take effect on the day of its notification.

It shall apply until 31 December 2017.

2. Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2017 and accompanied by a report which includes a review of the percentage set out in Article 1.

Article 7

This Decision is addressed to the Republic of Estonia.

Done at Brussels,

For the Council

The President
