



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION 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

COUNCIL IMPLEMENTING DECISION

of

**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**

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 a letter registered with the Commission on 18 June 2013, the Republic of Poland requested authorisation to introduce special measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC, as regards certain motorised road vehicles and expenditure related thereto (the "measures").
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the requested derogations to the other Member States by letter dated 10 October 2013. By letter dated 14 October 2013, the Commission notified the Republic of Poland that it had all the information necessary to consider the request.
- (3) 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 contains 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.

- (4) The measures requested by the Republic of Poland deviate from those provisions in that they restrict the right to deduct VAT on the purchase, hire, rent or lease of certain motorised road vehicles and expenditure related thereto, and relieve the taxable person from accounting for VAT on the non-business use of vehicles covered by the restriction.
- (5) The non-business use of motor vehicles is difficult to identify accurately, and even where it is possible, the mechanism for doing so is often burdensome. Under the requested measures, the amount of VAT on expenditure eligible for deduction concerning motor vehicles, 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 Republic of Poland believes that a rate of 50 % is 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 this restriction. Those measures could be justified by the need to simplify the procedure for charging VAT and to prevent evasion through incorrect record keeping and false tax declarations.
- (6) The restriction on the right of deduction under the measures should apply to VAT paid on the purchase, intra-Community acquisition, importation, hire or leasing of specified motorised road vehicles and on expenditure related thereto, including the purchase of fuel.

- (7) Certain types of motor vehicles should be excluded from the scope of the measures as - due to their nature or the type of business they are used for - any non-business use is considered as negligible. Therefore, the measures should not apply to vehicles with more than 9 seats (including the driver's) or with a total maximum weight of more than 3 500 kilograms. In addition, the restriction on the right of deduction shall not apply to VAT charged on any expenditure that is entirely related to the taxable person's business.
- (8) Those derogating measures should be limited in time to allow for an evaluation of their effectiveness and of the appropriate percentage, since the proposed percentage is based on initial findings regarding business use.
- (9) Should the Republic of Poland consider a further extension of the measures beyond 2016 necessary, a report on the application of the measures in question, including a review of the percentage applied, should be submitted to the Commission together with an extension request no later than 1 April 2016.

- (10) On 29 October 2004, the Commission adopted a proposal for a Council Directive amending Council Directive 77/388/EEC¹, now Directive 2006/112/EC, that includes the harmonisation of the categories of expenses for which exclusions from the right of deduction may apply. Under that proposal, exclusions from the right to deduct could be applied to motorised road vehicles. The derogating measures provided for in this Decision should expire on the date of the entry into force of such an amending Directive, if that date is earlier than the date of expiry of this Decision.
- (11) The derogation will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will not have an adverse effect on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

Article 1

1. By way of derogation from Article 168 of Directive 2006/112/EC, the Republic of Poland is hereby authorised to limit to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as VAT charged on expenditure related to those vehicles, where the vehicle is not entirely used for business purposes.
2. The limit of 50 % referred to in paragraph 1 shall not apply to motor vehicles with a total maximum weight of more than 3 500 kilograms or motor vehicles with more than nine seats including the driver's seat.
3. The limit of 50 % referred to in paragraph 1 shall not apply to VAT charged on any expenditure that is entirely related to the taxable person's business.

Article 2

By way of derogation from point (a) of Article 26(1) of Directive 2006/112/EC, the Republic of Poland is authorised not to treat as a supply of services for consideration the private use by a taxable person or his staff or, more generally, the use for purposes other than those of his business, of a vehicle to which the limit of 50 % referred to in Article 1 of this Decision applies.

Article 3

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

This Decision shall apply from 1 January 2014. It shall expire on 31 December 2016 or, if earlier, on the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles that is not eligible for a full deduction of VAT.

2. Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 1 April 2016. 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 4

This Decision is addressed to the Republic of Poland.

Done at ...,

For the Council

The President
