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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising Denmark to introduce a special measure derogating from Article 75 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2015/...

of ...

**authorising Denmark to introduce a special measure
derogating from Article 75 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 13 January 2015, Denmark requested authorisation to apply a measure derogating from the provisions of Directive 2006/112/EC governing the right to deduct input VAT.
- (2) The Commission informed the other Member States of the request made by Denmark by letters dated 13 and 14 February 2015. By letter dated 17 February 2015, the Commission notified Denmark that it had all the information that it deemed necessary to consider the request.
- (3) Without a derogation measure as requested, the legislation in Denmark implies that if a light goods vehicle with a maximum authorised weight of three tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is authorised to deduct, in full, the 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 this regime, Denmark has requested authorisation to apply a special measure derogating from Article 75 of Directive 2006/112/EC as previously granted by Council Implementing Decision 2012/447/EU¹, which expired 31 December 2014. The measure allows taxable persons who have registered a vehicle as being for business purposes only to use the vehicle for non-business purposes, and to calculate the taxable amount of the deemed supply pursuant to Article 75 of Directive 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.
- (5) The simplified calculation method should, however, be limited to 20 days of non-business use for each calendar year, and the flat-rate amount of VAT to be paid is fixed at DKK 40 for each day of non-business use. This amount has been determined by the Danish Government on the basis of an analysis of national statistics.
- (6) This measure, which should apply to light goods vehicles with a maximum authorised weight of three tonnes, would simplify the VAT obligations of taxable persons who make occasional non-business use of a vehicle registered for business purposes. However, it would remain possible for a taxable person to choose to register a light goods vehicle as being for both business and private use. In doing so, the taxable person would lose the right to deduct the VAT on the purchase of the vehicle but would not be required to pay a daily charge for any private use.

¹ Council Implementing Decision 2012/447/EU of 24 July 2012 authorising Denmark to introduce a special measure derogating from Article 75 of Directive 206/112/EC on the common system of value added tax (OJ L 202, 28.07.2012, p. 24).

- (7) Allowing a measure which ensures that a taxable person who makes occasional non-business use of a vehicle registered 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.
- (8) The authorisation should be valid for a limited period and should therefore expire on 31 December 2017.
- (9) In the event that Denmark requests a further extension of the derogation measure beyond 2017, it should submit a report to the Commission together with the extension request.
- (10) It is considered that 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 derogation from Article 75 of Directive 2006/112/EC, where a taxable person uses for private purposes, or those of his staff, or more generally for purposes other than those of his business, a light goods vehicle which has been registered as being solely for business use, Denmark is authorised to determine the taxable amount by reference to a flat rate for each day of such use.

The flat rate per day referred to in the first paragraph shall be DKK 40.

Article 2

The measure referred to in Article 1 shall only apply to light goods vehicles with a maximum authorised total weight of three tonnes.

This measure shall not apply where the private use exceeds 20 days per calendar year.

Article 3

This Decision shall take effect on the date of its notification. It shall expire on 31 December 2017.

Denmark shall submit any request for the extension of the measure provided for in this Decision to the Commission by 31 March 2017. Such a request shall be accompanied by a report which includes a review of the measure.

Article 4

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels,

For the Council

The President
