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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2015/...

of ...

**amending Decision 2009/791/EC
and Implementing Decision 2009/1013/EU
authorising Germany and Austria respectively
to continue to apply a measure derogating from
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, and in particular Article 291(2) thereof,

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) Germany and Austria were each granted a derogating measure by Council Decision 2009/791/EC¹ and Council Implementing Decision 2009/1013/EU² respectively. The application of the derogating measure was extended by Council Implementing Decision 2012/705/EU³ until 31 December 2015.
- (2) The derogating measure derogates from Articles 168 and 168a of Directive 2006/112/EC which govern the right of taxable persons to deduct value added tax (VAT) charged on goods and services supplied to them for the purposes of their taxed transactions. The derogating measure is intended to exclude completely from the right of deduction the VAT borne on those goods and services which are used more than 90 % by the taxable person for his private use or for that of his employees, or, in general, for non-business purposes.

¹ Council Decision 2009/791/EC of 20 October 2009 authorising the Federal Republic of Germany to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 283, 30.10.2009, p. 55).

² Council Implementing Decision 2009/1013/EU of 22 December 2009 authorising the Republic of Austria to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 348, 29.12.2009, p. 21).

³ Council Implementing Decision 2012/705/EU of 13 November 2012 amending Decision 2009/791/EC and Implementing Decision 2009/2013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 319, 16.11.2012, p. 8).

- (3) In order to take into account the case-law of the Court of Justice of the European Union, according to which input VAT relating to expenditure incurred by a taxable person cannot be deducted if it relates to activities which, in view of their non-economic nature, do not fall within the scope of Directive 2006/112/EC, it is appropriate to clarify that the derogating measure also applies to goods and services used for activities of a non-economic nature.
- (4) The objective of the derogating measure is to simplify the procedure for charging and collecting VAT. The amount of tax due at the level of final consumption is only affected to a negligible extent.
- (5) By letters registered with the Commission on 16 March 2015 and 19 March 2015, Germany and Austria respectively requested authorisation to continue to apply the derogating measure.
- (6) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letters dated 15 September 2015, of the requests made by Austria and Germany. By letters dated 17 September 2015, the Commission notified Austria and Germany that it had all the information necessary to consider the request.

- (7) According to the information provided by Austria and Germany, the legal and factual situation which has justified the current application of the derogating measure concerned has not changed and continues to exist. Austria and Germany should therefore be authorised to continue applying this derogating measure for a further period, but limited in time until 31 December 2018, in order to allow for a review of the necessity and effectiveness of the derogating measure and the apportionment rate between business and non-business use on which it is based.
- (8) Where Austria or Germany consider that a further extension beyond 2018 is necessary, the Member State concerned should submit to the Commission a report on the application of the derogating measure, which includes a review of the apportionment rate applied, together with the extension request, by no later than 31 March 2018 in order to allow sufficient time for the Commission to examine the request.
- (9) 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.
- (10) Decision 2009/791/EC and Implementing Decision 2009/1013/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Articles 1 and 2 of Decision 2009/791/EC are replaced by the following:

'Article 1

By way of derogation from Article 168 and Article 168a of Directive 2006/112/EC, Germany is authorised to exclude completely value added tax (VAT) borne on goods and services from the right to deduct VAT when the goods and services in question are used more than 90 % for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes or non-economic activities.

Article 2

This Decision shall expire on 31 December 2018.

Any request for extension of the derogating measure provided for in this Decision shall be submitted to the Commission by 31 March 2018.

Such request shall be accompanied by a report on the application of this measure which includes a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.'.

Article 2

Articles 1 and 2 of Implementing Decision 2009/1013/EU are replaced by the following:

'Article 1

By way of derogation from Article 168 and Article 168a of Directive 2006/112/EC, Austria is authorised to exclude completely value added tax (VAT) borne on goods and services from the right to deduct VAT when the goods and services in question are used more than 90 % for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes or non-economic activities.

Article 2

This Decision shall expire on 31 December 2018.

Any request for extension of the derogating measure provided for in this Decision shall be submitted to the Commission by 31 March 2018.

Such request shall be accompanied by a report on the application of this measure which includes a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.'.

Article 3

This Decision shall apply from 1 January 2016.

Article 4

This Decision is addressed to the Federal Republic of Germany and the Republic of Austria.

Done at Brussels,

For the Council

The President
