



Council of the
European Union

Brussels, 1 October 2018
(OR. en)

12617/18

Interinstitutional File:
2018/0334(NLE)

FISC 382
ECOFIN 853

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 September 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 652 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising the United Kingdom to apply a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2018) 652 final.

Encl.: COM(2018) 652 final



Brussels, 20.9.2018
COM(2018) 652 final

2018/0334 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the United Kingdom to apply a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter ‘the VAT Directive’), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 27 April 2018, the United Kingdom requested authorisation to continue to apply a measure derogating from Articles 16 and 168 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 11 June 2018 of the request made by the United Kingdom. By letter dated 12 June 2018, the Commission notified United Kingdom that it had all the information it considered necessary for appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 168 of the VAT Directive provides that a taxable person is entitled to deduct VAT charged on purchases made for the purpose of taxed transactions. Article 16 of the same Directive requires the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff to be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible. This system allows for the recovery of initially deducted VAT in relation to the private use.

In the case of company cars, partly used for private (non-business) purposes, it is often a difficult matter to calculate and to tax expenditure related to the private use under the above-mentioned rules.

In this context, the United Kingdom has operated a special scheme of flat rate taxation of private use authorised by Council Decision 86/356/EEC of 21 July 1986 authorising the United Kingdom to apply flat-rate measures in respect of non-deductible value added tax charged on fuel expenditure in company cars¹, which was based on the engine capacity and fuel type of the car.

This original derogation was abolished and replaced by Council Decision 2006/659/EC of 25 September 2006 authorising the United Kingdom to introduce a special measure derogating from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes², introducing a flat rate taxation of the private use on the basis of the car’s CO₂ emission rating. The latter Council Decision was on its turn replaced by Council Implementing Decision (EU) 2015/2109 of 17 November 2015³ which will expire on 31 December 2018.

The scheme is based on the fact that there is a direct relationship between the emission and the amount of fuel consumed as higher emissions correspond with greater fuel consumption. Based on these emission ratings, the fuel consumption per kilometre is calculated, which is then combined with the average private mileage determined on the basis of direct tax data and the retail price of road fuel. This results in a private use charge which corresponds with the

¹ OJ L 212, 2.8.1986, p. 35.

² OJ L 272, 3.10.2006, p. 15.

³ OJ L 305, 21.11.2015, p. 49-50.

amount of VAT due on the private use of the vehicle. The system is optional for taxable persons who may choose not to recover VAT on their fuel.

As required by Article 4 of Decision (EU) 2015/2109, the United Kingdom submitted to the Commission a report on the functioning of the derogating measure. According to the United Kingdom, this system has proven to be accurate and has led to a substantial simplification, both for businesses and the tax administration. The United Kingdom also submits that it provides taxable persons with legal certainty by providing a simplified method which can be used to account for VAT on private use of fuel.

On this basis, the United Kingdom has requested to be authorised to continue the application of the derogation until 31 December 2020.

- **Consistency with existing policy provisions in the policy area**

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions which were in place on 1 January 1979. There are therefore a number of “stand still” provisions restricting the right to deduct VAT in relation to passenger cars.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct⁴, such derogation is appropriate in the awaiting of a harmonisation of these rules at EU level.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

- **Subsidiarity (for non-exclusive competence)**

Considering the provision of the VAT Directive on which the proposal is based, the proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. to simplify the procedure for collecting VAT. It does not go beyond what is required to simplify VAT collection in a specific sector.

The system remains optional for taxable persons.

- **Choice of the instrument**

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

⁴ COM (2004) 728 final - Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations (OJ C 24, 29.1.2005, p.10) withdrawn on 21 May 2014_(OJ C 153 21. 05. 2014, p. 3)

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by the United Kingdom and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposed Decision aims at simplifying VAT collection in relation to fuel expenditure for company cars partly used for non-business purposes and has therefore a potential positive impact.

For taxable persons, who would opt to make use of this system, it reduces administrative burdens and compliance costs by removing the need to keep detailed mileage records for each company car for VAT purposes. Such record keeping requirements are likely to be time consuming and often impose significant administrative burdens for relatively small amounts of tax. The simplification method also reduces burdens for the tax authorities which would otherwise be required to audit numerous individual situations.

However, because of the narrow scope of the derogation and the limited application in time, the impact will in any case be limited.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implications for the EU budget.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2020.

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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,

Whereas:

- (1) Council Decision 2006/659/EC² authorised the United Kingdom to apply special simplification measures in order to determine on a flat-rate basis the proportion of non-deductible value added tax (VAT) relating to expenditure on fuel in business cars not exclusively used for business purposes. The system, which is optional for taxable persons, is based on the level of carbon dioxide (CO₂) emissions from the car, as there is a proportional correlation between emissions and fuel consumption and therefore with expenditure on fuel.
- (2) Council Decision 2006/659/EC was replaced by Council Implementing Decision (EU) 2015/2109³ which will expire on 31 December 2018.
- (3) By letter registered with the Commission on 27 April 2018, the United Kingdom requested authorisation to continue to apply the measure until 31 December 2020.
- (4) The Commission transmitted the request made by the United Kingdom to other Member States by letter dated 11 June 2018. By letter dated 12 June 2018, the Commission notified the United Kingdom that it had all the information necessary to consider the request.
- (5) As required by Article 4 of Implementing Decision (EU) 2015/2109, the United Kingdom submitted a report on the functioning of the special measure. According to the United Kingdom, the arrangement has effectively led to a simplification, both for taxable persons and the tax administration, of the procedure of collecting VAT in relation to expenditure on fuel for business cars.
- (6) It is therefore appropriate that the United Kingdom be authorised to apply the measure until 31 December 2020. It should nevertheless be noted that the United Kingdom

¹ [OJ L 347, 11.12.2006, p. 1.](#)

² Council Decision 2006/659/EC of 25 September 2006 authorising the United Kingdom to introduce a special measure derogating from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 272, 3.10.2006, p. 15).

³ Council Implementing Decision (EU) 2015/2109 of 17 November 2015 authorising the United Kingdom to apply a special measure derogating from Articles 26(1)(a), 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 305, 21.11.2015, p. 49).

notified on 29 March 2017 its intention to leave the Union, pursuant to Article 50 of the Treaty on the European Union, which implies that, unless a ratified withdrawal agreement between the European Union and the United Kingdom establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom on 30 March 2019, 00:00h (CET) ('the withdrawal date'). In such event this Decision will equally cease to have effect.

- (7) The derogating measure 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 16 and 168 of Directive 2006/112/EC, the United Kingdom is authorised to fix on a flat-rate basis the proportion of value added tax relating to expenditure on fuel used for private purposes in business cars from 1 January 2019 until 31 December 2020.

Article 2

The proportion of the tax referred to in Article 1 shall be expressed in fixed amounts, established on the basis of the CO₂ emissions level of the type of vehicle, that reflect fuel consumption. The United Kingdom shall adjust these fixed amounts annually to reflect changes in the average cost of fuel.

Article 3

The system set up on the basis of this Decision shall be optional for taxable persons.

Article 4

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

*For the Council
The President*