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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING DECISION amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2022/…

of …

amending Decision 2007/441/EC authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 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 tax[1], and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

[1] OJ L 347, 11.12.2006, p. 1.

Whereas:

(1) 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 them for the purposes of their taxed transactions. Article 26(1), point (a), of that Directive lays down that, when a business asset is put to use for the private purposes of the taxable person or their staff or, more generally, for purposes other than those of their business, this is to be considered as a service for consideration which, subsequently, is subject to VAT.

(2) Council Decision 2007/441/EC[1] authorises Italy to limit the right to deduct VAT under Article 168 of Directive 2006/112/EC to 40 % with respect to the purchase of certain motorised road vehicles, including contracts of assembly and the like, manufacture, intra-Community acquisition, importation, leasing or hire, modification, repair or maintenance, and related expenditure, including lubricants and fuel, where the vehicle in question is not entirely used for business purposes. For vehicles subject to that 40 % limit, Italy requires that taxable persons do not treat the use for private purposes of vehicles included in the assets of a taxable person's business as a supply of services for consideration in accordance with Article 26(1), point (a), of Directive 2006/112/EC (the 'special measures').

(3) Decision 2007/441/EC is due to expire on 31 December 2022.

[1] Council Decision 2007/441/EC of 18 June 2007 authorising the Italian Republic to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 165, 27.6.2007, p. 33).

(4) By letter registered with the Commission on 19 April 2022, Italy requested authorisation to continue to apply the special measures for a further period until 31 December 2025.

(5) By letter dated 2 May 2022, the Commission requested further information which Italy provided by letter dated 1 June 2022.

(6) In response to the Commission's request, Italy submitted an explanation regarding the percentage limitation applied to the right to deduct VAT. Italy maintains that a rate of 40 % is still justified. It also maintains that the derogation from the requirement in Article 26(1)(a) of Directive 2006/112/EC is still necessary to avoid double taxation. It further maintains that those special measures are justified by the need to simplify the procedure for collecting VAT and to prevent tax evasion resulting from incorrect record-keeping and false tax declarations.

(7) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Italy to the other Member States, by letter dated 23 June 2022. By letter dated 24 June 2022, the Commission notified Italy that it had all the information necessary for the appraisal of the request.

(8) The application of the special measures beyond 31 December 2022 will only have a negligible effect on the overall amount of tax revenue Italy collects at the stage of final consumption and will not adversely affect the Union's own resources accruing from VAT.

(9) It is therefore appropriate to extend the authorisation set out in Decision 2007/441/EC. The extension of the special measures should be limited in time, to allow the Commission to evaluate their effectiveness and the appropriateness of the percentage limitation applied to the right to deduct VAT.

(10) Italy should therefore be authorised to continue to apply the special measures until 31 December 2025.

(11) In the case that Italy considers that the special measures are necessary beyond the date of expiry of Decision 2007/441/EC, and in order to ensure a timely examination of any request to extend the special measures, it is necessary to lay down requirements for such a request.

(12) Decision 2007/441/EC should be therefore amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2007/441/EC is amended as follows:

(1) Article 6 is replaced by the following:

‘*Article 6*

Any request for an extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2025. Such request shall be accompanied by a report including a review of the percentage limitation applied on the right to deduct VAT on the basis of this Decision.’;

(2) Article 7 is replaced by the following:

‘*Article 7*

This Decision shall expire on 31 December 2025.’.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at …,

For the Council
The President