



Council of the  
European Union

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## **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2013/805/EU 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

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**COUNCIL IMPLEMENTING DECISION (EU) 2022/...**

**of ...**

**amending Implementing Decision 2013/805/EU  
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 tax<sup>1</sup>, and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

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<sup>1</sup> 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 Implementing Decision 2013/805/EU<sup>1</sup> authorises Poland to limit to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire or leasing of certain motorised road vehicles and on expenditure related thereto, where such vehicles are not entirely used for business purposes, and to relieve taxable persons from having to treat non-business use of such vehicles as a supply of services in accordance with Article 26(1), point (a), of Directive 2006/112/EC (the 'special measures').
- (3) Implementing Decision 2013/805/EU is to expire on 31 December 2022.
- (4) By letter registered with the Commission on 18 February 2022, Poland requested authorisation to continue to apply the special measures for a further period until 31 December 2025.

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<sup>1</sup> Council Implementing Decision 2013/805/EU of 17 December 2013 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 (OJ L 353, 28.12.2013, p. 51).

- (5) In accordance with Article 3, second paragraph, of Implementing Decision 2013/805/EU, Poland submitted to the Commission, together with the request, a report on the application of the special measures, including a review of the percentage limitation applied on the right to deduct VAT. Based on that report, Poland maintains that a rate of 50 % 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. 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.
- (6) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Poland to the other Member States, by letter dated 15 March 2022. By letter dated 16 March 2022, the Commission notified Poland that it had all the information necessary for the appraisal of the request.
- (7) The application of the special measures beyond 31 December 2022, will only have a negligible effect on the overall amount of tax revenue Poland collects at the stage of final consumption and will not adversely affect the Union's own resources accruing from VAT.
- (8) It is therefore appropriate to extend the authorisation set out in Implementing Decision 2013/805/EU. 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 on the right to deduct VAT.

- (9) Poland should therefore be authorised to continue to apply the special measures until 31 December 2025.
- (10) In the case that Poland considers that the special measures are necessary beyond the date of expiry of Implementing Decision 2013/805/EU, and in order to ensure timely examination of any request to extend the special measures, it is necessary to lay down requirements for such a request.
- (11) Implementing Decision 2013/805/EU should be therefore amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 3 of Implementing Decision 2013/805/EU is replaced by the following:

*‘Article 3*

This Decision shall expire on 31 December 2025.

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.’

*Article 2*

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

*Article 3*

This Decision is addressed to the Republic of Poland.

Done at ...,

*For the Council*

*The President*

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