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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising Estonia to apply a measure derogating from Article 26(1), point (a), and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2021/ ...

of ...

authorising Estonia to apply a measure derogating from Article 26(1), point (a), and 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,

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), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p. 1.

Whereas:

- (1) Articles 168 and 168a of Directive 2006/112/EC establish a right for taxable persons to deduct value added tax (VAT) charged on supplies to them of goods and services that are used for the purposes of their taxed transactions. Pursuant to Article 26(1), point (a), of that Directive, the use of business assets for private use of taxable persons or their staff or, more generally, for purposes other than those of their business is to be treated as a supply of services.
- (2) Council Implementing Decision 2014/797/EU¹ authorised Estonia to restrict to 50 % the right to deduct VAT on the purchase, leasing, intra-Community acquisition and importation of certain passenger cars, and to relieve the taxable person from accounting for VAT on the non-business use of vehicles covered by the restriction until 31 December 2017.
- (3) Council Implementing Decision (EU) 2017/1854² extended the validity of Implementing Decision 2014/797/EU until 31 December 2020.

¹ Council Implementing Decision 2014/797/EU of 7 November 2014 authorising the Republic of Estonia to apply a measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 48).

² Council Implementing Decision (EU) 2017/1854 of 10 October 2017 amending Implementing Decision 2014/797/EU authorising the Republic of Estonia to apply a measure derogating from point (a) of Articles 26(1) and Article 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 265, 14.10.2017, p. 17).

- (4) By letter registered with the Commission on 12 February 2021, Estonia submitted a request to the Commission to be authorised to apply a special measure derogating from Article 26(1), point (a), and Articles 168 and 168a of Directive 2006/112/EC in order to restrict the right of deduction concerning the purchase, leasing, intra-Community acquisition and importation of certain passenger cars used for non-business purposes ('the special measure').
- (5) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission, by letter of 19 March 2021, informed the other Member States of the request made by Estonia. By letter of 23 March 2021, the Commission notified Estonia that it had all the information it considered necessary for appraisal of the request.
- (6) The non-business use of passenger cars is often very difficult to identify accurately and even where it is possible, the mechanism for doing so is often burdensome. Under the requested authorisation, the amount of VAT on expenditure eligible for deduction in respect of passenger cars which are not used entirely for business purposes should, with some exceptions, be set at a flat percentage rate. Based on currently available information, the Estonian authorities believe that a rate of 50 % is justifiable. At the same time, in order to avoid double taxation, the requirement of accounting for VAT on the non-business use of passenger cars should be suspended where those cars have been subject to a limitation. This special measure removes the need to keep records of the private use of business cars and, at the same time, prevents tax evasion through incorrect record keeping.

- (7) The limitation of the right of deduction under the requested authorisation should apply to VAT paid on the purchase, leasing, intra-Community acquisition and importation of specific categories of passenger cars and on expenditure related thereto, including the purchase of fuel.
- (8) The requested authorisation should apply only to passenger cars with a maximum authorised weight not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat, since any non-business use of passenger cars exceeding 3 500 kilograms or having more than eight seats in addition to the driver's seat is negligible due to the nature of those passenger cars or the type of business they are used for. A detailed list of specific passenger cars excluded from that authorisation should also be provided, based on their particular use.
- (9) The authorisation should be limited in time until 31 December 2024, in order to allow for a review of the necessity and effectiveness of the special measure and of the apportionment rate between business and non-business use on which it is based.

- (10) If Estonia considers that an extension of the authorisation beyond 2024 is necessary, it should, by 31 March 2024, submit to the Commission a request for an extension, accompanied by a report which includes a review of the percentage applied.
- (11) The special measure will 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 way of derogation from Articles 168 and 168a of Directive 2006/112/EC, Estonia is authorised to limit to 50 % the right to deduct the value added tax on expenditure on passenger cars not wholly used for business purposes where that expenditure covers the purchase, leasing, intra-Community acquisition or importation of passenger cars not wholly used for business purposes, as well as on expenditure related to the maintenance and repair of such cars and to the purchase of fuel for them.

Article 2

By way of derogation from Article 26(1), point (a), of Directive 2006/112/EC, Estonia shall not treat as supplies of services for consideration the use for non-business purposes of a passenger car included in the assets of a taxable person's business, where that car has been subject to a limitation authorised under Article 1 of this Decision.

Article 3

1. This Decision shall apply only to passenger cars with a maximum authorised weight not exceeding 3 500 kilograms and having not more than eight seats in addition to the driver's seat.

2. This Decision shall not apply to the following categories of passenger cars:
- (a) cars purchased for resale, hire or lease;
 - (b) cars used for the transportation of passengers for a fee, including taxi services;
 - (c) cars used for the provision of driving lessons.

Article 4

This Decision shall expire on 31 December 2024. Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2024, and shall be accompanied by a report which includes a review of the percentage set out in Article 1.

Article 5

This Decision is addressed to the Republic of Estonia.

Done at ...,

For the Council
The President
