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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2009/1013/EU authorising the Republic of Austria 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) 2024/...

of ...

**amending Implementing Decision 2009/1013/EU
authorising the Republic of Austria 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,

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 govern the right of taxable persons to deduct value added tax (VAT) charged on supplies of goods and services used by them for the purposes of their taxed transactions. Austria has been authorised to introduce a special measure intended to exclude completely VAT borne on goods and services from the right of deduction where those goods and services are used by taxable persons for more than 90 % for their private purposes or for purposes of their employees, or in general for non-business purposes or non-economic activities (the ‘special measure’).

- (2) Council Implementing Decision 2009/1013/EU² authorised Austria to continue to apply a special measure, derogating from Article 168 of Directive 2006/112/EC, until 1 January 2013. Council Implementing Decision 2012/705/EU³ amended Implementing Decision 2009/1013/EU, authorising Austria to apply the special measure, derogating from Articles 168 and 168a of Directive 2006/112/EC, until 31 December 2015. That authorisation was subsequently extended by Council Implementing Decisions (EU) 2015/2428⁴, (EU) 2018/1487⁵ and (EU) 2021/1779⁶.

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- ² Council Implementing Decision 2009/1013/EU of 22 December 2009 authorising the Republic of Austria 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 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 2009/1013/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 (OJ L 319, 16.11.2012, p. 8).
- ⁴ Council Implementing Decision (EU) 2015/2428 of 10 December 2015 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 (OJ L 334, 22.12.2015, p. 12).
- ⁵ Council Implementing Decision (EU) 2018/1487 of 2 October 2018 amending Implementing Decision 2009/1013/EU authorising the Republic of Austria 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 251, 5.10.2018, p. 33).
- ⁶ Council Implementing Decision (EU) 2021/1779 of 5 October 2021 amending Implementing Decision 2009/1013/EU 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 360, 11.10.2021, p. 120).

- (3) Implementing Decision 2009/1013/EU is due to expire on 31 December 2024.
- (4) By letter registered with the Commission on 20 March 2024, Austria requested an authorisation to continue to apply the special measure. That request was accompanied by a report on the application of the special measure, including a review of the apportionment rate applied on the right to deduct VAT as required by Article 2 of Implementing Decision 2009/1013/EU.
- (5) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Austria to the other Member States by letter dated 16 May 2024. By letter dated 17 May 2024, the Commission notified Austria that it had all the information necessary for the appraisal of the request.
- (6) According to Austria, the special measure has proven very effective in simplifying the collection of VAT and preventing tax evasion and avoidance. The special measure reduces the administrative burden for businesses and the tax administration, as there is no need for any monitoring of the subsequent use of the goods and services to which the exclusion from deduction applied at the time of their acquisition. Taking into account the positive impact for both businesses and the tax administration, the Commission considers it to be appropriate to extend the special measure. Austria should therefore be authorised to continue to apply the special measure until 31 December 2027.

- (7) According to the report submitted by Austria, the minimum apportionment rate of 10 % of business use of goods and services required to allow the deduction of input VAT is low enough to have no significant impact on the total amount of VAT actually collected at the final consumption stage.
- (8) The special measure should be limited to the time needed to evaluate its effectiveness and the appropriateness of the apportionment rate applied on the right to deduct VAT.
- (9) The special measure is proportionate to the objectives pursued, namely to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance, since it is limited in time and scope.
- (10) In the event that Austria considers an extension of the special measure beyond 2027 to be necessary, it should submit a request for an extension to the Commission by 31 March 2027. That request should be accompanied by a report on the application of the special measure, including a review of the apportionment rate applied.
- (11) The special measure will have no adverse impact on the Union's own resources accruing from VAT.
- (12) Implementing Decision 2009/1013/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision 2009/1013/EU is replaced by the following:

‘Article 2

This Decision shall expire on 31 December 2027.

Any request for an extension of the special measure provided for in this Decision shall be submitted to the Commission by 31 March 2027.

The request referred to in the second paragraph shall be accompanied by a report on the application of the special measure provided for in this Decision, including a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.’.

Article 2

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

Article 3

This Decision is addressed to the Republic of Austria.

Done at ..., ...

For the Council

The President
