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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION amending Implementing Decision (EU) 2018/789 authorising Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2024/...

of ...

**amending Implementing Decision (EU) 2018/789
authorising Hungary to introduce a special measure
derogating from Article 193 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 valued 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) Article 193 of Directive 2006/112/EC provides that any taxable person carrying out a taxable supply of goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.
- (2) Council Implementing Decision (EU) 2018/789² authorised Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC regarding the person liable for payment of VAT in cases where certain supplies are carried out by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency (the ‘special measure’).
- (3) Council Implementing Decision (EU) 2021/1775³ extended the special measure until 31 December 2024.
- (4) By letter registered with the Commission on 10 June 2024, Hungary requested an authorisation, in accordance with Article 395(2), first subparagraph, of Directive 2006/112/EC, to continue to apply the special measure (the ‘request’). That request was accompanied by a report on the application of the special measure.

² Council Implementing Decision (EU) 2018/789 of 25 May 2018 authorising Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 134, 31.5.2018, p. 10).

³ Council Implementing Decision (EU) 2021/1775 of 5 October 2021 amending Implementing Decision (EU) 2018/789 authorising Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 360, 11.10.2021, p. 110).

- (5) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request to the other Member States by letter dated 7 August 2024. By letter dated 9 August 2024, the Commission notified Hungary that it had all the information necessary for the appraisal of the request.
- (6) Hungary argues that taxable persons in liquidation or under an insolvency procedure often do not pay the VAT due to the tax authorities. At the same time, the purchaser, being a taxable person with the right of deduction, can still deduct the VAT incurred, thus negatively impacting the public budget. Hungary has also registered cases of fraud whereby companies in liquidation would issue fictitious invoices to active companies and greatly reduce their tax payable, without the guarantee that the issuer of the invoices would pay the VAT due.
- (7) Article 199(1), point (g), of Directive 2006/112/EC enables Member States to provide that the person liable for the payment of VAT is the taxable person to whom the supply of immovable property sold by a judgment debtor in a compulsory sale procedure is made (the ‘reverse charge mechanism’). The special measure allows Hungary to extend the application of the reverse charge mechanism to other supplies by taxable persons under an insolvency procedure, namely the supply of capital goods and the supply of other goods and services with an open market value exceeding HUF 100 000.

- (8) On the basis of information provided by Hungary, applying the reverse charge mechanism to those types of transactions has effectively simplified tax collection and prevented tax evasion or avoidance. The implementation of the measure has limited losses to public revenues and generated additional budget revenue.
- (9) The requested extension of the special measure should be limited in time, to allow the national tax administration to introduce other conventional measures to address VAT fraud and to reduce the public budget losses. The introduction of such conventional measures will make a further extension of the special measure redundant. A derogation from Article 193 of Directive 2006/112/EC to allow making use of the reverse charge mechanism is granted only exceptionally for specific fraudulent areas and constitutes a means of last resort. Furthermore, Article 199a of Directive 2006/112/EC will remain in force until 31 December 2026. Thus, the authorisation to apply the special measure should therefore be extended only until 31 December 2026.
- (10) The special measure will have no adverse impact on the Union's own resources accruing from VAT.
- (11) Implementing Decision (EU) 2018/789 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision (EU) 2018/789, the second paragraph is replaced by the following:

‘This Decision shall expire on 31 December 2026’.

Article 2

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

Article 3

This Decision is addressed to Hungary.

Done at ..., ...

For the Council

The President
