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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising Hungary to introduce a special 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

COUNCIL IMPLEMENTING DECISION (EU) 2018/...

of ...

**authorising Hungary to introduce a special 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**

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) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p. 1.

Whereas:

- (1) By letter registered with the Commission on 6 February 2018, Hungary requested authorisation in accordance with Article 395(2) of Directive 2006/112/EC to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC that govern the right to deduct input tax in relation to the leasing of passenger cars ('special measure').
- (2) The Commission transmitted the request made by Hungary to the other Member States by letter dated 8 June 2018, in accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC. By letter dated 11 June 2018, the Commission notified Hungary that it had all the information necessary to consider the request.
- (3) Articles 168 and 168a of Directive 2006/112/EC establish a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services supplied to a taxable person for the purposes of his taxed transactions. Point (a) of Article 26(1) of Directive 2006/112/EC contains a requirement to account for VAT when a business asset is put to use for private purposes of the taxable person or of his staff or, more generally, for purposes other than those of his business.

- (4) Taxable persons in Hungary may currently deduct VAT on the leasing of passenger cars to the extent that the passenger car is used for the taxable person's taxable economic activity. In order to benefit from that VAT deduction, taxable persons have to prove the extent to which they use their passenger cars for business purposes.
- (5) Hungary claims that this system is difficult to apply. The non-business use is often very difficult to identify accurately and even where it is possible, the mechanism is often burdensome.
- (6) Hungary, therefore, requested a special measure whereby the amount of VAT on expenditure eligible for deduction in respect of the leasing of passenger cars which are not wholly used for business purposes should be set at a flat percentage rate. Based on its estimations, Hungary concludes that it is appropriate to apply a deduction limit of 50 %. At the same time, the requirement to account for VAT on the non-business use of passenger cars should be suspended where those cars have been subject to a deduction limit of 50 %.

- (7) The limitation of the right of deduction under the requested authorisation should apply to VAT paid on the leasing of passenger cars designed for the transportation of a maximum of nine persons with a gross vehicle weight not exceeding five tons. Vehicles designed for the transport of goods, vehicles that serve special purposes (i.e. crane truck, fire engine, truck-mixer), vehicles that are designed for the transport of 10 or more than 10 persons, and tractors and trailers are excluded from the restriction to the right of deduction of VAT.
- (8) Taxable persons who do not wish to apply the 50 % deduction limit and who wish to apply the VAT deduction up to the proportion of actual business use should be able to do so based on detailed evidence on the business use.
- (9) The requested measure removes the need to keep records on the private use of leased business cars and, at the same time, prevents tax evasion through incorrect record keeping. It is therefore appropriate to grant Hungary the authorisation to apply the requested measure.
- (10) The special measure should be limited in time to allow for a review of the necessity and effectiveness of the special measure and of the used apportionment rate between business and non-business.

- (11) Where Hungary considers that an extension of the authorisation beyond 2021 is necessary, it should submit a report to the Commission which includes a review of the percentage limit applied together with the request for an extension no later than by 31 March 2021.
- (12) The special measure will only have a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will not have adverse effects 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, Hungary is authorised to limit to 50 % the right to deduct the VAT on expenditure related to passenger cars not wholly used for business purposes.

Article 2

By way of derogation from point (a) of Article 26(1) of Directive 2006/112/EC, Hungary 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

Articles 1 and 2 shall only apply to passenger cars designed for the transportation of a maximum of nine persons with a gross vehicle weight not exceeding five tons.

Article 4

Articles 1 and 2 shall not apply to the following categories of passenger cars:

- vehicles designed for the transport of goods,
- vehicles that serve special purposes (i.e. crane truck, fire engine, truck-mixer),
- vehicles that are designed for the transport of 10 or more than 10 persons,
- tractors,
- trailers.

Article 5

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

This Decision shall apply from 1 January 2019 and shall expire on 31 December 2021.

Any request for the extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2021 and shall be accompanied by a report which includes a review of the percentage set out in Article 1.

Article 6

This Decision is addressed to Hungary.

Done at Brussels,

For the Council

The President
