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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING DECISION authorising Portugal 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) 2019/…

of …

authorising Portugal 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 value added tax[1], 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 2 July 2018, Portugal requested an authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC for supplies of cork, wood, pine cones and pine nut kernels in their shell if the person to whom those goods are supplied is a taxable person who has his registered office, fixed establishment or habitual residence in Portugal and carries out transactions for which he is entitled to fully or partly deduct input value added tax (VAT). By letters registered with the Commission on 27 November 2018 and 19 March 2019, more information was submitted by Portugal to the Commission.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letters dated 27 March 2019, of the request made by Portugal. By letter dated 28 March 2019, the Commission notified Portugal that it had all the information necessary to consider the request.

(3) According to Portugal, levels of fraud and tax evasion in the forestry sector in Portugal are very high. This is because that sector is dominated by a large number of small producers and numerous harvesters who sell raw materials onwards to processing companies without declaring and paying VAT for those sales. The nature of the market and of the businesses involved has led to VAT fraud, which the Portuguese tax authorities find difficult to tackle despite enhanced controls and the measures already taken. In order to combat such tax evasion, Portugal intends to introduce the reverse charge mechanism for supplies of cork, wood, pine cones and pine nut kernels in their shell. This would shift the liability to pay VAT to a small number of easily identifiable processing companies. Portugal considers that this would eliminate this kind of VAT fraud and prevent the resulting losses of VAT revenue.

(4) Portugal should therefore be authorised to introduce a special measure for a limited period of time until 31 December 2022.

(5) Derogations are in general authorised for a limited period of time to allow an assessment of whether the special measure is appropriate and effective. Derogations give Member States time until the expiry of the special measure to introduce other conventional measures to tackle the specific problem, thereby making an extension of the derogation unnecessary. Derogations that permit use of the reverse charge mechanism are only granted exceptionally for specific areas where fraud occurs, and constitute a means of last resort. Portugal should therefore implement other conventional measures to fight and prevent VAT fraud in the sector of cork, wood, pine cones and pine nut kernels in their shell until the expiry of the special measure and consequently should no longer need to derogate from Article 193 of Directive 2006/112/EC with regard to such supplies.

(6) The special measure 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 Article 193 of Directive 2006/112/EC, Portugal is authorised to designate the taxable person to whom supplies of cork, wood, pine cones or pine nut kernels in their shell are made as the person liable to pay VAT if this is a taxable person who has his registered office, fixed establishment or habitual residence in Portugal and who carries out transactions for which he is entitled to fully or partly deduct input VAT.

Article 2

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

It shall apply from 1 January 2020 and shall expire on 31 December 2022.

Article 3

This Decision is addressed to the Portuguese Republic.

Done at …,

For the Council
The President