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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 Article 168 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2021/…

of …

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

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), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

[1] OJ L 347, 11.12.2006, p. 1.

Whereas:

(1) Council Implementing Decision 2009/1013/EU[1] authorised the Republic of Austria ('Austria') to apply a special measure derogating from Directive 2006/112/EC ('the special measure'). Following successive extensions, that authorisation is due to expire on 31 December 2021.

(2) Council Directive 2009/162/EU[2] inserted Article 168a into Directive 2006/112/EC in order to limit the deduction to the proportion of effective business use and thus apply more effectively the principle whereby the deduction arises only in so far as the goods and services concerned are used for the purposes of the taxable person's business. Article 1 of Implementing Decision 2009/1013/EU has been amended to include a reference to Article 168a of Directive 2006/112/EC. The title of Implementing Decision 2009/1013/EU therefore needs to refer to Article 168a of Directive 2006/112/EC as well.

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[1] Council Implementing Decision 2009/1013/EU of 22 December 2009 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 348, 29.12.2009, p. 21).

[2] Council Directive 2009/162/EU of 22 December 2009 amending various provisions of Directive 2006/112/EC on the common system of value added tax (OJ L 10, 15.1.2010, p. 14).

(3) The special measure derogates from Articles 168 and 168a of Directive 2006/112/EC, which govern taxable persons' right to deduct value added tax (VAT) charged on goods and services supplied to them for the purposes of their taxed transactions. The special measure is intended to exclude VAT borne on goods and services from the right of deduction where those goods and services are used by the taxable person 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.

(4) The objective of the special measure is to simplify the procedure for charging and collecting VAT. The amount of tax due at the level of final consumption is only affected to a negligible extent.

(5) By letter registered with the Commission on 19 March 2021, Austria requested to be authorised to continue to apply the special measure ('the request').

(6) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, by letters dated 7 April 2021, the Commission transmitted the request to the other Member States. By letter dated 8 April 2021, the Commission notified Austria that it had all the information necessary to consider the request.

(7) According to Austria, the special measure has proven very effective in simplifying the collection of VAT and preventing tax evasion and avoidance. It reduces administrative burdens for businesses and tax administrations, 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. Austria should therefore be authorised to continue to apply the special measure for a further limited period until 31 December 2024.

(8) In the event that Austria considers an extension beyond 2024 to be necessary, it should submit a request to the Commission by 31 March 2024 accompanied by a report on the application of the special measure, including a review of the apportionment rate applied.

(9) The special measure will have no adverse impact on the Union's own resources accruing from VAT.

(10) Implementing Decision 2009/1013/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2009/1013/EU is amended as follows:

(1) The title is replaced by the following:

'Council Implementing Decision 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';

(2) Articles 1 and 2 are replaced by the following:

'Article 1

By way of derogation from Articles 168 and 168a of Directive 2006/112/EC, the Republic of Austria is authorised to completely exclude value added tax (VAT) borne on goods and services from the right to deduct VAT when the goods and services in question are used for more than 90 % for the private purposes of a taxable person or of a taxable person's employees, or, more generally, for non-business purposes or non-economic activities.

Article 2

This Decision shall expire on 31 December 2024.

Any request for the extension of the derogating measure provided for in this Decision shall be submitted to the Commission by 31 March 2024.

Such request shall be accompanied by a report on the application of this measure which includes 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