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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising the United Kingdom to apply, in respect of Northern Ireland, a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2021/...

of ...

**authorising the United Kingdom to apply, in respect of Northern Ireland,
a special measure derogating from Articles 16 and 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 tax¹, and in particular the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p. 1.

Whereas:

- (1) The United Kingdom withdrew from the European Union on 31 January 2020 on the basis of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community¹ ('the Withdrawal Agreement'). Thus, Union law on value added tax ('VAT') is no longer applicable to or in the United Kingdom.
- (2) However, in accordance with the first paragraph of Article 8 of the Protocol on Ireland/Northern Ireland ('the Protocol'), which forms an integral part of the Withdrawal Agreement, Union law on VAT continues to apply to and in the United Kingdom in respect of Northern Ireland as regards goods, subject to the democratic consent referred to in Article 18 of the Protocol to the continued application of Article 8 thereof.
- (3) Therefore, taxable persons and certain non-taxable legal persons in the United Kingdom continue to be subject to Union law on VAT for transactions in goods in Northern Ireland.
- (4) Article 168 of Directive 2006/112/EC provides that a taxable person is entitled to deduct VAT charged on purchases made for the purposes of taxed transactions. However, Article 16 of that Directive requires the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff to be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible. This system allows for the recovery of initially deducted VAT in relation to the private use.

¹ OJ L 29, 31.1.2020, p. 7.

- (5) By Council Decision 2006/659/EC¹, the United Kingdom was authorised to apply, until 31 December 2015, a special measure in order to determine, on a flat-rate basis, the proportion of non-deductible VAT relating to expenditure on fuel in business cars not exclusively used for business purposes ('the special measure'). The special measure, which is optional for taxable persons, is based on the level of carbon dioxide emissions from the car, as there is a proportional correlation between emissions and fuel consumption and therefore with expenditure on fuel.
- (6) By Council Implementing Decision (EU) 2015/2109², the United Kingdom was authorised to continue to apply the special measure until 31 December 2018. A further extension, until 31 December 2020, was granted by Council Implementing Decision (EU) 2018/1918³.

¹ Council Decision 2006/659/EC of 25 September 2006 authorising the United Kingdom to introduce a special measure derogating from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 272, 3.10.2006, p. 15).

² Council Implementing Decision (EU) 2015/2109 of 17 November 2015 authorising the United Kingdom to apply a special measure derogating from Articles 26(1)(a), 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 305, 21.11.2015, p. 49).

³ Council Implementing Decision (EU) 2018/1918 of 4 December 2018 authorising the United Kingdom to apply a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 311, 7.12.2018, p. 30).

- (7) By letter registered with the Commission on 27 November 2020, the United Kingdom requested, in respect of Northern Ireland, authorisation to continue to apply the special measure from 1 January 2021. The request included an explanation on the functioning of the special measure.
- (8) The Commission transmitted the request made by the United Kingdom to the Member States by letter dated 10 December 2020. By letter dated 11 December 2020, the Commission notified the United Kingdom that it had all the information necessary to consider the request.
- (9) According to the United Kingdom, the special measure has provided an efficient simplified procedure for collecting VAT in relation to expenditure on fuel for business cars partly used for private purposes, for both taxable persons and the tax authority. It is therefore appropriate that the United Kingdom in relation to Northern Ireland be authorised to continue to apply the special measure.
- (10) The derogation should be limited in time to 31 December 2023, as it is necessary to periodically reassess whether the flat-rate system continues to reflect correctly the overall apportionment between business and private use.

- (11) In accordance with the second paragraph of Article 8 of the Protocol, revenues resulting from transactions taxable in Northern Ireland are not to be remitted to the Union. Therefore, the special measure will have no impact on the Union's own resources accruing from VAT.
- (12) In order to avoid disruptive effects, the United Kingdom should be authorised to apply, in respect of Northern Ireland, the special measure without interruption. The requested authorisation should therefore be granted with effect from 1 January 2021, in order to follow seamlessly on from the arrangements under Implementing Decision (EU) 2018/1918,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 16 and 168 of Directive 2006/112/EC, the United Kingdom is authorised, in respect of Northern Ireland, from 1 January 2021 until 31 December 2023, to fix, on a flat-rate basis, the proportion of VAT relating to expenditure on fuel used for private purposes in business cars.

Article 2

The proportion of VAT referred to in Article 1 shall be expressed in fixed amounts, established on the basis of the carbon dioxide emission level of the type of vehicle, that reflects fuel consumption. The United Kingdom shall, in respect of Northern Ireland, adjust those fixed amounts annually to reflect changes in the average cost of fuel.

Article 3

The system set up on the basis of this Decision shall be optional for taxable persons.

Article 4

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland, in respect of Northern Ireland.

Done at ...,

For the Council

The President
