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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising the Italian Republic to apply a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax and repealing Implementing Decision (EU) 2015/1401

COUNCIL IMPLEMENTING DECISION (EU) 2017/...

of ...

**authorising the Italian Republic to apply a special measure
derogating from Articles 206 and 226 of Directive 2006/112/EC
on the common system of value added tax
and repealing Implementing Decision (EU) 2015/1401**

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 Council Implementing Decision (EU) 2015/1401¹, Italy is authorised to require that value added tax (VAT) due on supplies to public authorities is to be paid by those authorities to a separate and blocked bank account of the tax authorities. The measure constitutes a derogation from Articles 206 and 226 of Directive 2006/112/EC in relation to VAT payment and invoicing rules.
- (2) By letter registered with the Commission on 16 February 2017, Italy requested that this authorisation be prolonged. At the same time, Italy requested that the scope of the derogation for supplies of goods and services be broadened to apply both to companies controlled by central and local public authorities and to listed companies included in the Financial Times Stock Exchange Milano Indice di Borsa ('FTSE MIB') index.
- (3) By letter dated 15 March 2017, the Commission informed the other Member States of the request made by Italy. By letter dated 16 March 2017, the Commission notified Italy that it had all the information it needed to appraise the request.

¹ Council Implementing Decision (EU) 2015/1401 of 14 July 2015 authorising Italy to introduce a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 217, 18.8.2015, p. 7).

- (4) Italy has introduced additional control measures to allow tax authorities to cross-check the different operations declared by the operators and to monitor the payments of VAT into the blocked State accounts. However, these control measures are still in a start-up phase, and more time is required to assess their effectiveness in inducing taxpayers to comply with their tax obligations. Thus, Italy is not in the position to finalise the arrangements for and implementation of adequate control policy measures before Implementing Decision (EU) 2015/1401 expires on 31 December 2017. Therefore, Italy requested the prolongation of that derogation.
- (5) Italy detected evasion with regard to supplies of goods and services to other entities controlled by central and local public authorities as well as to a number of listed companies included in the FTSE MIB index. To tackle tax evasion in the form of non-payment of VAT by the suppliers to those entities, Italy requests that it be allowed to derogate from Article 206 of Directive 2006/112/EC and to require that VAT due on supplies of goods and services to these companies controlled by central and local public authorities and to the listed companies included in the FTSE MIB index is paid by those entities into the separate and blocked account of the tax authorities. In addition, it is also necessary to derogate from Article 226 of Directive 2006/112/EC to allow for a special remark on the invoice that VAT has to be paid into that special account.

- (6) One of the effects of the measure is that suppliers, being taxable persons, are not able to offset the input VAT against the output VAT. They may be consistently in a credit position, and may need to ask the tax administration for VAT refunds. In the report presented in June 2016, which was required by Article 3(2) of Implementing Decision (EU) 2015/1401, Italy demonstrated that its system of VAT refunds works properly, and that the average period for VAT refunds does not exceed three months. Moreover, Italy provided information that suppliers to public authorities were covered by a priority procedure in which the refund period was even shorter. Italy expects the new rules that have been in force to properly manage any possible increase in requests for VAT refunds.
- (7) In 2014, Italy has introduced an obligation that supplies of goods and services to public authorities be invoiced electronically. That should allow for a proper control of the sector concerned in the future, when an adequate control policy will have been developed and deployed on the basis of electronically available data. As from 1 January 2017, additional control measures apply in Italy: the optional accounting system (known as 'electronic invoicing'); and mandatory reporting to tax authorities of invoices issued and received, which applies both to the companies for which the derogation is requested and to their suppliers. These measures are intended to allow the Italian tax authorities to cross-check the different operations declared by the operators and to monitor the VAT payments. Once this system is fully implemented, there should be no more need to derogate from Directive 2006/112/EC. Therefore, Italy has offered assurance that it will not seek to renew the derogation.

- (8) The requested derogation should be limited in time to allow an assessment whether the special measure is appropriate and effective.
- (9) To guarantee the necessary follow-up within the framework of this derogation and, in particular, the impact on VAT refunds to taxable persons covered by the derogation, Italy should be required to submit a report to the Commission, within 15 months after the entry into force of the derogating measure, on the overall situation of, and, in particular, the average time needed for, VAT refunds to taxable persons, and on the effectiveness of the measures in reducing tax evasion in the sectors concerned. Italy should continue the reforms aimed at ensuring a smooth and timely VAT refund procedure.
- (10) The derogating measure is proportionate to the objectives pursued since it is limited in time and restricted to sectors which pose considerable problems of tax evasion. In addition, the derogating measure does not give rise to the risk that evasion would shift to other sectors or other Member States.
- (11) The derogation will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.
- (12) Implementing Decision (EU) 2015/1401 should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 206 of Directive 2006/112/EC, Italy is authorised to provide that the VAT due on supplies of goods and services to the following entities has to be paid by the recipient to a separate and blocked bank account of the tax administration:

- public authorities;
- companies controlled by public authorities within the meaning of Article 2359 of the Italian Civil Code (*Codice Civile*);
- companies listed on the stock exchange that are included in the FTSE MIB index, the list of which will be published by Italy in the Italian Official Journal (*Gazzetta Ufficiale*) after ... [the entry into force of this Decision] and revised annually if necessary.

Article 2

By way of derogation from Article 226 of Directive 2006/112/EC, Italy is authorised to require that invoices, issued in relation to supplies of goods and services to the entities listed under Article 1 include a special remark that VAT has to be paid to that separate and blocked bank account of the tax administration.

Article 3

Italy shall notify the national measures referred to in Articles 1 and 2 to the Commission.

Within 15 months after the entry into force in Italy of the measures referred to in Articles 1 and 2, Italy shall submit a report to the Commission on the overall situation of VAT refunds to taxable persons affected by these measures and, in particular, on the average duration of the refund procedure and on the overall effectiveness of this measure in reducing VAT evasion in the sectors concerned.

Article 4

Implementing Decision (EU) 2015/1401 is repealed as of 1 July 2017.

Article 5

This Decision shall apply from 1 July 2017 to 30 June 2020.

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council

The President
