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European Union

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### **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: COUNCIL IMPLEMENTING DECISION authorising Romania to apply special measures derogating from Article 26(1), point (a), and Article 168 of Directive 2006/112/EC on the common system of value added tax

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**COUNCIL IMPLEMENTING DECISION (EU) 2024/...**

**of ...**

**authorising Romania to apply special measures derogating  
from Article 26(1), point (a), and 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<sup>1</sup>, and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>.

Whereas:

- (1) Article 168 of Directive 2006/112/EC establishes a right for taxable persons to deduct from the value added tax ('VAT') due or paid in the relevant Member State the VAT charged on supplies to them of goods and services that are used for the purposes of their taxed transactions. Pursuant to Article 26(1), point (a), of that Directive, the use of goods forming part of the assets of a business for the private use of taxable persons or their staff or, more generally, for purposes other than those of their business, where the VAT on such goods was wholly or partly deductible, is to be treated as a supply of services for consideration.
- (2) Council Implementing Decision 2012/232/EU<sup>2</sup> authorised Romania to limit to 50 % the right to deduct the VAT on the purchase, intra-Community acquisition, importation, hire or leasing of certain motorised road vehicles as well as the VAT charged on expenditure related to those vehicles, where such vehicles are not used exclusively for business purposes, and to relieve taxable persons from having to treat the use of such vehicles for purposes other than those of their business as a supply of services for consideration pursuant to Article 26(1), point (a), of Directive 2006/112/EC (the 'special measures').

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<sup>2</sup> Council Implementing Decision 2012/232/EU of 26 April 2012 authorising Romania to apply measures derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 117, 1.5.2012, p. 7, ELI: [http://data.europa.eu/eli/dec\\_impl/2012/232/oj](http://data.europa.eu/eli/dec_impl/2012/232/oj)).

- (3) By letter registered with the Commission on 14 September 2023, Romania requested an authorisation, in accordance with Article 395(2), first subparagraph, of Directive 2006/112/EC, to continue to apply the special measures in order to restrict the right of deduction in relation to expenditure on certain motorised road vehicles not used exclusively for business purposes and to relieve taxable persons from having to treat the use of such vehicles for purposes other than those of their business as a supply of services for consideration.
- (4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request submitted by Romania to the other Member States by letter dated 9 November 2023. By letter dated 10 November 2023, the Commission notified Romania that it had all the information necessary for the appraisal of the request.
- (5) Pursuant to Article 4(2) of Implementing Decision 2012/232/EU, Romania submitted, together with the extension request, a report to the Commission on the application of that Implementing Decision. On the basis of currently available information, Romania submits that the limit of 50 % is still justifiable and remains appropriate.
- (6) The special measures authorised by Implementing Decision 2012/232/EU expired on 31 December 2023. Given the positive impact for both businesses and administration, it is appropriate to authorise Romania to apply the special measures.

- (7) In order to ensure that the objectives pursued by the special measures are achieved, including the uninterrupted application of the special measures, and to provide legal certainty with regard to the tax period, it is appropriate to grant authorisation to apply the special measures with effect from 1 January 2024. As Romania requested authorisation on 14 September 2023 to continue to apply the special measures and has continued to apply the legal regime established under its national law on the basis of Implementing Decision 2012/232/EU from 1 January 2024, the legitimate expectations of the persons concerned are duly respected.
- (8) The special measures should be limited to the time needed to evaluate the effectiveness of those special measures and the appropriateness of the percentage limitation. Romania should therefore be authorised to apply the special measures until 31 December 2026.
- (9) The special measures are proportionate to the objectives pursued, i.e. to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance, since they are limited in time and scope. In addition, the special measures do not give rise to the risk that fraud would shift to other sectors or to other Member States.
- (10) In the event that Romania considers that the special measures are necessary beyond 2026, it should submit a request for an extension to the Commission by 31 March 2026, together with a report which includes a review of the percentage limitation applied on the right to deduct VAT.

- (11) According to information provided by Romania, the special measures will have only a negligible effect on the overall amount of tax revenue that Romania collects at the stage of final consumption and 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 168 of Directive 2006/112/EC, Romania is authorised to limit to 50 % the right to deduct the VAT on the purchase, intra-Community acquisition, importation, hire or leasing of motorised road vehicles as well as the VAT charged on expenditure related to those vehicles, where the vehicle is not used exclusively for business purposes.

### *Article 2*

1. Article 1 shall not apply to motorised road vehicles with a maximum permissible laden mass of more than 3 500 kg or with more than nine seats including the driver's seat.
2. Article 1 shall not apply to the following categories of motorised road vehicle:
  - (a) vehicles used exclusively for emergency services;
  - (b) vehicles used exclusively for security, protection and courier services;
  - (c) vehicles used by sales agents and by purchasing agents;
  - (d) vehicles used for the transport of passengers for consideration, including taxi services;

- (e) vehicles used for the supply of services for consideration, including hire or driving lessons provided by driving schools;
- (f) vehicles used for hire or leasing;
- (g) vehicles purchased for the purpose of resale.

### *Article 3*

By way of derogation from Article 26(1), point (a), of Directive 2006/112/EC, Romania is authorised not to treat as a supply of services for consideration the private use by a taxable person or his staff, or, more generally, for purposes other than those of his business, of a vehicle to which the restriction referred to in Article 1 of this Decision applies.

### *Article 4*

Romania shall notify the national measures implementing the special measures for the derogations referred to in Articles 1 and 3 to the Commission.

*Article 5*

1. This Decision shall take effect on the date of its notification.
2. This Decision shall apply from 1 January 2024 to 31 December 2026.
3. Any request for an extension of the special measures laid down in Articles 1 and 3 shall be submitted to the Commission by 31 March 2026 and shall be accompanied by a report which includes a review of the percentage limitation applied on the right to deduct VAT on the basis of this Decision.

*Article 6*

This Decision is addressed to Romania.

Done at ...,

*For the Council*

*The President*

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