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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2012/232/EU 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

COUNCIL IMPLEMENTING DECISION (EU) 2020/…

of …

amending Implementing Decision 2012/232/EU
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

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 thereof,

Having regard to the proposal from the European Commission,

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

Whereas:

(1) Article 168 of Directive 2006/112/EC establishes, inter alia, a right for taxable persons to deduct the value added tax ('VAT') due or paid in the relevant Member State from the VAT charged on supplies to them of goods and services that are used for the purposes of their taxed transactions. Pursuant to point (a) of Article 26(1) 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) By means of Council Implementing Decision 2012/232/EU[1], Romania was authorised, until 31 December 2014, 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 the 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 point (a) of Article 26(1) of Directive 2006/112/EC. By means of Council Implementing Decision (EU) 2015/156[2], the period of validity of Implementing Decision 2012/232/EU was extended until 31 December 2017. By means of Council Implementing Decision (EU) 2017/2012[3], Romania was authorised to apply the derogating measures until the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles that is not eligible for full deduction of VAT, or until 31 December 2020, whichever is the earlier.

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1 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).

2 Council Implementing Decision (EU) 2015/156 of 27 January 2015 extending the period of validity of Implementing Decision 2012/232/EU 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 26, 31.1.2015, p. 27).

3 Council Implementing Decision (EU) 2017/2012 of 7 November 2017 amending Implementing Decision 2012/232/EU 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 292, 10.11.2017, p. 57).

(3) By letter registered with the Commission on 13 March 2020, Romania requested authorisation to continue to apply a measure derogating from point (a) of Article 26(1), and Article 168, of Directive 2006/112/EC in order to continue restricting the right of deduction in relation to expenditure on certain motorised road vehicles not used exclusively for business purposes.

(4) The application of a flat percentage rate for the amount of VAT on expenditure eligible for deduction concerning motorised road vehicles which are not used exclusively for business purposes simplifies the procedure for collecting VAT.

(5) Pursuant to the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request made by Romania to the other Member States by letter dated 2 April 2020. By letter dated 3 April 2020, the Commission notified Romania that it had all the information necessary for appraisal of the request.

(6) 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. Based on currently available information, Romania states that the limit of 50 % is still justifiable and remains appropriate.

(7) The extension of the derogating measures should be limited to the time needed to evaluate the effectiveness of those measures and the appropriateness of the percentage limitation. Romania should therefore be authorised to continue to apply the derogating measures until 31 December 2023.

(8) In the event that Romania considers that an extension of the authorisation beyond 2023 is necessary, it should submit an extension request to the Commission by 31 March 2023, together with a report which includes a review of the percentage restriction applied on the right to deduct VAT on the basis of Implementing Decision 2012/232/EU.

(9) The derogation measures will only have a negligible effect on the overall amount of tax revenue of Romania collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.

(10) Implementing Decision 2012/232/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 4 of Implementing Decision 2012/232/EU is replaced by the following:

'*Article 4*

1. This Decision shall expire on the date of entry into force of Union rules determining the expenditure relating to motorised road vehicles that is not eligible for full deduction of VAT, or on 31 December 2023, whichever is the earlier.

2. Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission by 31 March 2023. Such request shall be accompanied by a report which includes a review of the percentage restriction 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 Romania.

Done at Brussels,

For the Council
The President