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EUROPEAN COMMISSION

Brussels, 2.12.2010
COM(2010) 707 final

2010/0344 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

Amending Decision 2007/884/EC authorising the United Kingdom to apply a measure derogating from Articles 26(1)(a), 168 and 169 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter 'the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Secretariat-General of the Commission on 22 July 2010, the United Kingdom requested authorisation to continue to apply a derogation measure concerning the right of deduction of VAT borne on the hire or lease of motor cars also used for private purposes and granted, for the last time, by Council Decision 2007/884/EC¹. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 12 October 2010 of the request made by the United Kingdom. By letter dated 15 October 2010, the Commission notified the United Kingdom that it had all the information necessary to consider the request.

General context

The above-mentioned Council Decision authorised the United Kingdom to apply a restriction of the right of deduction to 50% of the input VAT incurred on the hire or lease of cars used by taxable persons for both business and private use. At the same time, the private use by taxable persons of such leased or hired cars was not to be considered as supplies of services for consideration. This derogation removes the need for the hirer or the lessee to keep detailed private mileage records for each of these cars and to account for the VAT on the private use. The derogation is therefore essentially to be considered as a simplification measure and is due to expire on 31 December 2010.

Derogations are normally granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. In this respect, the Commission understands, on the basis of the information made available by the United Kingdom, that the 50% apportionment between business and private use (or any other non-business use within the meaning of Article 26(1)(a) of Directive 2006/112/EC) currently still reflects the overall business and private use of leased and hired cars by taxable persons in the United Kingdom. An extension of the derogating measure is therefore appropriate.

However, any extension should be limited in time in order to assess whether the conditions, on which the derogation is based, would still be valid. Therefore, it is proposed to extend the derogation until the end of 2013 and to request the United Kingdom to present a report by 1 April 2013 including a review of the percentage restriction applied in case a further extension would be envisaged beyond 2013. The Decision would in any case expire in case EU rules governing restrictions on the right of deduction would come into force before that end date.

Existing provisions in the area of the proposal

¹ OJ L 346, 29.12.2007, p. 21.

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure of which the VAT is not deductible. Until such time, Member States are authorised to maintain exclusions which were in place on 1 January 1979. Therefore, there are a number of "standstill" provisions restricting the right of deduction in relation to motor vehicles.

In 2004, the Commission made a proposal² which contains rules on which categories of expenditure may be subject to a restriction on the right to deduct but the Council has not been able yet to reach an agreement on that proposal.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The implementing Decision aims at extending in time a simplification measure which removes the need for the taxable person to keep records and to account for VAT on private mileage travelled in cars operated by a business and has therefore a potential positive economic impact. However, because of the narrow scope and the limited application in time, the impact will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

The implementing Decision is based on Article 395 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

The proposal falls under the exclusive competence of the EU institutions. The subsidiarity principle therefore does not apply.

The implementing Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation. The proposal therefore complies with the proportionality principle.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

² COM(2004) 728final (OJ C 24, 29.1.2005, p. 10)

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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 tax³, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In a letter registered by the Commission's Secretariat-General on 22 July 2010, the United Kingdom requested authorisation to extend a derogating measure in order to continue to restrict the right of deduction of VAT by the hirer or lessee on charges for the hire or lease of a passenger car where the car is not used entirely for business purposes.
- (2) The Commission informed the other Member States of the request made by the United Kingdom by letter dated 12 October 2010. By letter dated 15 October 2010, the Commission notified the United Kingdom that it had all the information necessary to consider the request.
- (3) Council Decision 2007/884/EC of 20 December 2007 authorising the United Kingdom to continue to apply a measure derogating from Articles 26(1)(a), 168 and 169 of Directive 2006/112/EC on the common system of value added tax⁴, authorised the United Kingdom to restrict to 50% the right of the hirer or lessee to deduct input VAT on charges for the hire or lease of a passenger car where the car was not used entirely for business purposes. The United Kingdom was also allowed not to treat as supplies of services for consideration the private use of a car hired or leased by a taxable person for his business purposes. This simplification measure removed the need for the hirer or the lessee to keep records of private mileage travelled in business cars and to account for tax on the actual private mileage of each car.
- (4) According to the information provided by the United Kingdom, the restriction to 50% still corresponds to the actual circumstances as regards the business and the non-

³ OJ L 347, 11.12.2006, p. 1.

⁴ OJ L 346, 29.12.2007, p. 21.

business use by the hirer or lessee of the vehicles concerned. It is therefore appropriate that the United Kingdom would be authorised to apply the measure during a further limited period, until 31 December 2013.

- (5) Where the United Kingdom considers a further extension beyond 2013, a report which includes a review of the percentage applied should be submitted to the Commission together with that extension request no later than 1 April 2013.
- (6) On 29 October 2004, the Commission adopted a proposal for a Council Directive amending Directive 77/388/EEC, now Directive 2006/112/EC, that includes the harmonisation of the categories of expenses for which exclusions of the right of deduction may apply. Under this proposal, exclusions on the right to deduct may be applied to motorised road vehicles. The derogating measures provided for in the Decision should expire on the date of the entry into force of such amending Directive, if that date is earlier than the date of expiry provided for in this Decision.
- (7) The derogation has no impact on the Union's own resources accruing from value added tax.
- (8) Decision 2007/884/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2007/884/EC is amended as follows:

- (1) Article 3 is replaced by the following

"Article 3

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, but on 31 December 2013 at the latest.

Any request for extension of those measures shall be accompanied by a report, submitted to the Commission no later than 1 April 2013, which includes a review of the percentage restriction applied on the right to deduct VAT on the hire or lease of cars not entirely used for business purposes."

Article 2

This Decision shall apply as from 1 January 2011.

Article 3

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

Done at Brussels,

*For the Council
The President*