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2023/0402 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2021/512 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 as regards an extension of the authorisation

EXPLANATORY MEMORANDUM

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’¹), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating 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.

The United Kingdom has left the European Union (EU) on 31 January 2020. In accordance with the Withdrawal Agreement², it is now a third country to the EU.

As from 1 January 2021, the EU VAT legislation no longer applies to the United Kingdom. However, on the basis of the Protocol on Ireland/Northern Ireland³ (hereafter the ‘Protocol’), which is part of the Withdrawal Agreement, Northern Ireland remains under the EU VAT legislation regarding goods with a view to avoid a hard border between Ireland and Northern Ireland. For services, on the other hand, Northern Ireland is, together with the rest of the United Kingdom, treated as a third country.

This inevitably leads to a dual or mixed VAT system in Northern Ireland whereby supplies, intra-Community acquisitions and importations of goods that are located in Northern Ireland, according to the rules on the place of taxable transactions laid down in Title V of the VAT Directive, are subject to the harmonised EU rules, while supplies of services made in that same territory are not subject to the EU VAT system.

Therefore, to continue applying in Northern Ireland a special scheme on VAT, which provides for flat-rate measures in respect of non-deductible value added tax charged on fuel expenditure in company cars, which deviates from the general rules laid down in the VAT Directive, the granting of a derogation pursuant to Article 395(1) of the VAT Directive is needed.

By letter registered with the Commission on 13 July 2023, the United Kingdom requested authorisation to continue to apply a measure derogating from Articles 16 and 168 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed all Member States but Cyprus by letter dated 7 August 2023 of the request made by the United Kingdom. Cyprus was informed by letter dated 8 August 2023. On that same day, 8 August 2023, the Commission notified the United Kingdom that it had all the information it considered necessary for appraisal of the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 168 of the VAT Directive provides that a taxable person is entitled to deduct VAT charged on purchases made for the purpose of his taxed transactions. Article 16 of the same Directive requires that a self-supply of goods occurs when a taxable person diverts goods forming part of his business assets to private use or for that of his staff where the VAT on those goods or the component parts thereof was wholly or partly deductible.

¹ OJ L 347, 11.12.2006, p. 1.

² Council agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C384 I of 12.11.2019, p. 1).

³ OJ C384 I of 12.11.2019, p. 92.

In the case of company cars, partly used for private (non-business) purposes, it is often a difficult matter to calculate and to tax expenditure related to the private use under the above-mentioned rules.

In this context, the United Kingdom has operated a special scheme authorised by Council Decision 86/356/EEC of 21 July 1986 authorising the application of flat-rate measures in respect of non-deductible VAT charged on fuel expenditure in company cars⁴, which was based on the engine capacity and fuel type of the car. On the basis of the Protocol, the EU VAT legislation remains applicable in Northern Ireland with respect to the supply of goods. By Council Implementing Decision (EU) 2021/512⁵, the United Kingdom in respect of Northern Ireland was authorised to apply a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC, which is set to expire on 31 December 2023.

The United Kingdom included in its request an explanation on the functioning of the special scheme. This scheme combines various elements to calculate the private use charge on which VAT is due. These elements are the fuel consumption per kilometre, which is calculated based on the CO₂ emission ratings, the average private mileage which is determined on the basis of data from the Department for Transport's National Travel Survey and the retail price of road fuel.

The special scheme is optional for taxable persons who may instead choose not to recover VAT on their fuel or recover it as per an apportionment method of calculation based on detailed mileage records.

According to the United Kingdom, this scheme has proven to be accurate and has led to a substantial simplification, both for the businesses and the tax administration. The United Kingdom also submits that it provides taxable persons with legal certainty by providing a simplified method which can be used to account for VAT on private use of fuel and is in line with the general rules on deduction as laid down by the VAT Directive.

On this basis, the United Kingdom in respect of Northern Ireland has requested to be authorised to continue the application of the derogation from 1 January 2024. The derogation should be limited in time to 31 December 2026, so that it can be assessed whether the special scheme is still a correct reflection of the overall apportionment between business and private use.

- **Consistency with existing policy provisions in the policy area**

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure in respect of which VAT is not deductible. Until then, it authorises Member States to maintain the exclusions provided for under their national laws on 1 January 1979. There are therefore a number of 'standstill' provisions restricting the right to deduct in relation to passenger cars.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct⁶, such special scheme is appropriate in the awaiting of a harmonisation of these rules at EU level.

⁴ OJ L 212, 2.8.1986, p. 35.

⁵ OJ L 103, 24.3.2021, p. 4-5.

⁶ COM (2004) 728 final - Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations (OJ C 24, 29.1.2005, p.10) withdrawn on 21 May 2014. (OJ C 153 21. 05. 2014, p. 3)

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

- **Subsidiarity (for non-exclusive competence)**

Considering the provision of the VAT Directive on which it is based, the subsidiarity principle is respected at the level of the VAT Directive.

- **Proportionality**

The Decision concerns an authorisation granted to the United Kingdom in respect of Northern Ireland upon its own request and does not constitute any obligation.

Given the limited scope of the special scheme, it is proportionate to the aim pursued, i.e. to simplify VAT obligations and VAT collection. It does not go beyond what is required to simplify VAT obligations and VAT collection in a specific sector. The scheme remains optional for taxable persons.

- **Choice of the instrument**

The instrument proposed is a Council Implementing Decision.

Under Article 395 of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed individually.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

No stakeholder consultation has been conducted. The present proposal is based on a request made by the United Kingdom in the respect of Northern Ireland and concerns only Northern Ireland.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposed Decision aims at simplifying VAT collection and VAT obligations in relation to fuel expenditure for company cars partly used for non-business purposes and has therefore a potential positive impact.

For taxable persons, who would opt for this system, it reduces administrative burdens and compliance costs by removing the need to keep detailed mileage records on each company car for VAT purposes. Such record keeping requirements are likely to be time consuming and often impose significant administrative burdens for relatively small amounts of tax. It is indicated that this option, thanks to the simplification it offers, avoids the pitfalls of having businesses opting out of their recovery right of VAT on fuel used for business purposes. It was also indicated that the special measure provides taxable persons with legal certainty.

The simplification method also reduces burdens for the tax authorities, which would otherwise be required to audit numerous individual cases.

Nevertheless, because of the narrow scope of the derogation and the limited application in time, the impact will in any case be limited.

4. BUDGETARY IMPLICATIONS

The measure will have no adverse impact on the Union's own resources accruing from VAT. In this context, it is reminded that, in accordance with the second paragraph of Article 8 of the Protocol, revenues resulting from transactions that are taxable in Northern Ireland shall not be remitted to the EU.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2026.

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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 tax¹, and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Article 1 of Council Implementing Decision (EU) 2021/512², the United Kingdom was authorised to apply, in respect of Northern Ireland, until 31 December 2023, a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC in order to fix, on a flat-rate basis, the proportion of VAT relating to expenditure on fuel used for private purposes in business cars ('the special measure').
- (2) Article 168 of Directive 2006/112/EC provides that a taxable person is entitled to deduct VAT charged on purchases made for the purpose of the person's taxed transactions. However, Article 16 of that Directive requires the application by taxable persons of goods forming part of their business assets for their private use or for that of their 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.
- (3) By letter registered with the Commission on 13 July 2023, the United Kingdom requested an authorisation to continue to apply, in respect of Northern Ireland, the special measure beyond 31 December 2023.
- (4) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, by letters dated 7 August 2023, the Commission transmitted the request submitted by the United Kingdom to the Member States except for Cyprus, which was informed by letter dated 8 August 2023. By letter dated 8 August 2023, the Commission notified the United Kingdom that it had all the information necessary to consider the request.
- (5) According to the information provided by the United Kingdom in its request, the factual situation justifying the application of the special measure has not changed. Moreover, an explanation on the functioning of the special measure included in its request indicates that the special measure has proved to be effective in simplifying,

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 103, 24.3.2021, p. 4.

both for taxable persons and the tax administration, the procedure for collecting VAT in relation to expenditure on fuel for business cars partly used for private purposes.

- (6) It is therefore appropriate to extend the authorisation set out in Implementing Decision (EU) 2021/512. The extension of the authorisation should be limited in time to allow for a proper monitoring by the United Kingdom of whether the proportion of VAT, fixed on a flat-rate basis, still correctly reflects expenditure on fuel for business cars used for private purposes. The authorisation of the special measure should therefore expire on 31 December 2026.
- (7) In the event that the United Kingdom requests a further extension of the special measure beyond 31 December 2026, it should accompany such request to the Commission with a report, by 31 March 2026.
- (8) In accordance with Article 8, second paragraph, of the Protocol, revenues resulting from transactions that are taxable in Northern Ireland are not to be remitted to the Union. Therefore, the derogating measure will have no adverse impact on the Union's own resources accruing from VAT.
- (9) Implementing Decision (EU) 2021/512 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Implementing Decision (EU) 2021/512 is replaced by the following:

‘Article 1

By way of derogation from Articles 16 and 168 of Directive 2006/112/EC, the United Kingdom is authorised, from 1 January 2021 until 31 December 2026, to fix, in respect of Northern Ireland, on a flat-rate basis, the proportion of VAT relating to expenditure on fuel used for private purposes in business cars.

Any request for extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2026 and shall be accompanied by a report which verifies the effectiveness of the special measure, as well as the achievement of the objectives. The report shall include a review of the proportion of VAT as to whether it still correctly reflects the expenditure on fuel for business cars used for private purposes.

Article 2

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

Done at Brussels,

*For the Council
The President*