

EUROPEAN COMMISSION

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2012/0093 (NLE)

Proposal for a

COUNCIL DECISION

authorising Denmark to introduce a special measure derogating from Article 75 of Council Directive 2006/112/EC

(only the Danish text is authentic)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Pursuant to Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] (hereafter: 'VAT Directive'), 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 value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 5th September 2011, Denmark requested authorisation to introduce a measure derogating from Article 75 of the VAT Directive.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 14 March 2012 of the request made by Denmark. By letter dated 15 March 2012, the Commission notified Denmark that it had all the information necessary to consider the request in the way set out below.

Currently, Denmark makes use of a standstill provision under Article 176 of the VAT Directive regarding the deduction of VAT on the purchase and running costs of a light goods vehicle with a maximum authorised weight of up to three tonnes. The main features of this provision are as follows. A business which registers such a light goods vehicle as being solely for business purposes is authorised to deduct in full the VAT on the purchase of the vehicle and the running costs. However, a business which registers such a light goods vehicle as being for both business and personal use is not authorised to deduct the VAT on the purchase cost, but can deduct in full the VAT on the running costs of the vehicle. Where a light goods vehicle, which has been registered as being used solely for business purposes, is subsequently used for private purposes, even if this is only once, the taxable person loses in full his right of deduction of the VAT on the purchase cost.

This system can be complicated and costly to administer, both for the taxable person and for the tax administration, and Denmark has therefore requested a derogation to allow for a simplified procedure.

Under the terms of the derogation, Denmark would introduce a special measure applying to light goods vehicles with a maximum authorised weight of up to three tonnes. Under this special measure, a taxable person can register a vehicle as being for business purposes only, and deduct in full the VAT incurred on the purchase and running costs of the vehicle, as is the situation under the terms of their current standstill provision. However, should the taxable person use the vehicle for private purposes, he would no longer lose the right of deduction on the purchase cost of the vehicle, but would instead be authorised to calculate the tax on the private use on a flat rate basis for up to twenty days each calendar year (the 'pay-per-day' system).

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

The amount of DKK 40 per day has been assessed, on the basis of the full cost model, by the Danish authorities using national statistics, and covers only VAT. A similar payment, under separate national legislation, will be required to cover income tax on the disposal of a company car, and a surcharge to the circulation tax. Should the taxable person use the vehicle for more than twenty days in a calendar year, then the current standstill rules would apply, and the taxable person would lose in full the right of deduction of the purchase costs of the vehicle.

The Danish tax authorities will develop an electronic system whereby taxable persons are able to pay this daily amount on-line.

The Danish authorities consider that the new measure allows for a simplified means for taxable persons to fulfil their accounting obligations (by paying on-line via the pay-per-day scheme rather than repaying all of the VAT originally claimed on the purchase of the light goods vehicle) and for the tax authorities to collect and charge the tax. The measure does not lead to any extension of the standstill provisions and makes the Danish system more consistent with the general VAT rules.

The taxable person would still be able to register their light goods vehicle for both business and private use, and use the current system if that suits their circumstances.

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

There was no need for consultation or external expertise.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Decision authorises Denmark to introduce a special measure derogating from the VAT Directive as regards the accounting of the VAT on the private use of certain vehicles.

This Decision is based on Article 395 of the VAT Directive.

This Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the strict limitation in time and scope, the special measure appears to be proportionate to the aim pursued.

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal has no negative implications for the European Union's budget.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

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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 tax[2], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 5 September 2011, Denmark requested authorisation to apply a measure derogating from the provisions of Directive 2006/112/EC governing the right to deduct input tax.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Denmark in a letter dated 14 March 2012. By a letter dated 15 March 2012, the Commission notified Denmark that it had all the information that it considered necessary to consider the request.

(3) Currently, pursuant to Article 176 of Directive 2006/112/EC, if a light goods vehicle with a maximum authorised weight of up to three tonnes is registered with the Danish authorities as being used for business purposes only, the taxable person is authorised to deduct in full the input tax on the purchase and running costs of the vehicle. If such a vehicle is subsequently used for private purposes, the taxable person loses the right to deduct the VAT incurred on the purchase cost of the vehicle.

(4) Because this system places a heavy burden on both the taxable person and the tax administration, the Danish authorities have requested authorisation to apply a special measure derogating from Article 75 of Directive 2006/112/EC. This measure allows taxable persons, who have registered a vehicle as being for business purposes only, to use the vehicle for non-business purposes, and to calculate the taxable amount of the deemed supply pursuant to Article 75 of Directive 2006/112/EC on a daily flat rate basis, rather than lose their right to deduct the VAT incurred on the purchase cost of the vehicle.

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

(5) This simplified calculation method is however limited to twenty days of non-business use for each calendar year, and the flat rate amount of VAT to be paid is fixed at DKK 40 for each day of non-business use. This amount has been determined by the Danish Government through an analysis of national statistics.

(6) This measure, which is to apply to light goods vehicles with a maximum authorised weight of up to three tonnes, would simplify the VAT obligations of taxable persons who make occasional non-business use of a vehicle registered for business purposes. However, a taxable person could still choose to register his vehicle as being for both business and personal use, and lose his right of deduction of the VAT on the purchase of the light goods vehicle, and pay no daily charge for any private use.

(7) Putting in place a measure ensuring that a taxable person who makes occasional non-business use of a vehicle registered for business purposes is not deprived of the full right to deduct the input tax on that vehicle would be consistent with the general rules on deduction as laid down by Directive 2006/112/EC.

(8) The authorisation should be valid for a limited period and should therefore expire on 31 December 2014. In light of the experience gained up to that date an assessment should be made whether or not the derogation remains justified.

(9) This measure will have no effect on the European Union's own resources provided from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

Where a taxable person uses for private purposes, or those of his staff, or more generally for purposes other than those of his business, a light goods vehicle which has been registered as being solely for business use, Denmark is authorised, by derogation from Article 75 of Directive 2006/112/EC, to determine the taxable amount by reference to a flat-rate for each day of that use.

The flat rate per day referred to in the first paragraph shall be DKK 40.

Article 2

The measure referred to in Article 1 shall only be applied to light goods vehicles with a maximum authorised total weight of three tonnes.

This measure shall not apply where the non-business use exceeds twenty days per calendar year.

Article 3

This Decision shall expire on 31 December 2014.

Article 4

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels,

For the Council
The President