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Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons 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 Commission on 22 May 2015, 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 the other Member States by letter dated 5 June 2015 of the request made by the United Kingdom. By letter dated 8 June 2015, the Commission notified United Kingdom that it had all the information it considered necessary for appraisal of the request.

General context

Articles 168 and 168a of the VAT Directive provide that a taxable person is entitled to deduct VAT charged on purchases made for the purpose of taxed transactions. Article 26(1)(a) of the same Directive requires the use of goods forming part of the assets of a business for private purposes to be a supply of services for consideration if the VAT on the goods was eligible for deduction. This system allows for the recovery of initially deducted VAT in relation to the private use.

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

In this context, the United Kingdom has operated a special scheme of flat rate taxation of private use authorised by Council Decision 86/356/EEC of 21 July 1986 authorising the United Kingdom to apply flat-rate measures in respect of non-deductible value added tax charged on fuel expenditure in company cars¹, which was based on the engine capacity and fuel type of the car.

This original derogation was abolished and replaced by Council Decision 2006/659/EC of 25 September 2006 authorising the United Kingdom to introduce a special measure derogating from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes², introducing a flat rate taxation of the private use on the basis of the car's CO₂ emission rating. This scheme is based on the fact that there is a direct relationship between the emission and the amount of fuel consumed as higher emissions correspond with greater fuel consumption. Based on these emission ratings, the fuel consumption per kilometre is calculated, which is then combined with the average private mileage determined on the basis of direct tax data and the retail price of road fuel. This results in a private use charge which corresponds with the amount of VAT on the private use of the vehicle. This charge is revalorised once a year as to take changes in fuel prices into account.

According to the United Kingdom, this system has proven to be accurate and has led to a substantial simplification, both for businesses and the tax administration. In this context, it should be pointed out that the system is optional for taxable persons who could decide to stay

¹ OJ L 212, 2.8.1986, p. 35.

² OJ L 272, 3.10.2006, p. 15.

under the normal rules. However, it is estimated that around 230.000 vehicles operate within the simplification.

On this basis, the United Kingdom has requested to extend the application of the derogation.

The above-mentioned Decision, which ends on 31 December 2015, was granted on the basis of the so-called Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment³ which, without substantial changes as regards its content, was replaced by the VAT Directive which therefore forms the basis for the current Decision.

Any extension request beyond 31 December 2018 should be accompanied by a report on the functioning of the system.

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 the proposal is based, the proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

• Proportionality

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

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. to simplify the procedure for collecting VAT. It does not go beyond what is required to simplify VAT collection in a specific sector.

The system remains optional for taxable persons.

• Choice of the instrument

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

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

• Stakeholder consultations

This proposal is based on a request made by the United Kingdom and concerns only this Member State.

• Collection and use of expertise

There was no need for external expertise.

³ OJ L 145, 13.6.1977, p. 1.

- **Impact assessment**

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

For taxable persons, who would opt to make use of this system, it reduces administrative burdens and compliance costs by removing the need to keep detailed mileage records for 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. The simplification method also reduces burdens for the tax authorities which would otherwise be required to audit numerous individual situations.

However, 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 proposal will have no negative implication for the EU budget.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2018.

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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 tax⁴, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2006/659/EC⁵ authorised the United Kingdom to apply special simplification measures in order to determine on a flat-rate basis the proportion of non-deductible value added tax (VAT) relating to expenditure on fuel in business cars not exclusively used for business purposes. The system, which is optional for taxable persons, is based on the level of carbon dioxide (CO₂) emissions from the car, as there is a proportional correlation between emissions and fuel consumption and therefore with expenditure on fuel.
- (2) By letter registered with the Commission on 22 May 2015, the United Kingdom requested authorisation to continue to apply the measure.
- (3) The Commission informed the other Member States of the request made by the United Kingdom in a letter dated 5 June 2015. By letter dated 8 June 2015, the Commission notified the United Kingdom that it had all the information necessary to consider the request.
- (4) According to the United Kingdom, the arrangement has effectively led to a simplification, both for taxable persons and the tax administration, of the procedure of collecting VAT in relation to expenditure on fuel for business cars. It is therefore appropriate that the United Kingdom be authorised to apply the measure until 31 December 2018.
- (5) Where the United Kingdom considers that a further extension beyond 2018 is necessary, it should submit a report together with an extension request to the Commission no later than 31 March 2018.
- (6) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT,

⁴ [OJ L 347, 11.12.2006, p. 1.](#)

⁵ Council Decision 2006/659/EC of 25 September 2006 authorising the United Kingdom to introduce a special measure derogating from Articles 5(6) and 11(A)(1)(b) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 272, 3.10.2006, p. 15).

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 26(1)(a), 168 and 168a of Directive 2006/112/EC, the United Kingdom is authorised, from 1 January 2016 until 31 December 2018, to fix on a flat-rate basis the proportion of value added tax relating to expenditure on fuel used for private purposes in business cars.

Article 2

The proportion of the tax referred to in Article 1 shall be expressed in fixed amounts, established on the basis of the CO₂ emissions level of the type of vehicle, that reflect fuel consumption. The United Kingdom shall adjust these fixed amounts annually to reflect changes in the average cost of fuel.

Article 3

The system set up on the basis of this Decision shall be optional for taxable persons.

Article 4

Any request for extension of the special measure provided for in this Decision shall be submitted to the Commission no later than 31 March 2018 and shall be accompanied by a report which includes a review of the application of this measure.

Article 5

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

Done at Brussels,

*For the Council
The President*