



Brussels, 7.10.2016
COM(2016) 645 final

2016/0315 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Decision 2007/884/EC 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 tax

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’), 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.

By letter registered with the Commission on 14 March 2016, 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 2013/681/EU¹. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 28 June 2016 of the request made by the United Kingdom. By letter dated 28 June 2016, the Commission notified the United Kingdom that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 168 and 168a of the VAT Directive provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purposes of his taxed transactions. At the same time, Article 26(1)(a) of the VAT Directive stipulates that the use of goods, forming part of the assets of a business, for private purposes is to be considered as a supply of services for consideration if the VAT on these goods was wholly or partly deductible. As a result, the system ensures that final consumption is taxed when the corresponding input VAT was initially deducted.

In relation to motor vehicles, it is sometimes difficult and burdensome for the taxable persons to identify and register the split between business and private use and for the tax administration to verify the effective division of use. This would be the case even if the United Kingdom made use of the option provided for in Article 168a(2) of the VAT Directive to limit the deduction on expenditure related to company cars to the proportion of the taxable person's effective business use. In addition, because of the number of mixed use vehicles, tax evasion could become considerable.

In order to simplify VAT collection and to combat tax evasion, the United Kingdom has been authorised since 1995² and for the last time in 2013³, to restrict, until 31 December 2016, to 50% the right of the hirer or lessee to deduct input tax on charges for hire or lease of a car where the car is not used entirely for business purposes. In order to avoid double taxation the

¹ Council Implementing Decision 2013/681/EU of 15 November 2013 amending Decision 2007/884/EC 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 tax (OJ L 316, 27.11.2013, p. 41).

² Council Decision 95/252/EC of 29 June 1995 authorizing the United Kingdom to apply a measure derogating from Articles 6 and 17 of the Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes (OJ L 159, 11.7.1995, p. 19)

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 tax (OJ L 346, 29.12.2007, p. 21) was extended by Council Implementing Decision 2011/37/EU of 18 January 2011 (OJ L 19, 22.1.2011, p. 11) up to 31 December 2013 and by Council implementing Decision 2013/681/EU of 15 November 2013 up to 31 December 2016 (OJ L 316, 27.11.2013, p. 41).

United Kingdom is also authorised not to treat the private use of a business car hired or leased by a taxable person as a supply 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 option provided for in Article 168a(2) of the VAT Directive does not foresee partial deduction at a flat rate and could be applicable only for input VAT on cars forming part of the business assets of the taxable person; therefore, a derogation is an appropriate measure to achieve the requested simplification.

In accordance with Article 3 of Council Decision 2007/884/EC⁴, as amended, the United Kingdom has presented a report covering the application of the Decision 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. The report sets out that pending the dataset used the actual estimated ratio between professional and private use does not deviate significantly from 50%.

Derogations are normally granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. The report provided by the United Kingdom suggests 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 2019 and to request the United Kingdom to present a new report if a new extension request would be envisaged beyond that end date.

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

Article 176 of Directive 2006/112/EC stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until such time, it authorises Member States to maintain exclusions, which were in place on 1 January 1979. There are therefore a number of "stand still" provisions restricting the right to deduct in relation to motor vehicles.

Notwithstanding previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct⁵, such derogation is appropriate in the awaiting of a harmonisation of these rules at EU level.

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 subsidiarity principle does not apply.

⁴ OJ L 346, 29.12.2007, p. 21–22.

⁵ 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).

- **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. In particular, given the potential for businesses to under declare their liability and the burdensome check of mileage data for tax authorities, the 50% restriction would avoid an overstatement of business mileage and contributes to protecting against revenue loss through error and evasion and to simplifying the VAT collection in a specific sector.

- **Choice of the instrument**

Proposed instrument is a Council Implementing Decision. Other means would not be adequate for the following reason as under Article 395 of Council Directive 2006/112/EC, derogation from the common VAT rules is only possible upon authorisation of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

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.

- **Impact assessment**

The Decision aims at extending in time a simplification measure which is designed to counter VAT evasion and to simplify the procedure for charging tax. The 50% input tax restriction is a proxy for the actual amount of tax due on the use of relevant cars for private motoring. It removes the need for the hirer/lessee to keep records of the private mileage travelled in business cars and to account for tax on the actual private use of each car and therefore significantly reduces administrative burden for taxpayers and tax authorities. Businesses using their car for professional purpose more than 50% but less than 100% would bear additional costs.

Moreover, because of the narrow scope 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 2019.

In case the United Kingdom would consider another extension of the derogating measure beyond 2019, a new evaluation report should be submitted to the Commission together with the extension request no later than 1 April 2019.

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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 tax⁶, and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2007/884/EC⁷, lastly amended by Council Implementing Decision 2013/681/EU⁸, authorised the United Kingdom to restrict to 50% the right of the hirer or lessee to deduct input value added tax (VAT) on charges for the hire or lease of a 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. That 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.
- (2) In a letter registered by the Commission on 14 March 2016, 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 car where the car is not used entirely for business purposes.
- (3) The Commission informed the other Member States of the request made by the United Kingdom by letter dated 28 June 2016. By letter dated 28 June 2016, the Commission notified the United Kingdom that it had all the information necessary to consider the request.
- (4) According to the report provided by the United Kingdom, the restriction to 50% still corresponds to the actual circumstances as regards the business and the non-business use by the hirer or lessee of the vehicles concerned. It is therefore appropriate that the United Kingdom is authorised to apply the measure until 31 December 2019.

⁶ OJ L 347, 11.12.2006, p. 1.

⁷ 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 tax (OJ L 346, 29.12.2007, p. 21).

⁸ Council Implementing Decision 2013/681/EU of 15 November 2013 amending Decision 2007/884/EC 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 tax (OJ L 316, 27.11.2013, p. 41).

- (5) In accordance with Article 3 of Council Decision 2007/884/EC, as amended, the United Kingdom submitted a report to the Commission covering the application of the Decision which included a review of the percentage restriction. The information provided by the United Kingdom still shows that a restriction of the right of deduction to 50% corresponds to the actual circumstances as regards the ratio of business to non-business use of the vehicles concerned. The United Kingdom should therefore be authorised to apply the measure for a further limited period, until 31 December 2019.
- (6) Where the United Kingdom considers that a further extension beyond 2019 would be necessary, it should submit a report which includes a review of the percentage applied together with an extension request to the Commission no later than 1 April 2019.
- (7) The derogation will have only a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the EU own resources accruing from VAT.
- (8) Decision 2007/884/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Decision 2007/884/EC is replaced by the following:

'Article 3

This Decision shall expire on 31 December 2019.

Any request for extension of the measures provided for in this Decision shall be accompanied by a report, submitted to the Commission by 1 April 2019, 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 from 1 January 2017.

Article 3

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

Done at Brussels,

*For the Council
The President*