

COMMISSION DECISION

of 22 December 2009

declining the solution proposed by Austria under Article 10 of Council Regulation (EEC, Euratom) No 1553/89 relating to the calculation of a compensation to the VAT own resources base resulting from the restriction of the right to deduct VAT under Article 176 of Council Directive 2006/112/EC

(notified under document C(2009) 10428)

(Only the German text is authentic)

(2010/8/EU, Euratom)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular Article 10(2) thereof,

After consulting the Advisory Committee on Own Resources,

Whereas:

- (1) The compensation to the VAT resources base is based on Article 6(4) of Regulation (EEC, Euratom) No 1553/89, which provides that where a Member State restricts or excludes, on the basis of Article 176 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽²⁾, the right to deduct input VAT, then the VAT own resources base may be determined as if the right of deduction had not been restricted. This applies only in respect of the purchase of passenger cars and their fuel used for business purposes, and of expenditure relating to the lease, hire, maintenance and repair of such cars. Austria proposed a multipart draft solution for such compensation to its VAT own resources base, which includes a method for six sub-categories.
- (2) Pursuant to Article 13(3) of Regulation (EEC, Euratom) No 1553/89, the solution proposed by Austria was examined in its entirety by the Advisory Committee on Own Resources at its meeting on 10 December 2009. The examination revealed a difference of opinion in the Committee regarding one of the sub-categories of the solution. That sub-category concerns the methodology proposed for the calculation of the private use component of the compensation to the harmonised VAT own resources base. A draft decision declining that sub-category of the solution presented by Austria

was submitted to the Advisory Committee on Own Resources which delivered a positive opinion on 10 December 2009.

- (3) When calculating private use, in the absence of actual data, alternative methods can be used. To guarantee that these methods contribute to uniformity in the calculation of the compensation they should be based on generally accepted assumptions.
- (4) Austria requires taxable persons to administer actual data about the private use of business cars. However, for reasons of administrative simplicity, Austria has proposed a solution for the calculation of private use incorporating general statistical data combined with depreciation rules devised for non-harmonised corporate income tax purposes. Since the proposed solution results in a private use element significantly lower than the proportion used by other Member States, it is contradictory to the required uniformity in the calculation of the compensation. The solution proposed by Austria concerning the calculation of the private use proportion of cars acquired by businesses needs therefore to be declined,

HAS ADOPTED THIS DECISION:

Article 1

The solution proposed by Austria concerning the calculation of the private use proportion of cars acquired by businesses is declined.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 22 December 2009.

For the Commission
Algirdas ŠEMETA
Member of the Commission

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.