DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2015/1401

of 14 July 2015

authorising Italy to introduce a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax

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 ([1]), 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 24 November 2014, Italy requested authorisation to introduce a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC in relation to value added tax (VAT) payment and invoicing arrangements.

(2) The Commission informed the other Member States of the request made by Italy by letter dated 16 March 2015. By letter dated 17 March 2015, the Commission notified Italy that it had all the information it considered necessary for appraisal of the request.

(3) Italy has detected substantial tax evasion with regard to supplies of goods and services to public authorities. On these supplies, VAT is paid by the public authority to the supplier who is, as a rule, liable for the payment of this VAT to the tax administration. However, Italy has indicated that a significant number of traders engage in tax evasion by not paying the VAT to the tax authorities.

(4) Italy requested the derogating measure in order to prevent VAT due on supplies to public authorities from being paid to the supplier, requiring instead for it to be paid to a separate and blocked bank account. This derogating measure should ensure that the opportunity to engage in that form of tax evasion is excluded without affecting the amount of VAT due. To that end, it is necessary to derogate for those supplies from Article 206 of Directive 2006/112/EC. In addition, it is also necessary to derogate from Article 226 of Directive 2006/112/EC as to allow for a special remark on the invoice that VAT has to be paid onto that special account.

(5) As a consequence of the measure, taxable persons, acting as suppliers to public authorities, might have to request more often a refund of VAT from the tax administration. Italy has indicated that it has taken the necessary legislative and administrative steps to speed up the refund procedure as to the guarantee that the right of deduction of the taxable persons concerned is fully respected. Italy should therefore be required to submit a report to the Commission within 18 months after the entry into force of the derogating measure in Italy regarding the overall situation of, and in particular the average time needed for, VAT refunds to taxable persons. In 2014, Italy introduced an obligation on public authorities to perform electronic invoicing for supplies of goods and services. That should allow for a proper control of the sector concerned in the future when an adequate control policy will have been developed and deployed on the basis of electronically available data. Once this system is fully implemented, there should be no further need to derogate from Directive 2006/112/EC. Therefore, Italy has offered assurance not to seek renewal of the authorisation of the derogating measure.

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

(6) The derogating measure is therefore proportionate to the objectives pursued since it is limited in time and restricted to a sector which poses considerable problems of tax evasion. In addition, the derogating measure does not give rise to the risk that tax evasion would shift to other sectors or other Member States.

(7) In order to ensure that the objectives pursued by the measure are achieved and that its application does not create legal uncertainty with regard to the tax period, it is appropriate that this Decision applies from 1 January 2015.

(8) The derogation will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 206 of Directive 2006/112/EC, Italy is authorised to provide that the VAT due on supplies of goods and services to public authorities has to be paid by the recipient to a separate and blocked bank account of the tax administration.

Article 2

By way of derogation from Article 226 of Directive 2006/112/EC, Italy is authorised to require that invoices, issued in relation to supplies of goods and services to public authorities, include a special remark that VAT has to be paid to that separate and blocked bank account of the tax administration.

Article 3

Italy shall notify the national measures, referred to in Articles 1 and 2, to the Commission.

Within 18 months after the entry into force in Italy of the measures referred to in Articles 1 and 2, Italy shall submit a report to the Commission on the overall situation of VAT refunds to taxable persons affected by these measures and, in particular, on the average duration of the refund procedure.

Article 4

This Decision shall apply from 1 January 2015 to 31 December 2017.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 14 July 2015.

For the Council

The President

P. GRAMEGNA